



# Oregon

Kate Brown, Governor

## Real Estate Agency

1177 Center Street NE

Salem, OR 97301-2505

Phone: (503) 378-4170

Regulations Fax: (503) 373-7153

Admin. Fax: (503) 378-2491

Licensing Fax: (503) 378-3256

www.rea.state.or.us

### AGENDA ITEM NO.

I. C.

#### Notice of Agenda

## OREGON REAL ESTATE BOARD

### Regular Meeting Agenda

Monday, April 6, 2015

Oregon Real Estate Agency

1177 Center St. NE

Hearings Room

*NOTE: The board plans to meet from 10 a.m. until 1:30 p.m., including a "working lunch" period.*

#### I. BOARD BUSINESS – Chair Hendricks

- A. Call to Order
- B. Roll Call/Chair Hendricks comments
- C. Approval of the Agenda and Order of Business
- D. Approval of 2.2.15, regular meeting minutes
- E. Date of the Next Meeting: June 1, 2015 to begin at 10am at the Oregon Real Estate Agency, 1177 Center St. NE, Salem, OR, 97301.

#### II. PUBLIC COMMENT

- This time is set aside for persons wishing to address the Board on matters not on the agenda. Speakers will be limited to five minutes.
- The Board Chair reserves the right to further limit or exclude repetitious or irrelevant presentations. If written material is included, 12 copies of all information to be distributed to board members should be given to the Board Liaison prior to the meeting.
- Action will not be taken at this meeting on citizen comments. The Board, however, after hearing from interested citizens, may place items on a future agenda so proper notice may be given to all interested parties.
- If no one wishes to comment, the next scheduled agenda item will be considered.

#### III. PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER– Approval of petition log.

- A. BELFOR Property Restoration will appear in person.
- B. Marcia Gohman Golden Goose Consulting will appear in person.

#### IV. COMMUNICATIONS – Administrative Actions Summary

#### V. REPORTS

- A. Commissioner Gene Bentley
- B. Agency division reports-Deputy Commissioner Dean Owens
  1. Regulation Division – Selina Barnes
  2. Education Division – Stacey Harrison

3. Land Development Division – Michael Hanifin
4. Business and Licensing Services Division – Erica Kleiner

**VI. ANNOUNCEMENTS** – Next board meeting 6.1.15 to begin at 10 a.m. at the Oregon Real Estate Agency, 1177 Center St. NE, Salem, OR 97301.

**VII. ADJOURNMENT**

**Interpreter services or auxiliary aids for persons with disabilities are available upon advance request.**

DRAFT



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**AGENDA ITEM NO.  
I.D.**

## **OREGON REAL ESTATE BOARD**

### **Regular Meeting Minutes**

**Monday, February 2, 2015**

**BOARD MEMBERS PRESENT:**

Byron Hendricks, Chair  
Robert LeFeber, Vice-Chair  
Marcia Edwards  
James (Jef) Farley  
Joann Hansen  
Warren (Lee) Dunn  
Diana Emami  
Chris Hermanski  
Coni Rathbone

**OREA STAFF PRESENT:**

Gene Bentley, Commissioner  
Dean Owens, Deputy Commissioner  
Selina Barnes, Regulations Division Manager  
Stacey Harrison, Education Division Manager  
Erica Kleiner, Business and Licensing Services Division Manager  
Leandra Hagedorn, Board Liaison

**GUESTS PRESENT :**

Jenny Pakula, Oregon Association of REALTORS®  
David Tangvalo, Premiere Property Grove, LLC  
Shawn Cleave, Oregon Association of REALTORS®  
Nicholas Cook, Sleep Sound PM  
Gabe Terreson

**I. BOARD BUSINESS – Chair Hendricks**

- A. Call to Order. Chair Hendricks called the meeting to order at
- B. Roll Call/Chair Hendricks comments. Chair Hendricks explained the role/function of the board members, REA staff and also asked for self-introductions from all.
- C. Approval of the Agenda and Order of Business. Agenda and Order of Business approved as submitted.

**MOTION TO APPROVE AGENDA AND ORDER OF BUSINESS AS SUBMITTED BY MARCIA EDWARDS**

**SECOND BY JOANN HANSEN**

**MOTION CARRIED BY UNANIMOUS VOTE**

**SECOND BY JOANN HANSEN**

**MOTION CARRIED BY UNANIMOUS VOTE**

- D. Approval of 12.1.14, regular meeting minutes. The 12.1.14 regular meeting minutes approved as submitted.

**MOTION TO APPROVE 12.1.14 REGULAR MEETING MINUTES AS SUBMITTED BY WARREN (LEE) DUNN**

**SECOND BY ROBERT LEFEBER**

**MOTION CARRIED BY UNANIMOUS VOTE**

- E. Date of the Next Meeting: April 6, 2015 to begin at 10am at the Oregon Real Estate Agency, 1177 Center St. NE, Salem, OR, 97301.

**II. PUBLIC COMMENT**

- This time is set aside for persons wishing to address the Board on matters not on the agenda. Speakers will be limited to five minutes.
- The Board Chair reserves the right to further limit or exclude repetitious or irrelevant presentations. If written material is included, 12 copies of all information to be distributed to board members should be given to the Board Liaison prior to the meeting.
- Action will not be taken at this meeting on citizen comments. The Board, however, after hearing from interested citizens, may place items on a future agenda so proper notice may be given to all interested parties.
- If no one wishes to comment, the next scheduled agenda item will be considered.

**III. REQUESTS FOR WAIVERS – Waiver request log.**

- A. Nicholas Cook requests experience waiver for principal broker license. Mr. Cook appeared and explained that he would rely on the information provided on his application as the basis for his request. Chair Hendricks asked Mr. Cook if he held a real estate and/or property management license outside of Florida. Mr. Cook responded that he did not. He also explained his company manages properties in the tri-county area and he is half way through the IREM program. Discussion: Vice-Chair LeFeber stated that Mr. Cook's 4 year college degree and property management experience demonstrate enough experience to allow the waiver request.

**MOTION TO APPROVE NICHOLAS COOK'S REQUEST FOR WAIVER FOR PRINCIPAL BROKER LICENSE BY ROBERT LEFEBER**

**SECOND BY CONI RATHBONE**

**MOTION CARRIED BY UNANIMOUS VOTE**

- B. Gabe Terreson requests experience waiver for principal broker license. Mr. Terreson appeared and explained he has been in real estate lending business for 22 years, received his real estate license in Washington, was a principal broker, hired and managed several people over the years. Jef Farley asked Mr. Terreson what his main reason for becoming a principal broker was and Mr. Terreson responded that has a passion for helping people. Coni Rathbone stated that Mr. Terreson started a real estate firm in 2009 while he did not have a license. Mr. Cook explained that Washington did not require him to hold license because he did not handle any transactions. Chair Hendricks asked Mr. Terreson if he was prepared to make sure brokers comply with rule and law. Mr. Cook replied that his approach would be to go the source to ensure compliance and consumer protection. Discussion: Marcia Edwards stated that she did not feel Mr. Terreson demonstrated enough experience. Warren (Lee) Dunn stated that he felt Mr. Terreson was qualified to supervise.

**MOTION TO DENY GABE TERRESON'S REQUEST FOR EXPERIENCE WAIVER FOR PRINCIPAL BROKER LICENSE BY MARCIA EDWARDS**

**NO SECOND - MOTION TO DENY DIES**

**MOTION TO APPROVE GABE TERRESON'S REQUEST FOR EXPERIENCE WAIVER FOR PRINCIPAL BROKER LICENSE BY WARREN (LEE) DUNN**

**SECOND BY JOANN HANSEN**

**MOTION CARRIED BY 8 AYES (WARREN (LEE) DUNN, DIANA EMAMI, JAMES (JEF) FARLEY, JOANN HANSEN, BYRON HENDRICKS, CHRIS HERMANSKI, ROBERT LEFEBER, AND CONI RATHBONE) AND 1 NAY (MARCIA EDWARDS)**

**IV. PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER– Approval of petition log.**

- A. The Seminar Group, Chris Terp or Elizabeth Skirving will appear by phone. Chris Terp and Elizabeth Skirving both appeared by phone and explained their company has been providing continuing education to realtors for 18 years which cover the following acceptable course topics: real estate law, regulation, marketing. Chair Hendricks pointed out that Mr. Terp could provide continuing education as an instructor. Mr. Terp responded that customers would have a better perception of him as a provider.

**MOTION TO APPROVE THE SEMINAR GROUP'S PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER BY CONI RATHBONE**

**SECOND BY ROBERT LEFEBER**

**MOTION CARRIED BY UNANIMOUS VOTE**

- B. Right Now Home Services Inc., Jack Brockway will appear in person. Mr. Brockway appeared by phone and explained that he was asked to provide continuing education to realtors covering the following course topics: radon, electrical code changes, risk management, fire/water damage, and dealing with insurance companies. Mr. Farley asked Mr. Brockway if he had experience in providing classes. Mr. Brockway replied that he had not provided any classes. Discussion: Coni Rathbone, Chair Hendricks, and Warren (Lee) Dunn all stated that Mr. Brockway should provide continuing education as an instructor because there are providers looking for the content he offers.

**MOTION TO DENY RIGHT NOW HOME SERVICES, INC.'S PETITION TO QULAIIFY AS A CONTINUING EDUCATION PROVIDER BY WARREN (LEE) DUNN**

**SECOND BY MARCIA EDWARDS**

**MOTION CARRIED BY UNANIMOUS VOTE**

**V. BOARD ADVICE/ACTION**

- A. Memorandum re: Law and Rule Required Course (LARRC)/Stacey Harrison. Ms. Harrison summarized the historical changes to the LARRC course and also reviewed statistics as well as the process involved for updates. Coni Rathbone and James (Jef) Farley suggested REA compile a list of non-compliance issues. Commissioner Bentley directed board members to send topical issues to Chair Hendricks.

**VI. NEW BUSINESS**

- A. 2015 Governor's Food Drive/Commissioner Bentley. Commissioner Bentley made the following announcements:

- 2015 Governor's Food Drive runs from 2.2.15 through 2.27.15.
- Direct deposit program enrollment is available to all board members
- Legislative Session will conclude at mid or the end of July
- REA budget presentation will be submitted to the Ways and Means Committee next week.

**VII. COMMUNICATIONS – Administrative Actions Summary**

**VIII. REPORTS**

A. Commissioner Gene Bentley

B. Agency division reports-Deputy Commissioner Dean Owens

1. Regulation Division – Selina Barnes. Ms. Barnes stated that the Do's and Don'ts Class has been updated and also summarized the division statistics provided in the handout included in the packet. Ms. Barnes reported administrative actions have decreased and REA is evaluating the compliance review process.
2. Education Division – Stacey Harrison. Ms. Harrison summarized the statistics provided in the handout included in the packet.
3. Land Development Division – Deputy Commissioner Owens. Deputy Commissioner Owens summarized the statistics provided in the handout included in the packet and also reported that condominium filings are at a steady pace.
4. Business and Licensing Services Division – Erica Kleiner. Ms. Kleiner summarized the statistics provided in the handout included in the packet and provided a budget update. She also reported that the Governor's budget eliminated the Information Systems 3 vacancy and in focusing on cost reduction strategy, the Agency has evaluated all expenses i.e. customer service parking, facility costs, travel expenses and current licensee fees.

**IX. ANNOUNCEMENTS** – Next board meeting 4.6.15 to begin at 10 a.m. at the Oregon Real Estate Agency, 1177 Center St. NE, Salem, OR 97301.

**X. ADJOURNMENT**

Respectfully submitted by:

Respectfully submitted by:

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GENE BENTLEY, COMMISSIONER

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BYRON HENDRICKS, BOARD CHAIR

**AGENDA ITEM NO.  
III.**

**OREGON REAL ESTATE BOARD  
CEP LOG**

2.2.15	The Seminar Group	Approved	<p><b>FACTS:</b> Chris Terp and Elizabeth Skirving both appeared by phone and explained their company has been providing continuing education to realtors for 18 years which cover the following acceptable course topics: real estate law, regulation, marketing. Chair Hendricks pointed out that Mr. Terp could provide continuing education as an instructor. Mr. Terp responded that customers would have a better perception of him as a provider.</p> <p><b>MOTION TO APPROVE THE SEMINAR GROUP'S PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER BY CONI RATHBONE SECOND BY ROBERT LEFEBER MOTION CARRIED BY UNANIMOUS VOTE</b></p>
2.2.15	Right Now Home Services Inc.	Denied	<p><b>FACTS:</b> Mr. Brockway appeared by phone and explained that he was asked to provide continuing education to realtors covering the following course topics: radon, electrical code changes, risk management, fire/water damage, and dealing with insurance companies. Mr. Farley asked Mr. Brockway if he had experience in providing classes. Mr. Brockway replied that he had not provided any classes.</p> <p><b>DISCUSSION:</b> Coni Rathbone, Chair Hendricks, and Warren (Lee) Dunn all stated that Mr. Brockway should provide continuing education as an instructor because there are providers looking for the content he offers.</p>
4.6.15	BELFOR Property Restoration		<p><b>FACTS:</b> <b>DISCUSSION:</b></p>
4.6.15	Marcia Gohman Golden Goose Consulting		<p><b>FACTS:</b> <b>DISCUSSION:</b></p>



**PETITION TO QUALIFY AS A  
CONTINUING EDUCATION PROVIDER**

Rev. 7/2011

Real Estate Agency  
1177 Center Street NE  
Salem OR 97301  
Phone: 503-378-4170  
Fax: 503-378-2491  
www.rea.state.or.us

**INSTRUCTIONS**

To petition the Real Estate Board for approval of qualifications to become an applicant for certification as a continuing education provider, the petitioner must complete this form and submit it via mail or fax to the Agency at least 21 days before the next scheduled Board meeting at which the applicant wishes the Board to act. OAR 863-020-0025

**IMPORTANT:**

- ▶ If the petitioner is an entity, the information provided must pertain to that entity. If the petitioner is an individual, the information provided must pertain to that individual.
- ▶ All information and documents submitted as part of this petition become part of the Board Packet, and therefore, public record.
- ▶ Petitioners will need to appear before the Board. Once the Agency receives this completed petition, a letter will be sent to the petitioner with the date of the Board meeting the petitioner will need to attend.

If the Board approves this petition, the Agency will mail a letter to the petitioner, at the mailing address provided, confirming the Board's approval. The petitioner may then apply for certification as a continuing education provider under OAR 863-020-0030.

**PETITIONER**

Name BELFOR Property Restoration Phone Number 541-664-5454

Physical Address 449 Pech Rd Address Cont. 449 Pech Rd

City Central Point State OR Zip Code 97502 County Jackson

E-mail jim.eystad@us.belfor.com

Mailing Address (if different) \_\_\_\_\_ Address Cont. \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_ County \_\_\_\_\_

**AUTHORIZED CONTACT PERSON**

Prefix Mr. First Name James Last Name Eystad

Phone Number 541-613-6762 E-mail jim.eystad@us.belfor.com

Provide the name of the individual that will appear in person on behalf of the Petitioner: James Eystad

<b>AGENCY USE ONLY</b>	
Approved by Board	YES NO
Review Date	_____

**Rec'd by Fax**  
MAR 12 2015  
**Real Estate Agency**

PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER, Continued

QUALIFICATION INFORMATION

Provide below sufficient information about the petitioner to allow the Board to determine whether the petitioner qualifies for certification. If the petitioner is an entity, the information provided must pertain to that entity. If the petitioner is an individual, the information provided must pertain to that individual.

Information MUST include one or both of the following:

- ▶ Petitioner's demonstrated expertise and experience in providing educational courses to real estate licensees.
- ▶ Petitioner's demonstrated experience and expertise in two or more course topics eligible for continuing education credit under OAR 863-020-0035.

You may attach up to three (3) additional pages if necessary.

I have been in property restoration for over 10 years. 2 years with North West Flood Pro, 6years with Serv Pro and 2 years with Belfor Property Restoration. I am certified through IICRC (Institute of Inspection, Cleaning and Restoration) For Mold Mitigation and Remediation, Water Restoration and Fire and Smoke Remediation. Have Instructor certification through Serv Pros presentation work shop and certified/approved through the State of Oregon Insurance Division to conduct CE Classes on the following topics: Advanced Water Damage Restoration, Mold Remediation, Advanced Content Damage Restoration and Ethics in Restoration. These courses are offered to Insurance Agents and Adjusters.

