

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
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4 In the Matter of the Real Estate License of)
5

6 JERRY PATRICK BOEHNEN)

STIPULATED FINAL ORDER
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10 The Oregon Real Estate Agency (OREA) and Jerry Patrick Boehnen (Boehnen) do
11 hereby agree and stipulate to the following:

12 FINDINGS OF FACT

13 &

14 CONCLUSIONS OF LAW

15 1.

16 1.1 Boehnen was licensed as a real estate broker working under Exit Rookstool
17 Moden Realty Co. (Exit Rookstool), from July 30, 2008 to January 1, 2013. Since January 30,
18 2014, Boehnen has been working under EXP Realty, LLC.

19 1.2 On September 23, 2014, OREA received a copy of a civil complaint from
20 Katherine Ash (Ash) against Boehnen. On January 5, 2015, OREA opened an investigation.

21 1.3 Boehnen represented both Ash as the buyer, and the sellers, Thomas and Maria
22 Dickerts (Dickerts) during Ash's purchase of 2210 Vine Ave, Klamath Falls (subject property).

23 1.4 The subject property was owned by Boehnen's in-laws, the Dickerts. Boehnen
24 helped his father-in-law do some repairs after the house was purchased.

25 1.5 On July 22, 2010, Ash signed an offer on the subject property. The Dickerts
26 accepted the offer on the same day, with Boehnen representing both Ash and the Dickerts.

27 1.6 The Professional Inspection Addendum to the sales agreement stated Ash would
28 order and pay for a professional home inspection. Time was of the essence on July 22, 2010,
29 and the default language stated the home inspection was supposed to be ordered and
30 completed with the report delivered to Ash, within 10 business days after written acceptance of
the agreement. The "inspection period" was to be followed by the "negotiation period" of the

1 default 3 days from the earlier of the receipt of the report or after expiration of the inspection
2 period. According to the document, a pest and dry rot inspection was not going to be done.

3 1.7 On August 26, 2010, the property was inspected, and the inspection report was
4 completed on August 30, 2010. Boehnen failed to have the parties agree per addendum for
5 the lapse of time regarding the inspection period and negotiation period.

6 1.8 Escrow was opened on August 30, 2010 at Aspen Title & Escrow, Inc. (Aspen
7 Title). On August 30, 2010, Aspen Title sent a letter to Boehnen, enclosed was the preliminary
8 title report and any "CCR's" for the subject property. Per the sales agreement, the transaction
9 was subject to Ash's review and approval of the preliminary title report, recorded covenants,
10 conditions and restrictions. According to the sales agreement, the preliminary title report for
11 the subject property were supposed to be ordered promptly upon acceptance of the offer.

12 **Violation:** By opening escrow over a month after acceptance, Boehnen failed to
13 exercise reasonable care and diligence, in violation of ORS 696.301(3) as it incorporates ORS
14 696.815(2) (2009 Edition) and OAR 863-015-0135(5) (6-15-2010 Edition). ORS 696.815(2)
15 states a real estate licensee acting pursuant to a disclosed limited agency agreement has the
16 following duties and obligations (a) To the seller, the duties under ORS 696.805, (b) To the
17 buyer, the duties under ORS 696.810. Per ORS 696.805(3)(a) and ORS 696.810(3)(a), a
18 licensee owes the buyer and seller the following affirmative duties: (a) To exercise reasonable
19 care and diligence.

20 1.9 Boehnen ordered a pest and dry rot inspection, the report was dated September
21 24, 2010. On September 24, 2010, Ash was billed for the pest and dry rot inspection, and
22 shows that a fee of \$165.00 was due at close of escrow. Ash's signature appears on the
23 invoice. Boehnen failed to have the parties agree per addendum regarding the pest and dry
24 rot inspection. Per the Professional Inspection Addendum the pest and dry rot inspection was
25 not going to be done.

26 1.10 According to the sales agreement, closing was required no later than August 31,
27 2010. The sale closed on September 27, 2010. Boehnen failed to have both parties sign a
28 written extension.

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1 **Violation:** By neglecting to timely address the following in addenda to the sales
2 agreement: a) an extension to the inspection period and negotiation period, prior to the
3 professional home inspection that occurred on August 26, 2010, b) a pest and dry rot
4 inspection not initially agreed to in the agreement, but which occurred on September 24, 2010,
5 and c) an extension to the closing date of the transaction from August 31, 2010, to September
6 27, 2010, Boehnen failed to exercise reasonable care and diligence to all parties in the
7 transaction in violation of ORS 696.301(3) as it incorporates ORS 696.815(2)(a)(b) (2009
8 Edition), which states a real estate licensee acting pursuant to a disclosed limited agency
9 agreement has the following duties and obligations (a) To the seller, the duties under ORS
10 696.805, (b) To the buyer, the duties under ORS 696.810. Per ORS 696.805(3)(a) and ORS
11 696.810(3)(a), a licensee owes the buyer and seller the following affirmative duties: (a) To
12 exercise reasonable care and diligence. Additionally, Boehnen violated ORS 696.301(3) as it
13 incorporates OAR 863-015-0135(5) (6-15-10 Edition), which states real estate licensees must
14 include all of the terms and conditions of the real estate transaction in the offer to purchase or,
15 directly or by reference, in the counter- offer, including but not limited to whether the
16 transaction will be accomplished by way of deed or land sales contract, and whether and at
17 white time evidence of title will be furnished to the prospective buyer.

18 1.11 The actions noted in the above violation(s) demonstrate incompetence in
19 performing acts for which Boehnen is required to hold a license.

20 **Violation:** ORS 696.301(12) (2009 Edition), which states a licensee's real estate
21 license can be disciplined if they have demonstrated incompetence in performing any act for
22 which the licensee is required to hold a license.

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2.1 OREA reserves the right to investigate and pursue additional complaints that may be received in the future regarding this licensee.

STIPULATION & WAIVER

I have read and reviewed the above findings of fact and conclusions of law which have been submitted to me by OREA and further, the order which follows hereafter. I understand that the findings of fact, conclusions of law and this stipulation and waiver embody the full and complete agreement and stipulation between OREA and me. I further understand that if I do not agree with this stipulation I have the right to request a hearing on this matter and to be represented by legal counsel at such a hearing. Hearings are conducted in accordance with the procedures set forth in ORS Chapter 183 and in accordance with the Rules of Practice and Procedure adopted by the Attorney General of the State of Oregon. I freely and voluntarily waive my rights to a hearing, to representation by legal counsel at such a hearing, and to judicial review of this matter.

I hereby agree and stipulate to the above findings of fact and conclusions of law and understand that the order which follows hereafter may be completed and signed by the Real Estate Commissioner or may be rejected by the Real Estate Commissioner. I understand that, in accordance with the provisions of ORS 696.445(3), notice of this order shall be published in the Oregon Real Estate News Journal.

ORDER

IT IS HEREBY ORDERED that Boehnen's broker license be, and hereby is, reprimanded.

IT IS SO STIPULATED:

IT IS SO ORDERED:

Jerry Boehnen
JERRY PATRICK BOEHNEN

Gene Bentley
GENE BENTLEY

Real Estate Commissioner

Date 1-7-17

Date 1.9.17

Date of service: 1/9/2017