My prior career was with Shell Oil Co. in Martinez California. I assumed many Management positions to include 5 years as the Training Department Manager where I developed and instructed various training programs to include: Steven Coyves Seven Habits of Highly Effective People, Interpersonal Skills Development and Conflict Resolution Workshops. The rest of my 33 year career was spent on the processing side of the business.

I feel the a fore mentioned courses would qualify under your Risk Management and Dispute Resolution Courses.

AUTHORIZATION AND ATTESTATION

- ▶ I hereby certify that I am authorized to submit this form on behalf of the petitioner and that the information is true and accurate, to the best of my knowledge.
- ▶ I acknowledge that petitioner, or authorized individual on petitioner's behalf, has read, understands and is ready to comply with the statutory and administrative rule provisions applicable to certified continuing education providers.
- ▶ I attest that petitioner knows and understands the responsibilities of a certified continuing education provider under OAR 863-020-0050.
- ▶ I attest that petitioner knows and understands the requirements of an instructor under ORS 696.186 and the information required on a continuing education instructor qualification form under OAR 863-020-0060.

Jim Eystad

Date March 24, 2015

Printed Name of Authorized Individual

*Jim Eystad*

Signature of Authorized Individual



**PETITION TO QUALIFY AS A  
CONTINUING EDUCATION PROVIDER**

Rev. 7/2011

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To petition the Real Estate Board for approval of qualifications to become an applicant for certification as a continuing education provider, the petitioner must complete this form and submit it via mail or fax to the Agency at least 21 days before the next scheduled Board meeting at which the applicant wishes the Board to act. OAR 863-020-0025

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- ▶ All information and documents submitted as part of this petition become part of the Board Packet, and therefore, public record.
- ▶ Petitioners will need to appear before the Board. Once the Agency receives this completed petition, a letter will be sent to the petitioner with the date of the Board meeting the petitioner will need to attend.

If the Board approves this petition, the Agency will mail a letter to the petitioner, at the mailing address provided, confirming the Board's approval. The petitioner may then apply for certification as a continuing education provider under OAR 863-020-0030.

**PETITIONER**

Name Marcia Gohman Golden Goose Consulting Phone Number 503-528-4514

Physical Address 544 Juedes Ave N Address Cont. \_\_\_\_\_

City Keizer State OR Zip Code 97303 County Marion

E-mail mgohman@ntnonline.com

Mailing Address (if different) \_\_\_\_\_ Address Cont. \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_ County \_\_\_\_\_

**AUTHORIZED CONTACT PERSON**

Prefix \_\_\_\_\_ First Name Marcia Last Name Gohman

Phone Number 503-528-4514 E-mail mgohman@ntnonline.com

Provide the name of the individual that will appear in person on behalf of the Petitioner: \_\_\_\_\_

<b>AGENCY USE ONLY</b>	
Approved by Board	YES NO
Review Date	_____

**Rec'd by Fax**  
MAR 05 2015  
**Real Estate Agency**

PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER, Continued

QUALIFICATION INFORMATION

Provide below sufficient information about the petitioner to allow the Board to determine whether the petitioner qualifies for certification. If the petitioner is an entity, the information provided must pertain to that entity. If the petitioner is an individual, the information provided must pertain to that individual.

Information MUST include one or both of the following:

- Petitioner's demonstrated expertise and experience in providing educational courses to real estate licensees.
Petitioner's demonstrated experience and expertise in two or more course topics eligible for continuing education credit under OAR 863-020-0035.

You may attach up to three (3) additional pages if necessary.

Marcia Gohman has taught classes for the Oregon Rental Alliance, formerly the Rental Housing Association of Greater Portland, for many years. She has also taught classes for the Oregon Rental Housing Association and Southern Oregon Rental Owner's Association. She has taught one hour classes to three hour classes that qualify for Continuing Ed points for these associations and continues to do so.

Classes recently taught:

New Law Review ORA - Two hour class

Resident Selection - One hour class

Fair Housing and Screening - Two hour class ORA

Marcia will continue teaching these classes for the associations but also wishes to teach Online Web Ex classes which provide continuing education hours.

Marcia has been a landlord, and has worked in Resident Screening for 20 years. Marcia and her husband purchased National Tenant Network, Oregon in 2000. Marcia has worked extensively with the Rental Owner's Associations in Oregon, and has taken as many classes as she has given. She has served as Vice President and Forms Chair for ORHA, and as Secretary for the Oregon Rental Alliance in Portland.

AUTHORIZATION AND ATTESTATION

- I hereby certify that I am authorized to submit this form on behalf of the petitioner and that the information is true and accurate, to the best of my knowledge.
I acknowledge that petitioner, or authorized individual on petitioner's behalf, has read, understands and is ready to comply with the statutory and administrative rule provisions applicable to certified continuing education providers.
I attest that petitioner knows and understands the responsibilities of a certified continuing education provider under OAR 863-020-0050.
I attest that petitioner knows and understands the requirements of an instructor under ORS 696.186 and the information required on a continuing education instructor qualification form under OAR 863-020-0060.

Marcia Gohman

Printed Name of Authorized Individual

Date 3/5/15

[Handwritten Signature]

Signature of Authorized Individual

ADMINISTRATIVE ACTIONS  
Reported  
January 22, 2015 through March 24, 2015

**REVOCATIONS**

Fox, Christopher (Portland) Principal Broker 860800102, Final Order dated, February 10, 2015, issuing a Revocation

Booren, Holly (Madras) Principal Broker 200309095, Stipulated Order dated, March 9, 2015, issuing a Revocation

Rosenberg, Carol (Lake Oswego) Broker 971100089, Final Order dated, March 16, 2015, issuing a Revocation

**SUSPENSIONS**

n/a

**REPRIMANDS**

Bittler, Sandra (Portland) Principal Broker 200308112, Stipulated Order dated, February 17, 2015, issuing a Reprimand

Slavit, Marc (Medford) Broker 200105121, Stipulated Order dated March 18, 2015 issuing a Reprimand

**CIVIL PENALTIES**

Expired — Late Renewal civil penalties 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. ORS 696.990

Toney, Jana (Ashland) Unlicensed, Stipulated order dated, February 20, 2015, issuing a Civil Penalty of \$200 for Unlicensed activity

**BEFORE THE  
REAL ESTATE AGENCY  
STATE OF OREGON**

IN THE MATTER OF: ) **FINAL ORDER**  
 )  
**CHRISTOPHER FOX,** ) OAH Case No. 1202930  
 ) Agency Case No. 2011-492  
 **Licensee**

This matter came before the Real Estate Commissioner to consider Licensee's exceptions to the Commissioner's Amended Proposed Order of January 24, 2014. Licensee filed exceptions to the Amended Proposed Order on March 24, 2014 following two extensions to the filing deadline.

The Commissioner has reviewed Licensee's exceptions but does not find them to be persuasive. Licensee's exceptions were extensive but raised primarily arguments why certain evidence should be viewed differently. Licensee's exceptions also requested the addition of additional facts that the Commissioner has determined are not necessary for determination of the facts or conclusions of law in this case.

For the foregoing reasons, the Commissioner adopts the Amended Proposed Order as the Final order.

**ORDER**

Based on the foregoing, Licensee's Principal Broker License is hereby revoked.

IT IS SO ORDERED THIS 10<sup>th</sup> day of February, 2015

  
\_\_\_\_\_  
Gene Bentley  
Commissioner

NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days of the service of this order. Judicial review is pursuant to the provisions of ORS 183.482 to the Oregon Court of Appeals.

**BEFORE THE REAL ESTATE AGENCY  
STATE OF OREGON**

IN THE MATTER OF:

**CHRISTOPHER FOX,**  
Licensee

) **AMENDED PROPOSED ORDER**  
)  
) OAH Case No.: 1202930  
) Agency Case No.: 2011-492

This Matter came before the Commissioner to consider the Proposed Order issued by Administrative Law Judge (ALJ) A. Bernadette House. Licensee filed no exceptions to the Proposed Order. For the reasons explained below, the Commissioner adopts the Proposed Order in part and rejects it in part. The Commissioner does not adopt the ALJ's recommendation that Licensee be suspended. The Commissioner instead imposes revocation, which was the sanction proposed in the Notice of Intent.

**HISTORY OF THE CASE**

On July 9, 2012, the Real Estate Agency (Agency) issued a Notice of Intent to Revoke with Notice of Contested Case Rights to Christopher Fox (Licensee). On July 30, 2012, Licensee requested a hearing.

On August 7, 2012, the Agency referred the hearing request to the Office of Administrative Hearings (OAH). Senior Administrative Law Judge (ALJ) Jenifer Rackstraw was assigned to preside at hearing. A hearing was scheduled for October 23 and 24, 2013. The OAH reassigned the matter to Senior ALJ A. Bernadette House.

On September 24, 2012, Michael Gordon, Attorney at Law, notified the OAH that he had been retained by Licensee, and requested a postponement of the hearing date to prepare for the hearing. Mr. Gordon's unopposed motion was granted and the matter was rescheduled.

ALJ House convened a hearing on January 23, 2013 at the Agency's offices in Salem, Oregon. Licensee appeared with counsel, Mr. Gordon, and testified. The Agency was represented by Raul Ramirez, Senior Assistant Attorney General. The Agency also called Michael Donnelly, former manager of the Chatfield Family, LLC, a family trust. Licensee called Peter Bale, Agency investigator, and Grace Burch, real estate broker and former office manager, appearing in person, and T.J. Newby, former real estate broker and Mark Parsons, real estate broker and Licensee's former business associate, appearing by telephone. The record closed at the conclusion of hearing on January 23, 2013.

## ISSUES

1. Whether Licensee's failure to reference zoning issues in promotional materials for the sale of 65 acres of property which he owned, located at 22600 Skyline Boulevard, Portland, Oregon (the property), constituted the following violations: knowing or reckless publication of materially misleading or untruthful advertising, and/or fraudulent or dishonest conduct substantially related to the fitness of Licensee to conduct professional real estate activity, in violation of ORS 696.301(4) and (14)(2005 edition); and/or failure to disclose material facts known by Licensee, as a real estate agent, which are not apparent or readily ascertainable to a party in a real estate transaction. ORS 696.805(2)(c) (2005 edition).
2. Whether Licensee's failure to accurately complete the Residential Real Estate Sale Agreement for the property, in two separate statements, constituted 1) fraud and/or dishonest conduct substantially related to his fitness to conduct professional real estate activity (ORS 696.301(14)) (2005 edition) and/or 2) violated the requirement that a seller's agent disclose material facts known by the seller's agent and which are not apparent or readily ascertainable to a party in a real estate transaction. ORS 696.805(2)(c) (2005 edition).
3. Whether Licensee's incorrect answer, indicating there were no zoning violations or nonconforming issues, on the Seller's Property Disclosure Statement related to the property constituted an act of fraud and/or engaging in dishonest conduct substantially related to the fitness of Licensee to conduct professional real estate activity, in violation of (ORS 696.301(14)) (2005 edition), and/or violated the requirement that a seller's agent disclose material facts known by the seller's agent and which are not apparent or readily ascertainable to a party in a real estate transaction. ORS 696.805(2)(c) (2005 edition).
4. Whether Licensee's signature on the July 17, 2006 warranty deed transferring the real property "free of encumbrances," to Skyline View, LLC, when Licensee was aware at that time of a State Land Division violation regarding the property, was an act of fraud and/or dishonest conduct substantially related to the fitness of Licensee to conduct professional real estate activity. ORS 696.301(14) (2005 edition).
5. Whether Licensee's failure to report a March 16, 2010 adverse judgment to the Agency until October 14, 2011, violated ORS 696.301(3) (2009 edition) and OAR 863-015-0175(4) (2009 edition, 1-1-09) which requires that a licensee notify the commissioner of any adverse decision or judgment resulting from any suit, action or arbitration proceeding in which the licensee was named as a party within 20 calendar days of receiving written notification of the adverse decision.
6. If so, whether the violations are grounds for discipline (ORS 696.301), and if so, whether the violations resulted in significant damage or injury, and exhibited dishonest or fraudulent conduct such that Agency's proposed revocation of Licensee's license is appropriate. ORS 696.396(2)(c)(A) and (C).

## EVIDENTIARY RULINGS

Exhibits A1 through A24, and A26 through A27, offered by the Real Estate Agency, and Exhibits R1 through R19, offered by Licensee, were admitted into the record without objections.

Licensee objected to Exhibit A25, based on relevancy and the ALJ reserved ruling. Exhibit A25 is a copy of Claimant's Confidential Arbitration Hearing Memorandum. Reviewing the record, Licensee's objection is overruled. Licensee opened the door by introducing evidence regarding Licensee's opinion that the arbitration decision was based on an incomplete record, due in part to Licensee having represented himself until the contested case hearing was held. The Agency is entitled to address the record for the arbitration decision in rebuttal. Exhibit A25 is hereby admitted into evidence.

The parties agreed to an amendment to the Notice, at paragraph 2.5, top of page 4, adding the citation to the relevant ORS be added "Violation," immediately after, as ORS 696.301(3). The pleading in the OAH file was amended by hand, initialed and dated by the ALJ. On the record, the ALJ stated a certain order of marking the pleadings. The Agency's exhibits and submissions included a full copy of the pleading documents. The Agency's pleading record is accepted as the official record and a copy of the hand-amended Notice is included in that set of documents.

## FINDINGS OF FACT

(1) Licensee, a licensed real estate principal broker, owns and operates Estate Builders, Inc. (Estate Builders). Licensee incorporated Estate Builders in 1995. Licensed in real estate in Oregon since 1988, Licensee has also been dually licensed in Washington and Oregon for the past twenty years. (Test. of Licensee.)

(2) Licensee has extensive experience in real estate. His background in real estate began at age 15, working with his father throughout the 1960s and 1970s. Licensee's father was an experienced broker, with one of the largest real estate companies in Corvallis, Oregon. His father's office specialized in decreasing outflow and increasing income on properties. Licensee has also been a presenter for continuing education in the practice of real estate and has received commendations for his work. (Test. of Licensee; Ex. R19.)

(3) Licensee's practice historically has been 90 percent income property. Licensee buys, sells, and manages low income properties, including rentals and mobile home parks, throughout Oregon and Washington. Focusing on the type of property acquired and sold, he does not, as a matter of practice, regularly represent either buyers or sellers. Licensee does not regularly engage in property development as part of his real estate business. (Test. of Licensee; Ex. R19 at 2-3.)

### *Relevant facts related to the history of the property*

(4) In 1965, Merlin F. Radke (Radke) purchased one parcel of property (approximately 82 acres) on Skyline Boulevard, and a second parcel (approximately 65 acres) with boundaries contiguous to the first, consisting of two tax lots, in 1966. A house had existed on the second

parcel of property, known as 22600 NW Skyline Boulevard (the property), since at least 1942. (Test. of Licensee; Ex R14.)

(5) In 1967, Radke built a new house on a portion of the property, approximately 100 feet away from the original home-site. In addition to the new house, over time, Radke added other structures to the property, including, a storage/shop building of about 1000 square feet and six other storage units, all built by Radke. In 1971, Radke added substantial improvements to the house. (Test. of Licensee.)

(6) In 1981, Radke and Publishers Paper Company completed a property exchange agreement and a cutting boundary agreement involving two parcels of land with contiguous boundaries between the parties. One part, approximately 17.92 acres, of Radke's property on the downhill side away from Skyline Boulevard, was steep and forested. Publishers Paper owned approximately 19.36 acres of property with a boundary to Radke's parcel and with frontage on Skyline. The Publishers' parcel was relatively flat. (Test. of Licensee; Exs. R1, R2.)

(7) The parties executed the property exchange agreement on May 22, 1981, exchanging Radke's 17.92 acres for Publishers Paper's 19.36 acres. (Test. of Licensee; Ex. R1.) In July 1981, Pioneer National Title Insurance issued an original warranty deed by which Publishers conveyed the real property described in the attached report to Merlin F. Radke and a copy of a warranty deed by which Radke conveyed to Publishers the real property as described in the referenced reports as amended and subject to the noted exceptions. Pioneer issued an owner's title insurance policy in the amount of \$45,000 to insure Publisher's fee simple title to the real property and easements free and clear of all liens and encumbrances to Radke. The consideration for the transfer of title to the property was an equal value exchange of property. (Ex. R1.)

(8) The parties later executed a Cutting Boundary Agreement, which was recorded with Multnomah County Circuit Court on December 31, 1981. (Ex. R2.) Within 6 months, Publishers harvested 500 acres of its property which included the 17 acre parcel from Radke. (Test. of Licensee.)

(9) Multnomah changed the zoning for the 65 acres by map in 1980. The County confirmed the change by rule in 1982, when the minimum acreage necessary for residential use was increased to a minimum of 80 acres. The property, as of 1982, was not large enough for a new residential use. (Test. of Licensee.)

(10) In September 2004, Licensee purchased the 65 acre parcel of property from Radke. The property is located on Skyline Boulevard, at an altitude of approximately 1400 ft. to 1600 ft. elevation. Fifty to sixty percent of the property is flat and the location provides views of the Cascades and the Columbia River. Licensee bought the 65 acres, which included land recorded under three separate tax lots, in a single transaction. (Test. of Licensee.)

(11) At the time Licensee purchased it, the property was zoned CFU 1 (commercial forest use). CFU 1 designates land as a protected natural resource area for future generations. Property so zoned is intended for use in increasing timber harvest within the zoning and to decrease residential use within the zoned area. (Test. of Licensee.)

(12) Licensee did not own the timber rights to the property he purchased from Radke. Approximately two months after Licensee bought the property, the owner of the timber rights harvested the timber. The timber harvest revealed that Radke had disposed of 60 to 70 % more waste on the property than was readily apparent prior to the harvest. The additional waste included 30-to-40 55-gallon barrels of oil or solvents, 30 cars, and materials from 30 years of dumped waste from apartments and ruined buildings. (Test. of Licensee.)

(13) When Licensee purchased the property in 2004, the house did not meet current plumbing and electrical requirements. Radke's improvements had not been permitted and were non-compliant. Licensee knew that a new residence could not be built on the property due to the zoning. Licensee intended to bring the existing house up to code for his personal use under the zoning in effect at that time. Licensee intended to make improvements through a program offered by the City of Portland (the City) acting on behalf of Multnomah County. The program was called the "Get Legal" program. (Test. of Licensee.)

(14) In the Get Legal program, the City assisted owners of property located in rural areas of Multnomah County to bring unpermitted, not-to-code improvements up to current code requirements. The City's engineering, electrical, and plumbing departments worked with program participants to bring existing non-conforming buildings into compliance. (Test. of Licensee.)

(15) After purchasing the property, Licensee began the initial work to bring the house up to code and to clean up the property. He hired several individuals for the work, including an acquaintance, Gordon Linch, (spelling not provided). Through Linch, Licensee met Ernie Casella. (Test. of Licensee.)

(16) In December 2004, after Publisher's logged the parcel it had acquired, a major windstorm caused additional significant damage to the property. Licensee contracted with Casella to repair the additional damage to the house and other structures. (Test. of Licensee.)

(17) Casella also represented himself to be knowledgeable on resolving zoning and permitting issues. Casella told Licensee that he had successful experience as an arbitrator between the City, the County and homeowners in similar land use issues. Licensee researched Casella's reputation in the community. Casella had worked on projects in the Pearl District and other areas, and had a reputation for being thorough and professional in his business dealings. (Test. of Licensee.)

(18) Licensee determined that Casella had the skills and knowledge to resolve the issues with the property. Licensee hired Casella, and over time, spent approximately \$80,000 to work on resolving the permitting and land use problems with the property. (Test. of Licensee.)

(19) On March 8, 2005, Licensee wrote Casella a letter outlining the issues with the property. In Licensee's letter to Casella, he outlined the history and the issues involving the property. Licensee intended the letter to disclose everything he knew about the property. In particular, Licensee wanted Casella to investigate the possibility that the third tax lot, that had been created by the timber company in 1981, could be split off, and sold. Licensee wanted to use the proceeds to keep the remaining acreage and finish the work on the house. (Test. of Licensee; Ex. R6.)

(20) In paragraph 5 of the March 8th letter, Licensee set out the details of the 1981 property exchange between Radke and Publishers, which created the 19-acre parcel (the third tax lot) that he was hoping to sell off. At the time he wrote the letter, Licensee knew that the County had red-flagged the property because it determined that the 1981 property exchange between Radke and Publishers created an illegal lot smaller than the minimum 80 acres required for residential development. (Test. of Licensee; Ex. R6 at 2.) Licensee believed he could work with the County to resolve the problem by offering to merge the third tax lot back with the adjacent original two tax lots, one made up of 37 acres (where the shop was located) and the other with 26.7 acres (where the house was located) to recreate the original larger parcel. Licensee outlined other proposals he believed might be ways to resolve the zoning so some portion of the parcel might be sold and/or the existing structure could be brought up to current building codes. (Test. of Licensee; Ex. R6.)

(21) At approximately the same time as the March 8, 2005 letter, Licensee also sent Casella a document from the Multnomah County Land Use Division which provided information on how an owner of CFU property could get approval for a template dwelling through County processes. Licensee believed the property met the minimum requirements for approval through the template process at the time he told Casella about the process. Licensee provided the information to Casella so that Casella could pursue getting the County's approval for the non-conforming use. (Test. of Licensee; Ex. R13.)

(22) Licensee knew the County had assessed taxes on Radke's improvements and had issued permits for electrical meters while Radke owned the property. The County assessed taxes for July 1, 2004 to June 30, 2005 on the parcel with the market values for the land at \$160,430 and the structure at \$59,600. He believed those actions by the County supported his seeking approval for the nonconforming use. (Test. of Licensee; Ex. A5.)

(23) Throughout the time Licensee owned the property, while he was selling the property, and continuing through the time of the contested case hearing, Licensee believed there were policies and land-use exceptions that would apply to legalize the zoning violations created by the 1981 tax lot division and Radke's improvements to the house on the property. Licensee's belief was based, in part, on the following: research on the applicable land use laws; discussions with County and City employees who worked with zoning and compliance issues in land use; and comparable lots in the area that had been granted exceptions under the County's process. (Test. of Licensee; Exs. A24, R4.)

(24) Licensee exhausted his available funds to clean up the property. He was unable to complete all planned upgrades to the existing house. Licensee decided to sell the property. Acting under his principal broker's license, Licensee listed the property on the Regional Multiple Listing Service (RMLS). (Test. of Licensee; Ex. A8 at 4.)<sup>1</sup>

(25) Licensee wrote the RMLS listing for the property and he was the principal broker at that time. Either Licensee or his staff entered the information into the RMLS system for the listing. The listing date was August 10, 2005. (Test. of Licensee; Ex. A9.)

(26) The RMLS listing format includes an area for "Remarks" where a listing broker can

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<sup>1</sup> This finding of fact was rephrased for clarity. No substantive modifications were made

add information about the property that would be important for an interested party to know. Licensee's listing for the property did not include any statements addressing the property's zoning history and current "red-flag" status with the County. Licensee knew at the time the property was listed that it had been illegally divided in the 1981 Radke/Publishers Paper property exchange. (Test. of Licensee; Ex. A9.)

(27) Licensee, as an Oregon licensed principal broker, also oversaw the business activities of any real estate agents working under his principal broker's license. As a principal broker, Licensee was responsible for those agents' activities, including working with clients and with MLS listings. Licensee was responsible for the accuracy and fairness of the activities of any agent working under Licensee's principal broker's license, including any omissions or incorrect information included on the listing. (Test. of Licensee.)

(28) Licensee's work during the period of time at issue did not include property development. He did not regularly generate advertising for properties in his work but did list approximately 50 percent of his inventory on the RMLS. (Test. of Licensee.)

(29) Licensee met Mike Donnelly through Brent Maxson, a real estate licensee and Licensee's professional colleague at the time. (Test. of Licensee.) Maxson had met Donnelly in college and they remained friends. Maxson helped Donnelly in the past buy both residential and commercial properties. Maxson knew Casella and his reputation for successful permitting and construction projects. Maxson also knew that Casella worked with Michael Crane as a mortgage broker. Maxson believed Casella and Crane would be a good fit with Donnelly. Maxson introduced Donnelly to Casella and Crane for the purpose of considering a purchase of the property. (Ex. R5 at 1.)

(30) Donnelly, Crane and Casella agreed to buy the property together for \$650,000. (Test. of Licensee; Exs. A13, R5 at 1.) Donnelly, Crane, and Casella signed the residential real estate purchase and sale agreement (the offer) for 22600 N.W. Skyline Blvd, Portland, Oregon in their individual capacities. Licensee knew that the three individual buyers intended to form Skyline View LLC, to complete the purchase of the property. (Test. of Licensee; Ex. A13 at 1.)

(31) In the transaction, Maxson acted as the Buyers' agent. (Exs. A13 at 1, R5 at 1.) Casella was the primary party acting for the three buyers. Maxson was aware that Casella had been working on permitting issues for the property. Casella told Maxson that he would solve the permit problems. (Ex. R5 at 1.)

(32) When later interviewed by the Agency's investigator (Bale), Maxson said that at some point he became aware that Casella and Crane might have misused funds belonging to Skyline View, LLC. Maxson knew that Crane controlled the funds for Skyline View, LLC. (Ex. R5 at 2.)

(33) The form of the offer was a standard industry form which was familiar to Licensee as one of those regularly used in the real estate industry. Paragraph 10 on page 2 of the offer is entitled "Seller Representations" and states, in part, the following:

(7) Seller has no notice from any governmental agency of any violation of law relating to the Property \* \* \* (9) Seller agrees to promptly notify Buyer if, prior to

closing, Seller receive actual notice of any event or condition which could result in making previously disclosed material information relating to the Property substantially misleading or incorrect. These representations are based upon Seller's actual knowledge. Seller has made no investigations. Exceptions to items (1) through (9) are: \_\_\_\_\_, Buyer acknowledges that the above representations are not warranties regarding the condition of the Property and are not a substitute for, nor in lieu of, Buyer's own responsibility to conduct a thorough and complete independent investigation, including the use of professionals, where appropriate, regarding all material matters bearing on the condition of the Property, its value and its suitability for Buyer's intended use[.]

(Ex. A13 at 2.) (Emphasis in original.)

(34) Licensee was aware at the time the offer was signed that Multnomah County had determined the property had been illegally divided in the prior transaction between Radke and Publisher's Paper. Licensee discussed the property and the details of the transaction with Crane and Casella. Donnelly did not participate in those discussions. Licensee's understanding was that Crane and Casella represented Skyline View, LLC, in those discussions. Licensee knew that Casella had knowledge of all of the issues regarding the property based on his original business relationship with Casella. Licensee had no knowledge as to whether Donnelly, as the third member of Skyline View, LLC, was or was not informed by Casella of the issues with the property. (Test. of Licensee.)

(35) Licensee signed a Seller's Property Disclosure Statement regarding the sale of the property on July 7, 2006. He answered the questions on the form, including question "H" under the heading "Title" on page 2 of the agreement. To the question, "Are there any zoning violations or nonconforming uses?" Licensee checked "No." (Test. of Licensee; Ex. A7 at 2.) That answer was incorrect at the time Licensee completed it. Licensee was aware of the zoning violation regarding Multnomah County. Licensee's omission was not intentional. (Test. of Licensee.) Licensee did not complete the portions of the document that were completed by hand. Licensee initialed each page at the bottom in the area set designated for the Seller's signature. (Test. of Licensee; Ex. A7.)

(36) Licensee signed a warranty deed transferring the "real property free of encumbrances" from FOXC, LLC to the buyer Skyline View, LLC, on July 17, 2006. (Test. of Licensee; Ex. A20.) Licensee was aware of the zoning violations when he signed the deed. (Test. of Licensee.)

(37) Licensee had reviewed land-use law while he owned the property and at the time he was trying to sell the property. Licensee believed that the issues with the zoning could be resolved based on his review of land-use statutes and rules at the time he owned the property and at the time he sold the property. (Test. of Licensee; Exs. R8-R13.)

(38) The County has approved development on non-conforming lots that were less than the minimum 80-acres but that were greater than 19 acres. Licensee knew of those exceptions and he believed that was the reason the parties to the 1981 division created the new tax-lot in the size of 19.3 acres. (Test. of Licensee.)

(39) Michael Donnelly is currently retired. Prior to retiring, Donnelly, among other business interests, managed a LLC for his family trust, the Chatfield Family Trust, LLC. Donnelly, on behalf of the LLC, was looking for property for investment and development purposes. Brent Maxson, a realtor and friend of 25 years, had worked with Donnelly for a long time regarding real estate matters. Maxson brought the listing on the property to Donnelly for consideration. Donnelly was interested. Donnelly and other members of the family trust went to look at the property. (Test. of Donnelly.)

(40) Maxson reviewed the listing of the property with Donnelly, and looked at the property itself. Maxson had been looking for properties with potential for rehabilitation and resale for Donnelly. Donnelly relied upon Maxson's statements about the property when Donnelly told the members of the family LLC about the property. (Test. of Donnelly.)

(41) Donnelly met Licensee at some point and discussed the basics of "the whole deal" including the condition of the house at that time and Licensee's experiences with the property and its history. (Test. of Donnelly.) Donnelly was aware that Casella had performed most of the work as the contractor on the property, and had obtained all of the permits to do the rehabilitation, with the exception of the septic. (*Id.*)

(42) After Donnelly became interested in acquiring the property and forming an LLC, Maxson introduced Donnelly to Crane to assist in securing additional funds. Crane represented himself as having contacts in the financial system. Donnelly, Casella, and Crane decided to form Skyline View LLC. Crane became the managing partner of Skyline View. Crane assured Donnelly that he would be able to acquire additional finances through loans to complete the planned development of the property. (Test. of Donnelly.)

(43) Donnelly did not rely on the RMLS listing written by Licensee when considering the purchase of the property. Donnelly was aware of the extensive history of issues Licensee encountered trying to rehabilitate the house. He was aware of the permitting issues with the City but he did not know about the zoning issue with the County. Donnelly relied on Casella and Crane, as partners in the LLC, to advise him of any problems they encountered, specifically if they had knowledge of any zoning violations. (Test. of Donnelly.)

(44) On January 8, 2006, Donnelly, acting for his family LLC, signed the original offer and earnest money agreement (sale agreement), along with Michael Crane and Ernest Casella. The three purchasers also signed an Addendum to Purchase and Sale Agreement and Receipt for Earnest Money: Addendum A, on the same day. (Test. of Donnelly; Ex. A13 at 6.)

(45) On January 10, 2006, Licensee initialed each page of the purchase agreement including Addendum A, and signed as the Seller. (Ex. A13 at 7.) Licensee did not complete the handwritten portion of the January 10, 2006, Residential Real Estate Sale Agreement but he reviewed, initialed and signed the completed document. (Test. of Licensee; Ex. A13.)

(46) Addendum A included, among other things, an agreement that "all permits shall be issued through E.J. Casella and Associates[.]" "contractor release to E.J. Casella and Associates[.]" and "[p]roperty to be sold "AS IS[.]" (Ex. A14.)

(47) Addendum B, signed by all parties on February 14, 2006, included the statement

that "All parties are aware that Purchasers will create an LLC as the purchasing entity." (Ex. A15.)

(48) Addendum C, signed March 27, 2006, included the statement that the new entity buying the property was "Skyline View, LLC." (Ex. A16.)

(49) Addendum D, signed on April 25, 2006, listed Skyline View LLC as the Buyer. A subsequent addendum listed Skyline View, LLC as the Buyer. (Exs. A17-A18.) The City issued final electrical and plumbing permits. The septic permit took longer and delayed the closing until it was issued. (Test. of Donnelly.)

(50) The Chatfield Family LLC paid the down payment for the purchase price for the property. Neither Casella nor Crane put any money into the property. Donnelly, acting on behalf of the family trust, purchased the property with the intent to complete the current rehabilitation of the existing house, to sell it when rehabilitation was complete, and to possibly keep the 19 acre parcel for the family to develop with a residence for their own use. (Test. of Donnelly.)

(51) The property appraised at \$1,250,000 in September of 2006. (Ex. A22 at 12.)

(52) In February 2012, Peter Bale, Agency investigator, conducted an investigation regarding a complaint filed against Licensee regarding his conduct during the sale of the property. As part of the Agency's investigation, Bale received documents from Donnelly regarding the transaction at issue. One of the documents included was an appraisal of the property commissioned by Michael Crane. (Test. of Bale; Ex. R16.)

(53) The appraisal report included with Donnelly's documents was completed by Carla Johnson, on January 28, 2008. Johnson, a licensed Oregon appraiser with Portland Residential Appraisals, Inc., completed an appraisal of the property for the purpose of a refinance of the existing mortgage. The property appraised at \$1,600,000. In the portion allocated to consideration of the neighborhood, Johnson wrote, in part, that:

[The] area is composed of large tracts of timberland. Where zoning allows, homesites have been created in recent years. Development of large custom homes of substantial value has become commonplace."

(Ex. R16 at 2.)

(54) Under the portion entitled "Site," Johnson indicated, among other things, that the area of the site was 65 acres, that the specific zoning was "CFU-commercial forest" and that the zoning description was "80 to 100 acre minimum lot size for new tracts-restrictive." (Ex. R16 at 1.) Johnson checked the box for "Legal Nonconforming (Grandfathered Use), and on the same line, included the following: "legal site - rebuild of home is ok." To the question "[i]s the highest and best use of subject property as improved (or as proposed per plans and specifications) the present use[,]" Johnson wrote: "issue of a building permit will be adequate proof of legality under zoning. CFU zoning is one of the most restrictive in the County." (*Id.*)

(55) Under "Sales Comparison Approach," Johnson indicated that she had researched

the sale or transfer history of the subject property and comparable sales. (Ex. R16 at 2.)

(56) Following the appraisal, Skyline View, LLC acquired a construction loan to develop the property, secured by an interest in the property as collateral for the loan. Part of the proceeds from the loan was disbursed to repay the Chatfield Family LLC for the down payment loan and part was used to pay off the purchase price. (Test. of Donnelly.)

(57) At some point after Skyline View, LLC purchased the property and began work on the existing structure, Multnomah County issued a Stop-Work order. Donnelly received a copy and called Crane, who was in charge of the work at that time. Crane told Donnelly he had received the Stop-Work order and that it had been "taken care of." (Test. of Donnelly.)

(58) Following the issuance of the original Stop-Work order, on April 9, 2008, the County sent a letter to Skyline View LLC, c/o Donnelly and to Crane as Managing Partner which included a Request for Voluntary Compliance. The County had determined that the County's zoning, which prohibited the project, took precedent over the permits issued by the City of Portland under which the City had allowed the rehabilitation work to proceed. The April 9, 2008 letter set out specific actions and deadlines under which the violations might be resolved. (Test. of Donnelly; Ex. A24.)

(59) On February 18, 2010, Michael Donnelly, acting in his capacity as the managing member of Skyline View, LLC, won an arbitration award against Licensee, FOXC, LLC, and Estate Builders, Inc. The arbitration panel found Licensee liable to Donnelly on Donnelly's claim of intentional fraud and awarded Claimant \$666,450 in damages. Donnelly has been unable to collect on the damages award. (Test. of Donnelly; Ex. A2 at 7.)<sup>2</sup>

(60) Licensee, individually and in connection with his LLCs, was the party Donnelly first sued regarding the property, and the matter went to mandatory arbitration. Licensee was not represented by an attorney at the time arbitration began. Licensee answered requests for admissions and filed an answer to the initial claim without the advice of counsel. Licensee retained counsel for the arbitration hearing itself. Because Licensee did not have legal counsel throughout the arbitration, in Licensee's opinion, a substantial amount of relevant evidence was not submitted for consideration at the hearing. (Test. of Licensee.)

(61) Licensee talked to Crane about testifying at the arbitration proceeding against Licensee. Crane told Licensee he intended to testify to certain facts when he was called as a witness and that he would appear at the arbitration. Crane did not appear as promised. Crane was reached by telephone. Crane's testimony was different from what Crane told Licensee he was going to say. Crane had not been sued at the time of Licensee's hearing. (Test. of Licensee.)

(62) After receiving the arbitration award against Fox, Donnelly subsequently sued Crane and Casella for fraud involving the purchase of the property. Donnelly obtained a judgment against both. Neither Crane nor Casella has paid any portion of the arbitration awards against them. Sometime in 2010, Donnelly had Crane and Casella removed from partnership in Skyline View, LLC., on the basis of the judgments which found that Crane and Casella had

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<sup>2</sup> The Commissioner supplemented this Finding of Fact to reflect Donnelly's testimony on damages,

engaged in fraud. Skyline View, LLC is currently in default on the construction loan, jeopardizing the LLC's ownership of the property. (Test. of Donnelly.)

(63) In Bale's investigative report to the Agency, he included notes of a February 1, 2012 interview with Michael Grimmert, with Multnomah County Code Enforcement. Grimmert told Bale that, considering the then-current situation with the zoning and the issues underlying the stop-work order, no development of the land was possible because there was no established use permitting the present residential use. Grimmert also told Bale that there were solutions to the problem and referred Bale to the August 9, 2008 letter from Multnomah County to Crane and Donnelly. (Test. of Bale; Ex. A24.)

(64) At the time of the sale to Donnelly and Skyline View, LLC., Licensee believed that the zoning issues created by Radke's property exchange with Publisher's Paper Company could be resolved. The property exchange occurred in 1981. The property created was in conformance with the county's then existing property specifications and road frontage requirements. The Forest Practices Act, which rendered the 17 acre parcel transferred to Radke a nonconforming use, was enacted in 1984. Under the Act, Licensee understood that counties could no longer engage in boundary and use issues independent of the state's rights and restrictions under the Act. (Test. of Licensee.)

(65) Licensee and Casella spoke several times prior to the sale. Casella told Licensee that he had had several discussions with individuals at the county. Casella represented to Licensee that the issues could be resolved and that the improvements to the existing house could be legally completed. (Test. of Licensee.)

(66) Licensee researched the law at the time of the sale at issue, including statutes related to minimum lots or parcel sizes. His understanding of the law was that the Forest Practices Act protected the rights of private land owners and their rights to actualize their rights to harvest timber on their properties by working with the timber companies. Licensee believed that any rights accrued to Radke through grandfathered or prior use allowance transferred to Licensee. Licensee believed that it had been legal for Publisher's Paper and Radke to actualize by a transaction that created a parcel larger than 19 acres but smaller than 85 acres under Multnomah County Commercial Forest Use policies as published in 2005. (Test. of Licensee.)

(67) Grace Burch, a real estate principal broker licensed in Washington since 1979, worked for Licensee as an office manager in his Portland office, for over three years beginning in early 2000. Burch completed her Certified Commercial Investment Manager (CCIM) course at the prompting of Licensee. She worked closely with Licensee's property management and business accounts. Based on her work with Licensee, Burch saw no evidence of Licensee having acted in any fraudulent or dishonest conduct in relation to any of his real estate activity. Licensee has a reputation in the real estate community for ethical conduct. (Test. of Burch; Ex. R19 at 1.)

(68) Membership in the CCIM requires that an individual comply with high ethical standards. (Test. of Burch and Gordon.) Qualification for membership includes completion of extensive coursework and international-level review of a candidate's portfolio of activity. Licensee has served as Secretary, Vice-President, President, and Education Chair for the Oregon and Southwest Washington CCIM chapter. The CCIM awarded Licensee multiple "transaction

of the year” awards. In his role as Education Chairman, Licensee initiated bringing additional education for members of the CCIM in the Portland area. (Test. of Burch; Ex. R19 at 1.)

(69) Mark Parsons, real estate agent, licensed in Oregon since 1998, has worked with Licensee, beginning when both were licensed associates working for Donahue and Associates, from 1998 until 2000. Parsons then worked under Licensee as his principal broker from 2000 to 2012. He became an Oregon licensed principal broker in April 2012. Parsons opined, based on his experience as a peer and then working under Licensee’s supervision, that Licensee is honest and ethical. (Test. of Parsons.)

### CONCLUSIONS OF LAW

1. Licensee’s failure to disclose the zoning violations in promotional materials for the sale of the property (as alleged in paragraph 2.1 of the Notice), violated ORS 696.301(4) (2005 edition); ORS 696.301(14) (2005 edition) and ORS 696.805(2)(c) (2005 edition).<sup>3</sup>

2. Licensee’s failure to accurately complete the Residential Real Estate Sale Agreement for the property, in two separate statements (as alleged in paragraph 2.2 of the Notice), violated ORS 696.805(2)(c) (2005 edition) because Licensee failed to disclose material facts known by the seller’s agent and which are not apparent or readily ascertainable to a party in a real estate transaction. Licensee’s conduct also violated ORS 696.301(14) (2005 edition) because he engaged in dishonest conduct related to his fitness to conduct professional real estate activity.<sup>4</sup>

3. Licensee’s incorrect answer, indicating there were no zoning violations or nonconforming issues, on the Seller’s Property Disclosure Statement related to the property (as alleged in paragraph 2.3 of the Notice) violated ORS 696.805(2)(c) (2005 edition) because Licensee failed to disclose material facts known by the seller’s agent and which are not apparent or readily ascertainable to a party in a real estate transaction. Licensee’s conduct also violated ORS 696.301(14) (2005 edition) because he engaged in dishonest conduct related to his fitness to conduct professional real estate activity.<sup>5</sup>

4. Licensee’s signature on the July 17, 2006 warranty deed transferring the real property “free of encumbrances,” to Skyline View, LLC, when Licensee was aware at that time of a State Land Division violation regarding the property. Licensee’s conduct violated ORS 696.301(14) (2005 edition) because he engaged in dishonest conduct related to his fitness to conduct professional real estate activity, without regard to whether the act or conduct occurred in the course of professional real estate activity.<sup>6</sup>

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<sup>3</sup> The Commissioner also found that Licensee violated ORS 696.301(14) (2005 edition) as explained below.

<sup>4</sup> The Commissioner also found that Licensee violated ORS 696.301(14) (2005 edition) as explained below.

<sup>5</sup> The Commissioner also found that Licensee violated ORS 696.301(14) (2005 edition) as explained below.

<sup>6</sup> The Commissioner also found that Licensee violated ORS 696.301(14) (2005 edition) as explained below.

5. Licensee's failure to report a March 16, 2010 adverse judgment to the Agency until October 14, 2011, violated OAR 863-015-0175(4) (2009 edition) because licensee did not notify the commissioner of any adverse decision or judgment resulting from any suit, action or arbitration proceeding in which the licensee was named as a party within 20 calendar days of receiving written notification of the adverse decision.

6. The above violations are grounds for discipline.

### OPINION

The Agency proposes to revoke Licensee's real estate principal broker license based on the violations alleged in the Notice, paragraphs numbered 2.1 through 2.5. Regarding the alleged violations and the appropriate sanction, the burden of proof falls upon the Agency as the proponent of a fact or position. ORS 183.450(2). *Harris v. SAIF*, 292 Or 683 (1982) (general rule regarding allocation of proof is that burden is on the proponent of the fact or position); *Gallant v. Board of Medical Examiners*, 159 Or App 175 (1999) (in the absence of legislation adopting a different standard, the standard of proof in an administrative hearing is by a preponderance of the evidence). Proof by a preponderance of evidence means that the fact finder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989).

#### *Authority of the Agency to Act*

Licensee holds a real estate principal broker's license, issued by the Agency, authorizing him to conduct business as an agent in Oregon. The Agency proposes to revoke Licensee's real estate principal broker's license as a disciplinary action for the violations alleged in the Notice of Intent to Revoke.

#### *Statutes and Rules Governing the Conduct of Real Estate Licensees Relevant to Licensee's Conduct*

Former ORS 696.301<sup>7</sup> provides grounds for disciplinary action by the Real Estate Commissioner for real estate licensees. In pertinent part, ORS 696.301 provides:

Grounds for discipline. Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

\* \* \* \* \*

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<sup>7</sup> All references to the Oregon Revised Statutes (2005 edition) and to the Oregon Administrative Rules are to those in effect at the time of the alleged conduct. Counsel for the Agency provided a copy of OAR 863-027-0020, entitled "Progressive Discipline of Licensees," certified effective date of January 1, 2009, which is the source of the rule relied upon in this decision.

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

(4) Knowingly or recklessly published materially misleading or untruthful advertising.

\* \* \* \* \*

(14) Committed an act of fraud or engaged in dishonest conduct substantially related to the fitness of the applicant or licensee to conduct professional real estate activity, without regard to whether the act or conduct occurred in the course of professional real estate activity.

Additionally, a seller's agent has an affirmative duty to disclose the zoning issues and land-division violation to the parties pursuant to ORS 696.805. ORS 696.805, governing the conduct of a real estate licensee acting as a seller's agent, provides in relevant part that:

(2) A Seller's agent owes the seller, other principals and the principal's agents involved in a real estate transaction the following affirmative duties:

\* \* \* \* \*

(c) To disclose material facts known by the seller's agent and not apparent or readily ascertainable to a party."

The Real Estate Commissioner is charged with promulgating rules providing for the progressive discipline of real estate licensees and to provide for an objective method for the investigation of complaints alleging grounds for discipline under ORS 696.301. ORS 696.396. OAR 863-027-0020 (renumbered from OAR 863-015-0230, ef. 1-1-09) is the Agency rule addressing progressive discipline of real estate licensees. OAR 863-027-0020 states, in relevant part, that:

(1) The goal of progressive discipline is to correct a licensee's inappropriate behavior, deter the licensee from repeating the conduct, and educate the licensee to improve compliance with applicable statutes and rules. Progressive discipline means the process the agency follows, which may include using increasingly severe steps or measures against a licensee when a licensee fails to correct inappropriate behavior or exhibits subsequent instances of inappropriate behavior.

(2) The commissioner will evaluate all relevant factors to determine whether to issue a non-disciplinary educational letter of advice or to discipline a licensee through reprimand, suspension or revocation under ORS 696.301, including but not limited to:

- (a) The nature of the violation;
- (b) The harm caused, if any;

- (c) Whether the conduct was inadvertent or intentional;
- (d) The licensee's experience and education;
- (e) Whether the licensee's conduct is substantially similar to conduct or an act for which the licensee was disciplined previously;
- (f) Any mitigating or aggravating circumstances;
- (g) The licensee's cooperation with the investigation;
- (h) Any agency hearing orders addressing similar circumstances; and
- (i) The licensee's volume of transactions.

\* \* \* \* \*

(4) A reprimand is the maximum disciplinary action the commissioner may issue against a licensee if the licensee has committed an act or conduct that constitutes grounds for discipline under ORS 696.301 and such act or conduct does not:

- (a) Result in significant damage or injury;
- (b) Exhibit incompetence in the performance of professional real estate activity;
- (c) Exhibit dishonesty or fraudulent conduct; or
- (d) Repeat conduct or an act that is substantially similar to conduct or an act for which the real estate licensee was disciplined previously.

(5) The commissioner may impose suspension or revocation only if the licensee has committed an act that constitutes grounds for discipline under ORS 696.301 and such act also meets the requirements of 696.396(2)(c).

The progressive discipline requirements of ORS 696.396 were embodied in HB 2604 and apply to conduct that occurred on or after January 1, 2006. For conduct occurring prior to January 1, 2006, the Commissioner may impose sanctions as deemed appropriate.

### *Violations and analysis of penalty factors in order*

#### *Violations alleged in paragraph 2.1 of the Notice*

The Agency alleged that Licensee created promotional materials for the property which failed to reference known zoning problems and the land-division violation, that Licensee provided those materials to Donnelly, and that Donnelly relied upon those documents relevant to his decision to make an offer on, and to purchase, the property. The Agency met its burden on the first allegation. Licensee generated, or was responsible for the generation of, the published listing documents, including the property description and the RMLS listing. The documents, as set out in the findings of fact, did not alert potential buyers of the then-current zoning history, including the land-division violation and its potential impact on the property, in those locations in the documents where it is reasonable to expect such issues to be addressed, in violation of ORS 696.805(2)(c).

In ORS 696.301, the legislature did not define the terms "reckless," "fraud" or "dishonest." In the context of use by the Agency, there is no indication that those terms are

terms of art. Therefore, they are to be given their plain, natural, and ordinary meaning. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 611 (1993). The ordinary meaning is presumably what is reflected in a dictionary. *Masse and Masse*, 328 Or 195 202 (1999). According to *Webster's Third New International Dictionary*, "knowing" is defined as "having or reflecting knowledge, information, or insight: marked by understanding and intelligence[.]" *Webster's Third New Int'l Dictionary*, 1252 (unabridged ed 2002). The evidence at hearing was that Licensee had knowledge of the violations prior to marketing the property for sale. Licensee therefore violated ORS 696.301(4) because he knowingly published materially misleading advertising in the form of the listing documents and promotional materials that he created to market the property.

While it is sufficient for the Commissioner to establish that Licensee's publication of the materially misleading advertising was *knowing*, the Commissioner also finds that Licensee's publication of the materially misleading information was reckless and therefore rejects the ALJ's opinion that it was not. Reckless conduct requires that one acts in a manner "lacking in caution: deliberately courting danger," or "marked by a lack of foresight or consideration[.]" *Webster's* at 1896.

Licensee has substantial experience over many years engaging in professional real estate activity. Licensee invested considerable resources on the property, including trying to remedy the zoning violations before he decided to market the property. Licensee was aware that the nature of the zoning violations restricted a person's ability to remodel or build a residence on the property. Given Licensee's experience and his knowledge of the nature and extent of the zoning violations, it is not credible that Licensee's failure to disclose the zoning violations was a simple oversight. It is not a defense to state that Cassella (as one of the buyers) was aware of the zoning violations because Licensee has an independent duty to not publish materially misleading information. Moreover, at the time that the parties entered into the sale agreement, each of the buyers was acting in an individual capacity. It was not until later in the transaction that the buyers formed an LLC and agreed that the LLC would be the purchaser. Also, at the time that Licensee listed the property on the MLS, no other prospective buyer would have been aware of the zoning violations.

The Commissioner also rejects the ALJ's opinion that Licensee had a reasonable belief that the zoning violations would be resolved by working through Casella. The Commissioner rejects this reasoning because it is not logically connected to whether or not Licensee's conduct violated former ORS 696.301(4) or (14). Assuming for the sake of argument that Licensee believed the zoning violations would be resolved at some point *in the future*, it doesn't follow that Licensee did not knowingly publish materially misleading advertising, or did not recklessly publish the materially misleading information.

Because the ALJ opined that Licensee's conduct was merely a mistake or oversight, she concluded that his conduct was not dishonest for purposes of ORS 696.301(14). The Commissioner rejects this reasoning as well. Dishonesty, according to *Webster's*, is "characterized by lack of truth, honesty, probity, or trustworthiness, or by an inclination to mislead, lie, cheat, or defraud[.]" *Webster's* at 650. In this case, neither the marketing materials nor the listing documents alerted a potential buyer of the serious zoning violations affecting the property. Respondent failed to include the zoning violations in the listing and promotional materials even though he was aware of them and had been attempting to remedy the violations. Instead, Licensee presented an untruthful and incomplete version of the facts regarding the property in his effort to sell the property because he was essentially out of resources. Licensee's actions mislead Donnelly into looking at the property as an investment. Under these circumstances, the Commissioner finds that Licensee's actions were inclined to mislead Donnelly in furtherance of Licensee's own financial interests, and were therefore dishonest.

The Agency also alleged that Licensee's publication of the listing materials without reference to the zoning or land-division issues violated the duties required of a real estate agent under ORS 696.805(2). In the current matter, Licensee, acting as his own agent, was required to comply with the affirmative duties set out in ORS 696.805(2)(c). Licensee did not meet that obligation. Licensee admitted that he did not include known information regarding the zoning issues and the land-division violation.

*Violations alleged in paragraph 2.2 of the Notice*

On the January 10, 2006 Residential Real Estate Sales Agreement, Licensee, as the seller, represented that he had no notice from any governmental agency of any violation of law relating to the property. Licensee did not complete the handwritten portions of the January 2006 agreement but he did initial each page and he signed the agreement. Licensee, as a principal broker, was responsible for any agent working under his license. Licensee knew at the time he signed the Agreement that Multnomah County considered the land-division which occurred in 1981 illegal. Licensee's misrepresentation was a violation of his affirmative obligation, under ORS 696.805(2)(c), to disclose material facts of which he was aware and which were not readily apparent or readily ascertainable to a party in a real estate transaction.

The ALJ found that Licensee did not violate ORS 696.301(14) because she believed that licensee was credible when he testified that he had a 'good faith belief that the [zoning violations] would be resolved'. The Commissioner rejects this reasoning because Licensee's beliefs about resolving the zoning violations *in the future* do not affect his affirmative obligation to make honest representations on the Real Estate Sale Agreement. Licensee had an obligation to answer honestly and not omit material facts regardless of what he believed the future held. The key issue is not what Licensee believed would happen, but instead what the other party to the agreement might believe would happen (if supplied with all relevant information). By depriving Donnelly of relevant information, Licensee denied him the opportunity to come to an independent conclusion about closing on the transaction or regarding the likelihood that the zoning violations would be resolved. Furthermore, if Licensee *had* held the belief that the zoning violations would be remedied at some point in the future, it follows that he should have been more inclined to disclose the violations on the agreement. Instead, Licensee concealed those

facts. The Commissioner finds that by doing so, Licensee acted in a dishonest manner and therefore violated ORS 696.301(14).

*Violations alleged in paragraph 2.3 of the Notice*

Regarding the Seller's property disclosure statement, Licensee did, as alleged, mark "no" in answer to the question "[a]re there any zoning violations or nonconforming issues." That answer was not true. The ALJ concluded, however, that Licensee's false answer did not rise to the level of dishonesty or fraud because (1) Cassella was aware of the zoning violations; (2) Licensee relied on Cassella's knowledge of the problems; and (3) Licensee believed that Cassella would inform the other buyers of the zoning violations.

The Commissioner rejects the ALJ's conclusion that Licensee's response was not dishonest. The purpose of the Seller's Property Disclosure Statement is to *disclose* any potential defects with a property being conveyed, whether or not a seller has any reason to believe that a buyer is aware of a particular defect. Here, there is no dispute that Licensee was the seller and that he was aware of the zoning violations. Licensee initialed and signed the form, and acknowledging that the disclosures are based on 'SELLER'S ACTUAL KNOWLEDGE'. Licensee's false answer to the question on the Disclosure Statement fits squarely within the definition of 'dishonesty' because it lacked truth and probity, and was designed to mislead by affirmatively denying the existence of a known defect. The ALJ concluded there was no dishonesty because Licensee believed that the violations would be remedied, but those beliefs do not relieve Licensee of his responsibility to provide full disclosures.

As previously discussed, the zoning violations were material facts that were not readily ascertainable. Consequently, the Commissioner finds that by falsely answering this question on the Seller's Property Disclosure Statement, Licensee violated ORS 696.805(2)(c) (2005 edition)

*Violations alleged in paragraph 2.4 of the Notice*

As alleged by the Agency, Licensee signed the July 17, 2006 warranty deed transferring the "real property freed of encumbrances," to Skyline View LLC, knowing at that time of the land-division violation. The ALJ concluded that Licensee's false representation also did not rise to the level of dishonesty because Licensee held an honest belief that (1) the buyer knew of the violations and (2) Licensee believed the zoning violations would be remedied. The Commissioner rejects the ALJ's reasoning and conclusion. As stated before, Licensee's beliefs about what may happen in the future do not relieve him from the responsibility not to provide false answers or omit material facts on real estate documents. Here, it is also undisputed that Licensee was aware of the zoning violations and misrepresented the absences of any encumbrances by signing the warranty deed as shown in Exhibit A20. Again, Licensee's conduct fits squarely within the definition of dishonesty. For these reasons, the Commissioner finds that Licensee violated ORS 696.301(14)(2005 edition)

*Violation alleged in paragraph 2.5 of the Notice Failure to timely report*

Failure to comply with the Agency's rules constitutes grounds for disciplinary action against a licensee. ORS 696.301(3). OAR 863-015-0175(4) (2009 edition) required that a

licensee notify the commissioner of any adverse decision or judgment resulting from any suit, action or arbitration proceeding in which the licensee was named as a party within 20 calendar days of receiving written notification of the adverse decision. As shown by the findings of fact, Licensee failed to timely notify the Agency of the April 29, 2010 Arbitration Award and thus, he violated his obligation under the rule. The Agency has grounds for imposing disciplinary action for this violation.

### *Sanction*

Regarding an appropriate sanction for the violations Licensee committed, the factors set out under OAR 863-027-0020(2) must be considered in determining the severity of the sanction. These factors are applicable only to conduct that occurred on or after January 1, 2006. For conduct that occurred prior to that date, the Commissioner has discretion to impose an appropriate sanction.

To begin, Licensee failed to include zoning issues and the land-division violation, which were relevant data affecting the potential use and/or development of the property, in the published promotional materials. Likewise, Licensee failed to mark the appropriate boxes and complete the required disclosures in the sales agreement and warranty deed. Licensee also failed to report the adverse arbitration award to the Agency within the required time-limit.

As set out in the findings, Licensee knew about the zoning issues and land-division violations when he listed the property for sale. Licensee admitted that he wrote the listing, and entered the information into the RMLS data base, or, at the very least, he was responsible for the actions of any of his agents who may have entered the information. At each opportunity to disclose, as set out in the findings of fact, Licensee failed to do so. The Commissioner rejects the ALJ's conclusion that these omissions were merely mistakes on the part of Licensee. There was a consistent pattern in his failure to disclose that the Commissioner believes is compelling and establishes that Licensee acted with an intent to deceive so that he could effect a sale of the property.

The evidence established that Donnelly was harmed in the transaction. Donnelly was looking at the property he purchased from Licensee as an investment, including remodeling of the home. That has not been possible because of the zoning violations still present in the property. Donnelly explained that he ended up with nothing more than a 'tree farm' because of the zoning violations. It may be that the other buyers did not fully disclose material facts to Donnelly, but Licensee had an independent duty to act in good faith and adherence to the real estate licensing rules. He failed to do so and as a result Donnelly has incurred substantial economic damage because of the zoning violations, and in pursuing Licensee through legal action.

The Commissioner rejects the ALJ's reliance on an appraisal to suggest that Donnelly was not damaged. The appraisal that the ALJ relied on presumed that the site was ok to build on, but that was inaccurate. The appraisal was prepared before the County issued a stop work order, effectively preventing any work on a new or existing structure on the property. The appraisal is therefore not a reliable document to determine the value of the parcel as it relates to the level of damages.

Licensee has never been the subject of any disciplinary action in Oregon or Washington. He has been active and licensed in both states for a lengthy period of time and has a high reputation in the real estate community for ethics and knowledge. Licensee reported the matter once he was made aware that he had violated the reporting provision. Licensee was cooperative with the investigation. Licensee has extensive experience in real estate but not in the particular type of transaction that resulted in this proposed agency disciplinary action. Licensee has a reputation for competence in real estate.

For conduct that occurred after January 1, 2006 (Allegations 2.2 to 2.6) the record establishes for purposes of ORS 696.396(2)(A) that Licensee's conduct resulted in significant damage or injury to Donnelly. Further, for purposes of ORS 696.396(2)(C), the record establishes that Licensee's conduct exhibited dishonesty as explained above

### ORDER

For the foregoing reasons, Licensee's Real Estate Principal Broker License is hereby revoked.

IT IS SO ORDERED THIS 24<sup>th</sup> day of January, 2014

OREGON REAL ESTATE AGENCY

  
\_\_\_\_\_  
GENE BENTLEY  
Real Estate Commissioner

This is the Commissioner's Amended Proposed Order. If the Amended Proposed Order is adverse to you, you have the right to file written exceptions and argument to be considered by the Real Estate Commissioner in issuing the Final Order. Your exceptions and argument must be received by the 20th day from the date of service. Send them to:

Denise Lewis  
Oregon Real Estate Agency  
1177 Center St. NE  
Salem OR 97301-2505

The Real Estate Commissioner will issue a Final Order, which will explain your appeal rights.

1 REAL ESTATE AGENCY  
2 BEFORE THE REAL ESTATE COMMISSIONER  
3

4 In the Matter of the Real Estate License  
5 of  
6 HOLLY BOOREN

7 )  
8 ) STIPULATED FINAL ORDER  
9 )

10 The Oregon Real Estate Agency (OREA) and Holly Booren (Booren) do hereby agree  
11 and stipulate to the following:

12 FINDINGS OF FACT  
13 &  
14 CONCLUSIONS OF LAW

15 1.

16 1.1 At all times mentioned herein, Booren was licensed as a principal broker with  
17 D&D Realty Group LLC and Integrity Property Management.

18 1.2 On November 7, 2014, OREA received a complaint from Sharon and Mike Jewett  
19 (the Jewetts) regarding Booren's property management activities. On December 2, 2014, the  
20 Jewetts notified OREA that two checks issued by Booren were returned by their bank for "not  
21 sufficient funds." One of the checks was from the tenants' security deposits clients' trust  
22 account (CTA).

23 1.3 On December 9, 2014, an investigation was opened and assigned to OREA  
24 investigator Peter Bale (Bale).

25 1.4 On December 12, 2014, Bale spoke with Booren on the telephone and said he  
26 wanted to set up a meeting with her on December 22, 2014. Booren said she was represented  
27 by attorney Anthony Kuchulis (Kuchulis) of Hart Wagner LLP in Redmond.

28 1.5 On December 16, 2014, Bale met with the Jewetts at their home in Florence.  
29 The Jewetts gave Bale copies of the bank notifications dated November 28, 2014, containing  
30 the information about the two checks which were returned for insufficient funds.

1 1.6 The information on the returned checks was as follows:

- 2 • Check number 2636, was issued from tenants' security deposit CTA ending in #  
3 8977 at Columbia Bank on November 17, 2014. The check was from Integrity  
4 Property Management payable to Touchstone Realty Company (owned by Mike  
5 Jewett) for \$5,425.50.
- 6 • Check number 11267, was issued from D&D Realty Group LLC's operating  
7 account #8969 at Columbia Bank on November 17, 2014. The check was  
8 payable to M and S Jewett for \$3,036.19.

9 1.7 During the meeting between Bale and the Jewetts on December 16, 2014, the  
10 Jewetts said the checks had since cleared.

11 1.8 On December 22, 2014, Bale met with Booren and Kuchulis at Booren's office in  
12 Madras.

13 1.9 At the meeting, Booren confirmed the tenants' security CTA had been depleted.  
14 She said she had deposited a check in the account that day, December 22, 2014, for  
15 \$38,000.00.

16 1.10 Booren provided Bale with a list of tenants' security deposits that were held by  
17 her. The total amount of tenants' security deposits to be held by Booren was listed as  
18 \$40,784.00

19 1.11 On December 23, 2014, Booren provided a copy of the tenants' security deposits  
20 CTA bank account statement, confirming the deposit of the \$38,000.00 on December 22,  
21 2014. The bank statement showed a balance of \$40,152.17.

22 **Violation:** By issuing two checks to the Jewetts, without having sufficient funds in the  
23 banks account to cover the checks and by allowing the tenants' security deposit CTA to  
24 become depleted, Booren violated ORS 696.3012(12) (2013 Edition), which states a licensee  
25 may be disciplined if they have demonstrated incompetence or untrustworthiness in performing  
26 any act for which the licensee is required to hold a license.

27 1.12 Booren acknowledged that her principal broker license would be revoked.

28 1.13 On March 2, 2015, Booren transferred ownership of D&D Realty Group LLC and  
29 Integrity Property Management to Delilta Cordes.

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2.

2.1 The foregoing violations are grounds for discipline pursuant to ORS 696.301. Based on these violations a revocation is appropriate under ORS 696.396(2)(c)(C) (2013 Edition). According to ORS 696.396, OREA may revoke a real estate license if the material facts establish a violation of a ground for discipline under ORS 696.301 that exhibits incompetence in the performance of professional real estate activity.

2.2 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, in which case an amended notice of intent may be issued in this matter. 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.

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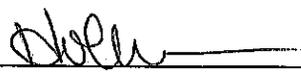
ORDER

IT IS HEREBY ORDERED that the principal broker license of Holly Booren be revoked, with said revocation to be effective the date of this order.

IT IS FURTHER ORDERED that Booren will not own, have partial ownership, or be an employee of a property management company or any company that engages in the management of rental real estate.

IT IS SO STIPULATED:

IT IS SO ORDERED:





HOLLY BOOREN

GENE BENTLEY

Real Estate Commissioner

Date 3/2/15

Date 3.9.15

DATE of service: 3-9-2015

**BEFORE THE  
REAL ESTATE AGENCY  
STATE OF OREGON**

IN THE MATTER OF:  <b>CAROL ROSENBERG,</b>	) <b>FINAL ORDER</b> ) ) OAH Case No. 1403704 ) Agency Case No. 2014-110
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This matter came before the Real Estate Agency to consider the Proposed Order issued by Administrative Law Judge (ALJ) Rick Barber on January 28, 2015. No exceptions were filed to the Proposed Order.

After considering the records and the file herein, , the Agency adopts the attached and incorporated Proposed Order as the Final Order.

IT IS HEREBY ORDERED that the broker license of Carol Rosenberg be revoked, with said revocation to be effective the date of this order.

Dated this 16<sup>th</sup> day of March 2015.

  
\_\_\_\_\_  
Gene Bentley  
Real Estate Commissioner

Date of Service: 3-16-2015

NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days of the service of this order. Judicial review is pursuant to the provisions of ORS 183.482 to the Oregon Court of Appeals.

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
REAL ESTATE AGENCY**

IN THE MATTER OF: ) **PROPOSED ORDER**  
 )  
**CAROL ROSENBERG** ) OAH Case No. 1403704  
 ) Agency Case No. 2014-110

**HISTORY OF THE CASE**

On April 29, 2014, the Real Estate Agency (Agency) issued a Notice of Intent to Revoke to Carol Rosenberg (Licensee). On May 12, 2014, Licensee's former attorney, Jesse Conway, requested a hearing on Licensee's behalf. Licensee later retained the services of David McDonald to represent her in the case.

On May 28, 2014, the Agency referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned Administrative Law Judge (ALJ) Rick Barber to preside at hearing. The ALJ convened a prehearing conference on July 22, 2014, and the parties agreed upon a January 6, 2015 hearing date. The parties also set a schedule for motions for summary determination.

On July 31, 2014, the Agency filed a Motion for Summary Determination, with six exhibits attached. On September 8, 2014, Licensee filed a Response with eight attached exhibits. On September 18, 2014, the Agency filed a Reply with an additional exhibit. On September 22, Licensee filed a Supplemental Response, along with an additional exhibit, as well as a Motion to Allow a Deposition and to Stay the Motion for Summary Determination. On September 24, 2014, the Agency denied Licensee's request for a deposition.

On October 24, 2014, ALJ Barber issued a Ruling on Motion for Summary Determination, concluding that the Agency had established its Dishonest Conduct charge against Licensee, but reserving the other charge and the appropriate sanction for hearing. The Ruling is hereby incorporated in this Proposed Order.

Hearing was held on January 6, 2015, as scheduled. Licensee did not attend the hearing, but was represented by Mr. McDonald. Certified Law Student Jacqueline Houser represented the Agency,<sup>1</sup> along with Senior Assistant Attorney General Raul Ramirez. Agency investigator Frances Hlawatsch and complainant Holly Consol testified for the Agency. The hearing record closed on January 6, 2015.

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<sup>1</sup> Documentation of Ms. Houser's representation and certification were presented by Mr. Ramirez on December 22, 2014, and are in the file.

## ISSUES

1. Whether Licensee knowingly or recklessly published materially misleading or untruthful advertising, thereby violating ORS 696.301(4).
2. Whether Licensee committed an act of fraud or engaged in dishonest conduct when she forged her tenant's signature on the Tenant Notice and Waiver Form, thereby violating ORS 696.301(14). [*Decided by Ruling on Summary Determination*].
3. Whether, if Licensee committed the violations, her license should be revoked.

## EVIDENTIARY RULING

Exhibits A1 through A7, offered by the Real Estate Agency, and Exhibit L1, offered by Licensee, were admitted into evidence without objection. Procedural Documents P1 through P16 are also included in the record.

## FINDINGS OF FACT

1. Licensee has been licensed by the Agency at all times relevant to this proceeding. She was<sup>2</sup> the owner of a duplex at 15007 Boones Way, Lake Oswego, Oregon. (Ex. A1, A2). Holly Consol was a tenant on one side of the duplex. (Test. of Consol).
2. Licensee, through her attorney Jesse Conway, began the application process to convert her duplex into two condominiums. One of the requirements in a condominium conversion is to give existing tenants 120 days to find a new place to live. The 120 day time period can be waived by a tenant. Knowing that Consol did not want to waive the 120 day time period, Licensee forged Consol's name to the notice and waiver form without Consol's permission and instructed her attorney to submit it to the Agency. (Ruling on MSD).
3. Before the conversion was complete, Licensee put two listings on the MLS, one for an individual unit and one for the entire duplex. The duplex listing claimed to be a "Home like Plex being converted to condos[.]" The individual unit listing claimed to be a "Home like Condo, one of only two units[.]" (Ex. A7 at 1).
4. Consol discovered that the condominium conversion process was ongoing when she viewed the "for sale" sign on the property and then obtained a copy of the listing from real estate agent Aaron Heard. (Test. of Consol; Ex. A7). Consol contacted the Agency to find out her rights and discovered Licensee's forgery of her signature on the waiver form. Consol filed a complaint with the Agency. (Test of Consol; Ex. A6).
5. Investigator Frances Hlawatsch interviewed Licensee to ask about the signatures on the waiver form, and Licensee admitted she had signed Consol's name without her permission. Hlawatsch also asked Licensee about the two listings she had placed on the MLS before the condominium conversion was complete. Hlawatsch told her the listings were

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<sup>2</sup> It is unclear whether she remains the owner of the property.

premature. (Test. of Hlawatsch). Licensee indicated she would change the listings to comply with the Agency's desires, and she did so. (Ruling on MSD).

6. On April 29, 2014, the Agency sent a Notice of Intent to Revoke to Licensee. The Notice alleged the following violations:

**Violation:** By advertising the subject property as a condominium on the Regional Multiple Listing Service prior to completion of the conversion process, Rosenberg violated ORS 696.301(4), which states that a licensee may be disciplined if they have knowingly or recklessly published materially misleading or untruthful advertising.

\* \* \* \* \*

**Violation:** By forging Consol's signature on the Tenants' Notice and Waiver form, Rosenberg violated ORS 696.301(14), which states that a licensee may be subject to discipline if they have committed an act of fraud or engaged in dishonest conduct substantially related to the fitness of the licensee to conduct professional real estate activity, without regard to whether the act or conduct occurred in the course of professional real estate activity.

Based upon the two violations alleged, the Agency proposed to revoke Licensee's real estate license. (Pleading 1, at 3-4).

7. In her dealings with Hlawatsch, Rosenberg was cooperative and "forthcoming," admitting that she had signed Consol's name without her permission, and agreeing to make the changes that Hlawatsch suggested on the MLS listing. (Test. of Hlawatsch).

8. On June 4, 2014, Licensee was arrested in Clackamas County and charged with one count each of Forgery II and Identity Theft, arising from signing Consol's waiver form. On July 24, 2014, Consol signed a Civil Compromise Agreement by which she waived her right to sue Licensee and agreed to dismissal of the criminal charges, in return for a monetary settlement. (Ex. L1).

### CONCLUSIONS OF LAW

1. Licensee knowingly or recklessly published materially misleading or untruthful advertising, thereby violating ORS 696.301(4).

2. Licensee committed an act of fraud or engaged in dishonest conduct when she forged her tenant's signature on the Tenant Notice and Waiver Form, thereby violating ORS 696.301(14).

3. Licensee's real estate license should be revoked.

## OPINION

The Real Estate Agency contends that Licensee knowingly or recklessly published materially misleading or untruthful advertising, violating ORS 696.301(4). Based upon that charge and the charge of Dishonest Conduct previously established on summary determination, the Agency contends that Licensee's real estate license must be revoked. As the proponent of these positions, the Agency has the burden of proof. *Sobel v. Board of Pharmacy*, 130 Or App 374, 379 (1994), *rev den* 320 Or 588 (1995) (standard of proof under the Administrative Procedures Act is preponderance of evidence absent legislation adopting a different standard). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely true than not. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987). The burden of proof encompasses two burdens, the burden of production of evidence in support of an assertion, and the burden to persuade the fact-finder that the facts asserted are true. *Marvin Wood Products v. Callow*, 171 Or App 175 (2000).

As noted, the Ruling on Summary Determination decided the Dishonest Conduct charge, leaving only the questions whether Licensee's listing of her property on MLS was knowing or reckless, and also leaving the question of what sanction is appropriate. Because the serious violation has already been established, and because I find that it alone justifies the sanction of revocation, comments on the publishing charge will be brief.

### **Knowing or Reckless Publishing**

The Agency's publishing charge in this case is governed by ORS 696.301, which states in part:

**Grounds for discipline.** Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

\* \* \* \* \*

(4) Knowingly or recklessly published materially misleading or untruthful advertising.

Licensee did not attend and did not testify at hearing, so the only evidence concerning her mental state when she listed the property is found in the MSD exhibits. In her affidavit for the Response to the motion, Licensee indicated she did not realize that listing the properties during the conversion process would be a problem. The record indicates that Licensee did not "knowingly" try to be misleading or untruthful when listing her property on the MLS, and there is no evidence to establish that she knew she was violating the law. However, given Licensee's knowledge of her profession, including how to legally list properties, her decision to post the listings without knowing the legality of it was reckless.

As noted above, there were two listings in the MLS. One listing was for the entire duplex, and the listing explained that the conversion process was ongoing. Therefore, although it

was probably reckless for Licensee to list the property before it could be listed, there was nothing materially misleading or untruthful about that listing.

For the individual condo listing, however, the MLS listing was misleading and it was untruthful. The listing did not mention the conversion process; it represented that a "home like condo" was available, when it was not. The dwelling was not yet a condo, and it was not yet available. This listing was also reckless, so I conclude that Licensee violated ORS 696.301(4).

Looking at this violation in a vacuum, without consideration of the more serious dishonest conduct charge, I would be recommending a sanction of a reprimand or, perhaps, a short suspension for the violation. Given the progressive discipline standard discussed in more detail below, and taking into account Licensee's lack of prior discipline, those would have been the appropriate sanctions for the publishing charge.

**Nature of the Sanction.** However, setting the sanction for the more serious dishonest conduct charge is not as simple, nor is the result the same. For the reasons that follow, I propose that the Agency revoke Licensee's real estate license.

Licensee correctly contends that the Real Estate Agency requires a consideration of progressive discipline when sanctioning its licensees. Licensee relies on ORS 696.396, which states:

**Investigation of complaints and progressive discipline; rules.** (1) The Real Estate Commissioner shall provide by rule for the progressive discipline of real estate licensees and an objective method for investigation of complaints alleging grounds for discipline under ORS 696.301.

(2) The rules adopted by the commissioner under this section:

(a) Must establish procedures for the discovery of material facts relevant to an investigation and for the reporting of those facts without conclusions of violation or grounds for discipline to the commissioner or the commissioner's designee by the individual assigned to investigate the complaint.

(b) Must provide for progressive discipline designed and implemented to correct inappropriate behavior.

(c) May not authorize imposition of a suspension or a revocation of a real estate license unless the material facts establish a violation of a ground for discipline under ORS 696.301 that:

(A) Results in significant damage or injury;

(B) Exhibits incompetence in the performance of professional real estate activity;

(C) Exhibits dishonesty or fraudulent conduct; or

(D) Repeats conduct or an act that is substantially similar to conduct or an act for which the real estate licensee was disciplined previously.

Licensee contends that her lack of prior discipline with the Agency precludes the Agency from revoking her license. Under her theory, the Agency must utilize progressive discipline and impose a lesser sanction than revocation because of her lack of previous discipline.

Relying on the same statute, the Agency disagrees with Licensee's argument. Subsection (2)(c) of the statute notes four circumstances justifying the revocation of a license. The Agency relies upon (2)(c)(C), contending that Licensee "[e]xhibit[ed] dishonesty or fraudulent conduct" when she signed Consol's name to the waiver without her permission. I agree with the Agency.

Licensee's action in this case clearly involved dishonesty and fraudulent conduct, despite her later attempts to make things right with Consol and others. The language of the statute indicates that even in a system of progressive discipline there are circumstances too serious for lesser sanctions. This is such a case. The Agency contends that Licensee's license should be revoked, and I agree.

### ORDER

I propose the Real Estate Agency issue the following order:

The Agency's April 29, 2014, Notice of Intent to Revoke is AFFIRMED, and Licensee's license to practice real estate is revoked.

Rick Barber

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Administrative Law Judge  
Office of Administrative Hearings

### NOTICE

This is the Administrative Law Judge's Proposed Order. If the Proposed Order is adverse to you, you have the right to file written exceptions and argument to be considered by the Real Estate Commissioner in issuing the Final Order. Your exceptions and argument must be received by the 20th day from the date of service. Send them to:

Denise Lewis  
Oregon Real Estate Agency  
1177 Center St. NE  
Salem OR 97301-2505

The Real Estate Commissioner will issue a Final Order, which will explain your appeal rights.

**CERTIFICATE OF MAILING**

On January 28, 2015, I mailed the foregoing PROPOSED ORDER issued on this date in OAH Case No. 1403704.

By: First Class Mail

David McDonald  
Attorney at Law  
David T McDonald PC  
510 SW 3rd Ave Suite 400  
Portland OR 97204

Jacqueline Houser  
Department Of Justice  
1162 Court Street NE  
Salem, OR 97301-4096

Denise Lewis  
Real Estate Agency  
1177 Center Street NE  
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Raul Ramirez  
Senior Assistant Attorney General  
Department of Justice  
1162 Court St NE  
Salem OR 97301-4096

Ryan Clark  
Administrative Specialist  
Hearing Coordinator

**CERTIFICATE OF MAILING**

On March 16, 2015, I mailed the foregoing Final Order issued on this date in OAH Case No. 1403704 and Agency Case No. 2014-110.

By: First Class Mail

CAROL ROSENBERG  
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Carolyn Kalb  
Compliance Specialist

1 REAL ESTATE AGENCY  
2 BEFORE THE REAL ESTATE COMMISSIONER  
3

4 In the Matter of the Real Estate License of )

5  
6 SANDRA ELAINE BITTLER )

STIPULATED FINAL ORDER

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8  
9  
10 The Oregon Real Estate Agency (OREA) and Sandra Bittler (Bittler) do hereby agree  
11 and stipulate to the following:

12 FINDINGS OF FACT

13 &

14 CONCLUSIONS OF LAW

15 1.

16 1.1 Bittler was licensed as a principal broker with Oregon First from April 26, 2011  
17 until September 2, 2014.

18 1.2 On September 1, 2014, OREA received an email from Arthur Donaghey  
19 (Donaghey). Based on a newspaper article regarding the transaction, Donaghey requested  
20 OREA investigate Bittler's 2013 purchase of her neighbor's property.

21 1.3 On September 3, 2014, OREA received a hand delivered envelope from Oregon  
22 First. The envelope contained a copy of an email to Bittler dated August 31, 2014, from Ken  
23 Mistler (Mistler), President and Principal Broker for Oregon First. Mistler alleged Bittler had  
24 violated licensing administrative rules.

25 1.4 Bittler and her husband, Michael Leland (Leland), moved into their neighborhood  
26 about seven years ago. At that time, they told their neighbor, Elmo Marquette (E. Marquette)  
27 to let them know if he ever wanted to sell the 2.02 acre parcel (subject property) that abutted  
28 both the Marquettes' property and Leland and Bittler's property.

29 ///

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1           1.5    Bittler told OREA investigator Rob Pierce (Pierce) that she and her husband saw  
2 E. Marquette around the neighborhood and spoke with him many times over the next seven  
3 years. Bittler said the subject property was not discussed with E. Marquette again until E.  
4 Marquette rang Bittler's doorbell in November 2013 and said he was ready to sell the subject  
5 property.

6           1.6    Bittler said it was E. Marquette that set the asking price at \$22,000.00. Bittler  
7 said she had only done residential homes transactions and was not well versed in bare land  
8 transactions, but she thought the price seemed a little low.

9           1.7    On November 4, 2013, at 11:05 am, Bittler sent an email to Heidi Gamelgaard  
10 (Gamelgaard), Sr. Escrow Officer for Fidelity National Title, asking her to send her any  
11 information she had on the subject property, specifically asking Gamelgaard if the subject  
12 property was a buildable lot and if there was anything attached to the subject property or the  
13 title that would be conveyed in a sale. Bittler also asked Gamelgaard if she could use a simple  
14 Earnest Money Agreement to buy the subject property and follow the normal transaction route  
15 using Gamelgaard as the escrow office, even though there was no structure on the property.

16           1.8    On November 4, 2013, at 12:36 pm, Melissa Scott, Customer Service  
17 Representative for Fidelity National Title responded to Bittler's email. Scott told Bittler the  
18 subject property was zoned R10 with a P&C overlay. The email was copied to Gamelgaard.

19           1.9    On November 4, 2013, at 2:55 pm, Bittler sent an email to Gamelgaard,  
20 explaining to Gamelgaard, from what she was able to find online, that the P&C overlay was  
21 environmentally protected land area that would make developing the subject property very  
22 difficult. In her email, Bittler said she thought the subject property was not really all that  
23 valuable, considering the fact the subject property was landlocked, combined with the zoning  
24 restrictions. In her email, in regards to the subject property, Bittler said, "it would be awesome  
25 to clear it and extend our back yard if it really was only for \$20k."

26           1.10 A review of a City of Portland zoning map confirms the subject property is zoned  
27 R10 with a P&C overlay covering approximately half of the 2.02 acre parcel. According to the  
28 City of Portland Ordinance 33.430.15, development would only be approved in the  
29 environmental protection zone only in rare and unusual circumstances.

30 ///

1           1.11 On the zoning map, SW 59<sup>th</sup> Avenue appears to extend to the subject property  
2 providing access to the land. However, a review of google maps and google maps street view  
3 for the Marquettes' home located at 5857 SW Garden Home Road shows the street listed as  
4 SW 59<sup>th</sup> Avenue is actually a gravel driveway that ends at the Marquette house and does not  
5 extend the entire distance of the easement back to the subject property.

6           1.12 On November 12, 2013, Bittler and Leland wrote an offer to purchase the subject  
7 property from E. Marquette and his wife Mellitta Marquette (the Marquettes) for \$22,000.00.

8           1.13 On page one of the offer, in the section for final agency acknowledgement, Bittler  
9 did not fill in the name of the selling licensee or the name of the registered business name she  
10 worked under. Also, Bittler failed to check the box indicating she was representing the buyer  
11 only.

12           1.14 On page three of the offer, Bittler disclosed she was a real estate broker, but did  
13 not contain any language stating she was representing herself as the buyer in the transaction.

14           **Violation:** By failing to fill out the final agency acknowledgement on page one of the  
15 sale agreement and failing to state she was representing herself as the buyer in the  
16 transaction, Bittler violated ORS 696.301(3) (2013 Edition) as it incorporates OAR 863-015-  
17 0145(1) (4-1-2013 Edition), which states if a licensee, whether active or inactive, either directly  
18 or indirectly offers or negotiates for the sale, exchange, lease option, or purchase of real estate  
19 and the licensee is a principal to the transaction, the licensee must disclose to the other party  
20 to the offer or transaction that the licensee is a real estate licensee. The licensee must make  
21 the disclosure in any advertising or display signs, and it must appear in writing on at least the  
22 first written document of agreement concerning the offer or transaction. The disclosure set  
23 forth on the agreement document also must state that the real estate licensee is representing  
24 himself or herself as either the buyer or seller in the transaction.

25           1.15 Bittler said she advised E. Marquette more than once to get representation, but  
26 he did not want to be represented. Bittler said E. Marquette wanted to keep the transaction  
27 simple and would have sold the property on a handshake deal if he could. Bittler said E.  
28 Marquette asked her to draw up the documents so they could close the transaction. Bittler  
29 said she walked the Marquettes through the contract, explaining all of it, including the selling  
30 price that had been agreed upon.

1           1.16 On November 13, 2013, the Marquettes accepted the offer.

2           1.17 On November 18, 2013, signing was scheduled for the subject property. The  
3 signing was to happen at the Marquettes' home and Gamelgaard asked Bittler to meet her at  
4 the Marquettes house for the signing. Gamelgaard said she always uses a buddy system  
5 when doing an outside closing and in this case thought Bittler would be the logical choice,  
6 since Bittler was friends with the Marquettes, lived around the corner from the Marquettes, and  
7 was also one of the buyers of the property.

8           1.18 Bittler said when she arrived at the Marquettes' home prior to Gamelgaard, on  
9 November 18, 2013, Meliitta Marquette said they weren't getting enough for the property.

10          1.19 Bittler said when Gamelgaard arrived, she immediately told Gamelgaard the deal  
11 was off because Meliitta had changed her mind.

12          1.20 Galmegaard told Pierce that when she got to the Marquettes' house she was told  
13 right away by Bittler there was a problem. Gamelgaard said Meliitta Marquette was not happy  
14 with the price they were getting and thought they should be getting more. Gamelgaard gave  
15 the Marquettes the folder with the escrow documents and left without attempting to get the  
16 closing documents signed.

17          1.21. Gamelgaard said Bittler walked out with her and apologized for Gamelgaard  
18 having to come out for nothing.

19          1.22 The next day, on November 19, 2013, Bittler said E. Marquette called and told  
20 Bittler they were ready to move forward with the transaction. E. Marquette said he had  
21 discussed it with his wife and they decided it would be best to go ahead and sell the property  
22 to Bittler at the agreed upon price, rather than spending more time trying to get a higher price.

23          1.23 On November 21, 2013, Gamelgaard returned for the second time for the signing  
24 of the closing documents. Bittler said Gamelgaard explained each and every document in  
25 detail to the Marquettes. Bittler said Gamelgaard was specific about the price being  
26 \$22,000.00, mentioning the price in several documents and both Marquettes seemed to be in  
27 agreement regarding the price.

28          1.24 Bittler said there was no hesitation by Meliitta Marquette regarding the price at  
29 the second signing, and Bittler was confident that the Marquettes completely understood the  
30 transaction, including the price they were selling the subject property for.

1           1.25 Gamelgaard said she explained each document to the Marquettes in detail  
2 before she had them sign, to make sure they understood what they were signing.

3           1.26 Gamelgaard said she explained the preliminary title report to the Marquettes.  
4 The preliminary title report had been mailed to the Marquettes on November 15, 2013, so they  
5 had a couple days to look it over prior to signing the closing documents. Gamelgaard said the  
6 preliminary title report clearly showed the selling price to be \$22,000.00. Gamelgaard said she  
7 did not remember if she specifically said \$22,000.00 or if she just pointed out the amount.

8           1.27 Gamelgaard said she explained the Sale Escrow Instructions to the Marquettes,  
9 which showed that a title insurance policy was to be obtained in the amount of \$22,000.00.

10          1.28 Gamelgaard said she explained the Seller's Estimated Settlement Statement to  
11 the Marquettes. The Seller's Estimated Settlement Statement clearly showed the selling price  
12 of the property to be \$22,000.00, and the total amount to be deposited to the Marquettes' Key  
13 Bank account, including prorations to be \$23,581.74.

14          1.29 A Substitute Form 1099-S was prepared for the sale of the property that showed  
15 the proceeds of the sale to be \$22,000.00. Galemgaard said she explained this form to the  
16 Marquettes and they signed it on November 21, 2013.

17          1.30 A Statutory Warranty deed was prepared, transferring title to the property from  
18 the Marquettes to Leland and Bittler for true and actual consideration in the amount of  
19 \$22,000.00. Gamelgaard said she explained the Warranty Deed to the Marquettes and they  
20 signed it on November 21, 2013. Gamelgaard was confident that by walking the Marquettes  
21 through all the closing documents and the explanations she had given them, the Marquettes  
22 understood the transaction.

23          1.31 Regarding possible future development on the subject property, Bittler said there  
24 was a verbal agreement to not develop the subject property as long as the Marquettes lived  
25 there. Bittler said it was not part of the written contract because of the friendly nature of the  
26 transaction and because she did not know how the agreement might affect the deed if it was in  
27 writing.

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1           **Violation:** By making a verbal agreement not to develop the subject property and failing  
2 to include it in the written sale agreement Bittler violated ORS 696.301(3) (2013 Edition) as it  
3 incorporates OAR 863-015-0135(5) (4-1-2013 Edition), which states real estate licensees must  
4 include all of the terms and conditions of the real estate transaction in the offer to purchase or,  
5 directly or by reference, in the counter-offer, including but not limited to whether the transaction  
6 will be accomplished by way of deed or land sales contract, and whether and at what time  
7 evidence of title will be furnished to the prospective buyer.

8           1.32 Bittler failed to turn her transaction with the Marquettes in to Oregon First, the  
9 registered business name she worked under. She said the reason she did not turn it in to  
10 Oregon First was because she didn't think she was required to. Bittler said because she is a  
11 principal broker herself, she did not think state law required her to submit her personal  
12 transactions for another broker's approval. Bittler said this was the first and only transaction  
13 that she had ever done that did not involve Oregon First.

14           **Violation:** By failing to turn the transaction documents in to Oregon First, Bittler  
15 violated ORS 696.301(3) (2013 Edition) as it incorporates OAR 863-015-0260(1)(a) (4-1-2013  
16 Edition), which requires that transactions involving a licensee as a principal to the transaction  
17 must be processed in the same manner as the licensee's other professional real estate  
18 activities and comply with the records requirements under OAR 863-015-0250. Additionally,  
19 Bittler violated ORS 696.301(3) (2013 Edition) as it incorporates OAR 863-015-0260(1)(a),  
20 which states that records of professional real estate activity may be stored at the principal  
21 broker's main office, and records of professional real estate activity originating at a branch  
22 office may be maintained and stored at either that branch office or at the principal broker's  
23 main office.

24           1.33 Bittler said she and Leland first learned of the Marquettes' displeasure with the  
25 purchase price of the subject property after being contacted by a reporter for a story that ran  
26 August 30, 2014.

27           1.34 On September 5, 2014, attorneys for Bittler, Leland and the Marquettes  
28 announced a settlement. According to the terms of the settlement, the subject property was  
29 returned to the Marquettes by Bittler and Leland with no restrictions regarding future  
30 development. The Marquettes were allowed to keep the \$22,000.00 that Bittler and Leland had

1 paid them for the subject property.

2 1.35 On September 30, 2014, Pierce attempted to interview the Marquettes regarding  
3 the transaction with Bittler and Leland. Meliitta Marquette said the disagreement with Bittler  
4 and Leland had been resolved to her satisfaction and she and E. Marquette would not discuss  
5 the matter any further.

6 2.

7 2.1 OREA reserves the right to investigate and pursue additional complaints that  
8 may be received in the future regarding this licensee.

9 **STIPULATION & WAIVER**

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

20 I hereby agree and stipulate to the above findings of fact and conclusions of law and  
21 understand that the order which follows hereafter may be completed and signed by the Real  
22 Estate Commissioner or may be rejected by the Real Estate Commissioner, in which case an  
23 amended notice of intent may be issued in this matter. I understand that, in accordance with  
24 the provisions of ORS 696.445(3), notice of this order shall be published in the Oregon Real  
25 Estate News Journal.

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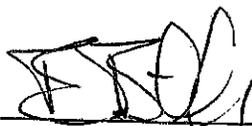
ORDER

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

IT IS SO STIPULATED:

IT IS SO ORDERED:

Sandra Elaine Bittler



SANDRA ELAINE BITTLER

GENE BENTLEY

Real Estate Commissioner

Date 2-2-15

Date 2-17-15

DATE of service: 2-18-2015

1 REAL ESTATE AGENCY  
2 BEFORE THE REAL ESTATE COMMISSIONER  
3

4 In the Matter of the Real Estate License of )

5  
6 MARC D. SLAVIT )

STIPULATED FINAL ORDER

7  
8  
9  
10 The Real Estate Agency (OREA) and Marc D. Slavit (Slavit) do hereby agree and  
11 stipulate to the following:

12 FINDINGS OF FACT  
13 &  
14 CONCLUSIONS OF LAW

15 1.

16 1.1 Slavit was licensed as a real estate broker with Keller Williams Realty Southern  
17 Oregon from November 9, 2009, through September 24, 2014.

18 1.2 Dated June 11, 2013, OREA received a complaint from Alejandro Zaragoza (A.  
19 Zaragoza) against Slavit. A. Zaragoza alleged Slavit listed properties for sale without  
20 permission from the property owner. A. Zaragoza's wife, Luisa Zaragoza (L. Zaragoza), is the  
21 sister of one of the property owners, Carlos Valentin Pelagio (C. Pelagio).

22 1.3 On June 30, 2013, OREA opened an investigation.

23 1.4 Prior to this complaint, Slavit represented C. Pelagio and his family in purchasing  
24 property in 2010. C. Pelagio is an attorney who lives in Mexico. Slavit said C. Pelagio came to  
25 the United States in 2010 to purchase property for himself and his children.

26 1.5 On November 5, 2010, Slavit helped C. Pelagio purchase 3148 Timothy Ave,  
27 Medford (Timothy Ave. property), and on December 28, 2010, Slavit helped C. Pelagio's son,  
28 Juan Carlos Valentin Estrada (J. Estrada), purchase 1477 Johnson St., Medford (Johnson St.  
29 property).

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1           1.6     A review of the documents shows that five offers, over three distinct dates, were  
2 made for the Johnson St. property and the Timothy Ave. property. C. Pelagio and Slavitt  
3 communicated several times about the need to have another person able to sign on his behalf  
4 for the purchases for himself and his children. C. Pelagio mentioned his sister, L. Zaragoza,  
5 should sign as power of attorney on his behalf.

6           **Johnson St. Property:**

7           1.7     On November 29, 2012, Slavitt emailed C. Pelagio and attached the Slavitts' offer  
8 on the Johnson St. property. Slavitt and his wife were the buyers, represented by Slavitt. J.  
9 Estrada was the seller as a for-sale-by-owner. Slavitt stated to C. Pelagio, "Please review the  
10 offer and if it is acceptable to you, please sign, and date and/or initial at every astrix/arrow (sic)  
11 which is at the top, middle or bottom of each page." It appears J. Estrada signed the  
12 acceptance of the offer on December 4, 2012.

13          1.8     Slavitt turned the accepted offer, signed December 4, 2012, in for his principal  
14 broker's, Stacey Boals (Boals), review around February 5, 2013. Boals said she supervises  
15 Slavitt's activity as a principal broker and has a 24 to 48 hour turnaround from when documents  
16 are turned in to her until they are reviewed. She said Slavitt is known to turn documents in late.  
17 Boals said this offer was turned in for review when she was looking at the next offer.

18          **Violation:** By waiting until around February 5, 2013, to submit the accepted offer to his  
19 principal broker for review, Slavitt violated OAR 863-015-0255(3) (9-14-2012 Edition), which  
20 requires a real estate broker to transmit to the broker's principal real estate broker within three  
21 banking days of receipt any money, checks, drafts, warrants, promissory notes, or other  
22 consideration and any documents received by the licensee in any professional real estate  
23 activity in which the licensee is engaged. Additionally, Slavitt violated OAR 863-015-0145(3) (9-  
24 14-2014 Edition), which requires each real estate transaction involving a licensee as a  
25 principal to the transaction, to be conducted under the supervision of the licensee's principal  
26 broker and all documents and funds must be transmitted through the licensee's principal real  
27 estate broker.

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1           1.9     On January 24, 2013, Slavik emailed C. Pelagio. Slavik stated he had an issue  
2 with his loan because of a credit issue within the past two-and-a-half years. He stated he had  
3 another buyer for both properties. Slavik stated C. Pelagio would need to get a specific power  
4 of attorney on both homes for L. Zaragoza to sign for C. Pelagio.

5           1.10    Slavik wrote a second offer for the Johnson St. Property, on behalf of Christine  
6 Swanson (Swanson), the buyer. The agreement was dated January 24, 2013.

7           1.11    J. Estrada signed, accepting the offer on January 28, 2013.

8           1.12    On February 27, 2013, Swanson signed an addendum to the Johnson St. sales  
9 agreement. The addendum stated Swanson was unable to secure financing due to a change  
10 in her credit qualifications. All earnest money was to be returned to Swanson.

11          1113    J. Estrada signed a POA related to this property on February 28, 2013,  
12 authorizing L. Zaragoza (aunt to J. Estrada) to sign on his behalf. L. Zaragoza signed the  
13 sales agreement addendum on February 27, 2013, a day before the POA was in effect.

14          **Violation:** By failing to address the error made when L. Zaragoza signed the sales  
15 agreement addendum on behalf of J. Estrada, before the POA was executed, Slavik violated  
16 ORS 696.810(3)(a) (2013 Edition), which states a buyer's agent owes the buyer involved in a  
17 real estate transaction the following affirmative duty: (a) To exercise reasonable care and  
18 diligence.

19          1.14    The sales agreement addendum, winding down the offer from Swanson, was  
20 accepted on February 27, 2013, but was not reviewed by Boals until March 25, 2013.

21          **Violation:** By failing to provide the addendum to his principal broker in a timely manner,  
22 Slavik violated OAR 863-015-0255(3) (9-14-2012 Edition), which requires a real estate broker  
23 to transmit to the broker's principal real estate broker within three banking days of receipt any  
24 money, checks, drafts, warrants, promissory notes, or other consideration and any documents  
25 received by the licensee in any professional real estate activity in which the licensee is  
26 engaged.

27          1.15    Dated February 27, 2013, Slavik wrote another offer on behalf of himself and his  
28 wife for the Johnson St. property. L. Zaragoza accepted the offer and signed as POA for J.  
29 Estrada on February 27, 2013. A POA notarized February 28, 2013 and signed by J. Estrada  
30 gave L. Zaragoza the ability to sign documents related to the Johnson St. property.

1           **Violation:** By failing to address the error that the power of attorney was executed after it  
2 was used, Slavik violated ORS 696.810(3)(a) (2013 Edition), which states a buyer's agent  
3 owes the buyer involved in a real estate transaction the following affirmative duty: (a) To  
4 exercise reasonable care and diligence.

5           1.16 Slavik failed to obtain principal broker review of the documentation of his  
6 February 27, 2013, offer on the Johnson St. property until March 20, 2013.

7           **Violation:** By failing to provide the agreement for the Johnson St. property to his  
8 principal broker in a timely manner, Slavik violated OAR 863-015-0255(3) (9-14-2012 Edition),  
9 which requires a real estate broker to transmit to the broker's principal real estate broker within  
10 three banking days of receipt any money, checks, drafts, warrants, promissory notes, or other  
11 consideration and any documents received by the licensee in any professional real estate  
12 activity in which the licensee is engaged.

13           **Timothy Ave Property:**

14           1.17 On January 24, 2013, Slavik filled out and signed a document titled, "One-Party  
15 Listing, Agency Disclosure & Commission Agreement," which stipulated C. Pelagio owns the  
16 Timothy Ave. property and agreed to let KW Realty and Slavik market the property to Swanson  
17 as the buyer. It appears J. Estrada instead of C. Pelagio signed the commission agreement on  
18 January 28, 2013.

19           1.18 On January 24, 2013, Slavik emailed C. Pelagio. Attached to this email was the  
20 offers and "commission paperwork" for the Johnson St. and Timothy Ave. properties with  
21 Swanson as the buyer (See 1.10 regarding the Johnson St. property offer for Swanson). Slavik  
22 wrote nothing about ensuring the correct owner signed the appropriate offers and commission  
23 paperwork. Slavik wrote, "I have attached the offers and paperwork for you to sign at every  
24 arrow and astrix. (sic) You will get more money from each home on both offers than when we  
25 previously talked about price. It is a win win for you. Please review this and return both offers  
26 signed As Soon As Possible." Slavik attached an offer from Swanson for the Timothy Ave.  
27 property dated January 24, 2013.

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1           1.19 Slavit said when working with C. Pelagio and J. Estrada in Mexico, J. Estrada did  
2 not have an email address, so documents were emailed to C. Pelagio to get signatures from  
3 both him and J. Estrada, depending on who owned the property. Slavit stated that either C.  
4 Pelagio or J. Estrada signed and then returned the signed documents through C. Pelagio's  
5 email.

6           1.20 J. Estrada, instead of the owner, C. Pelagio accepted this offer.

7           **Violation:** By writing the offer for Swanson as buyer and C. Peligio as seller, and failing  
8 to address the error made when J. Estrada signed the commission agreement and offer  
9 instead of C. Pelagio, Slavit violated ORS 696.810(3)(a) (2013 Edition), which states a buyer's  
10 agent owes the buyer involved in a real estate transaction the following affirmative duty: (a) To  
11 exercise reasonable care and diligence.

12           1.21 On February 27, 2013, Swanson signed an addendum to the Timothy Ave.  
13 property agreement as the buyer. The addendum stated Swanson was unable to secure  
14 financing due to a change in her credit qualification. All earnest money was to be returned to  
15 Swanson.

16           1.22 On February 27, 2013, L. Zaragoza (sister to C. Pelagio), signed the addendum  
17 terminating the sales agreement as power of attorney on behalf of C. Pelagio. Notarized on  
18 February 28, 2013, an attempt was made to give L. Zaragoza authority to sign documents  
19 related to the Timothy Ave property. But J. Estrada signed the POA related to this property  
20 instead of the owner, C. Pelagio.

21           **Violation:** By failing to address the errors made, when the authority to sign as power of  
22 attorney was executed after L. Zaragoza had already signed on behalf of another, and the  
23 power of attorney was signed by the wrong person, Slavit violated ORS 696.810(2)(a) (2013  
24 Edition), which states a buyer's agent owes the buyer involved in a real estate transaction the  
25 following affirmative duty: (a) To exercise reasonable care and diligence.

26           1.23 The February 27, 2013, addendum terminating the agreement for the Timothy  
27 Ave. property was not submitted timely for Boals' review. The addendum document which was  
28 accepted on February 27, 2013, was not reviewed by Boals until March 25, 2013.

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1           **Violation:** By failing to provide the addendum to his principal broker in a timely manner,  
2 Slavit violated OAR 863-015-0255(3) (9-14-2012 Edition), which requires a real estate broker  
3 to transmit to the broker's principal real estate broker within three banking days of receipt any  
4 money, checks, drafts, warrants, promissory notes, or other consideration and any documents  
5 received by the licensee in any professional real estate activity in which the licensee is  
6 engaged.

7           1.24 Slavit signed a one-party listing agreement dated February 27, 2013, which listed  
8 C. Pelagio as the owner. L. Zaragoza signed the listing agreement as "POA for Carlos  
9 Valentin" (J. Estrada) on February 27, 2013.

10           1.25 Dated February 27, 2013, Slavit wrote an offer for Dave Husel (Husel) for the  
11 Timothy Ave. property. L. Zaragoza signed accepting the offer as "POA for Carlos Valentin" (J.  
12 Estrada) on February 27, 2013.

13           1.26 Addendum A to the sale agreement was signed by L. Zaragoza "POA for Carlos  
14 Valentin" (J. Estrada) on March 27, 2013

15           1.27 J. Estrada, instead of C. Pelagio (actual owner of Timothy Ave. property), signed  
16 the power of attorney, which was notarized on February 28, 2013, allowing L. Zaragoza to sign  
17 on his behalf. On April 15, 2013 C. Pelagio signed the power of attorney.

18           **Violation:** Slavit, by failing to address the errors made on the commission agreement,  
19 offer, and addendum when the power of attorney was executed after it was used and signed  
20 by the wrong person, violated ORS 696.810(3)(a) (2013 Edition), which states a buyer's agent  
21 owes the buyer involved in a real estate transaction the following affirmative duty: (a) To  
22 exercise reasonable care and diligence.

23           1.28 The commission agreement, offer, and addendum for the Timothy Ave. property  
24 were not provided timely to Boals for review.

25           **Violation:** By failing to provide the commission agreement, offer, and addendum to his  
26 principal broker in a timely manner, Slavit violated OAR 863-015-0255(3) (9-14-2012 Edition),  
27 which requires a real estate broker to transmit to the broker's principal real estate broker within  
28 three banking days of receipt any money, checks, drafts, warrants, promissory notes, or other  
29 consideration and any documents received by the licensee in any professional real estate  
30 activity in which the licensee is engaged.

1 1.29 Through the above listed violations Slavik engaged in conduct below the standard  
2 of care for the practice of professional real estate activity in Oregon.

3 **Violation:** ORS 696.301(15) (2013 Edition), which states a licensee's real estate  
4 license can be disciplined if they have engaged in any conduct that is below the standard of  
5 care for the practice of professional real estate activity in Oregon as established by the  
6 community of individuals engaged in the practice of professional real estate activity in Oregon.

7 2.

8 2.1 OREA reserves the right to investigate and pursue additional complaints that  
9 may be received in the future regarding this licensee.

10 STIPULATION & WAIVER

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

21 I hereby agree and stipulate to the above findings of fact and conclusions of law and  
22 understand that the order which follows hereafter may be completed and signed by the Real  
23 Estate Commissioner or may be rejected by the Real Estate Commissioner, in which case an  
24 amended notice of intent may be issued in this matter. I understand that, in accordance with  
25 the provisions of ORS 696.445(3), notice of this order shall be published in the Oregon Real  
26 Estate News Journal.

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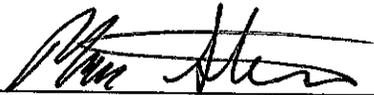
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ORDER

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

IT IS SO STIPULATED:

IT IS SO ORDERED:



MARC SLAVIT

GENE BENTLEY

Real Estate Commissioner

Date 3-9-15

Date 3.18.15

DATE of service: 3-18-2015

1 REAL ESTATE AGENCY  
2 BEFORE THE REAL ESTATE COMMISSIONER

3  
4 In the Matter of the Unlicensed Professional  
5 Real Estate Activity of  
6  
7 JANA TONEY  
8

STIPULATED FINAL ORDER

9  
10 The Oregon Real Estate Agency (OREA) and Jana Toney (Toney) do hereby agree and  
11 stipulate to the following:

12 FINDINGS OF FACT  
13 &  
14 CONCLUSIONS OF LAW

15 1.

16 1.1 At all times mentioned herein, Toney was not licensed to conduct professional  
17 real estate activity in Oregon.

18 1.2 On September 4, 2013, OREA received a complaint from Cindy Pickering-  
19 Smolen (Smolen) and CJ Smolen (Cindy and CJ referred to together as the Smolens), former  
20 tenants of 1090 Edwina Ave., Central Point, Oregon (subject property). Smolen stated Toney  
21 was unlicensed and alleged Toney acted as the property manager of the subject property on  
22 behalf of the owner, James Stanley "Stan" Phillips (Phillips), during the Smolens' tenancy.

23 1.3 Toney said she was friends with Phillips and was doing him a favor by looking  
24 over the subject property and picking up the rent from the tenants.

25 1.4 A residential lease agreement dated November 16, 2009, was signed between  
26 "TP Management" and the Smolens. Toney of "Toney Property Management" signed as the  
27 management on the agreement.

28 1.5 A "Month- to Month Rental Agreement" dated November 16, 2009, was signed by  
29 Toney of "Toney Property Management." The rental agreement stated rent was \$644.00 per  
30 month.

1           1.6     Documentation from the Housing Authority of Jackson County (HAJC) shows  
2 "Cynthia Pickering" as the tenant and "Jana Toney TCS" as manager from December 1, 2009,  
3 to August 31, 2012. "Cynthia Pickering" is Cindy Pickering-Smolens (Smolens). Additionally, the  
4 business address, check address, and correspondence address of "Jana Toney TCS" was  
5 Taney's post office box address.

6           1.7     Payments were made from HAJC on behalf of Smolens to "Jana Toney TCS" for  
7 rent at the subject property.

8           1.8     A review of the financial documents shows the following:

- 9                 • For January 2010-March 2010, total rent received was \$800.00 each  
10                 month. HAJC paid Jana Toney TCS \$475.00 per month on behalf of  
11                 Smolens. The Smolens paid an additional \$325.00 in cash to Toney for  
12                 rent each month.
- 13                 • For April 2010, HAJC paid Jana Toney TCS \$475.00 on behalf of Smolens.
- 14                 • For May 2010-November 2010, total rent received by Toney was \$800.00  
15                 each month. HAJC paid Jana Toney TCS \$475.00 per month on behalf of  
16                 Smolens. The Smolens paid an additional \$325.00 in cash to Toney for  
17                 rent each month.
- 18                 • For December 2010 and January 2011, total rent received was \$800.00  
19                 per month. HAJC paid Toney TCS \$550.00 per month on behalf of  
20                 Smolens. The Smolens paid an additional \$500.00 total, in cash, to Toney  
21                 for December 2010 and January 2011 combined.
- 22                 • For February 2011-July 2011, total rent received was \$800.00 per month.  
23                 HAJC paid Toney TCS \$550.00 per month on behalf of Smolens. For  
24                 these months, the Smolens paid an additional \$250.00 in cash to Toney  
25                 for rent each month.
- 26                 • For August 2011, HAJC paid Toney TCS \$550.00 on behalf of Smolens.
- 27                 • For September 2011-November 2011, total rent received was \$800.00 per  
28                 month. HAJC paid Toney TCS \$550.00 per month on behalf of Smolens.  
29                 For these months, the Smolens paid an additional \$250.00 in cash to  
30                 Toney for rent each month.

- 1 • For December 2011, total rent received was \$800.00 per month. HAJC  
2 paid Toney TCS \$420 on behalf of Smolen. The Smolens paid Toney an  
3 additional \$380.00 in cash for rent.
- 4 • For January 2012, total rent received was \$800.00. HAJC paid Toney  
5 TCS \$420.00 on behalf of Smolen. The Smolens paid Toney an additional  
6 \$380.00 in cash for rent.
- 7 • For February 2012, total rent received was \$800.00. HAJC paid Toney  
8 TCS \$420.00 on behalf of Smolen. The Smolens paid Toney an additional  
9 \$380.00 in cash for rent.
- 10 • For March 2012, HAJC paid Toney TCS \$420.00 on behalf of Smolen.
- 11 • For April 2012-July 2012, total rent received was \$800.00 per month.  
12 HAJC paid Toney TCS \$420.00 on behalf of Smolen. The Smolens paid  
13 Toney an additional \$380.00 in cash for rent per month.
- 14 • For August 2012, HAJC paid Toney TCS \$420.00 on behalf of Smolen.
- 15 • For September 2012, total rent received was \$800.00, split between  
16 Phillips and Toney. HAJC paid Phillips \$420.00 on behalf of Smolen. The  
17 Smolens paid Toney an additional \$380.00 in cash for rent.
- 18 • For October 2012-November 2012, HAJC paid Phillips \$420.00 per month  
19 on behalf of Smolen.
- 20 • For December 2012, total rent received was \$804.00, split between Phillips  
21 and Toney. HAJC paid Phillips \$424.00 on behalf of Smolen. The  
22 Smolens paid Toney an additional \$380.00 in cash for rent.

23 1.9 Toney managed the subject property from January 2010 through December 2012  
24 for Phillips. Toney stated that during the time she was managing the property, she did not  
25 receive any compensation for her work. However, Phillips later sent Toney a check for  
26 \$1,200.00 as a "thank you" for her work with the property.

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1 **Violation:** By engaging in the management of rental real estate for Phillips, Toney  
2 violated ORS 696.020(2) (2009 and 2011 Editions), which states an individual may not engage  
3 in, carry on, advertise or purport to engage in or carry on professional real estate activity, or  
4 act in the capacity of a real estate licensee, within this state unless the individual holds an  
5 active license.

6 2.

7 STIPULATION & WAIVER

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

18 I hereby agree and stipulate to the above findings of fact and conclusions of law and  
19 understand that the order which follows hereafter may be completed and signed by the Real  
20 Estate Commissioner or may be rejected by the Real Estate Commissioner, in which case an  
21 amended notice of intent may be issued in this matter.

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ORDER

IT IS HEREBY ORDERED that, pursuant to ORS 696.397, Toney immediately cease and desist from engaging in any professional real estate activity as defined in ORS 696.010(14)(a) to (n) (2013 Edition) unless Toney first obtains a real estate license from the OREA. The Commissioner's authority for this order is under ORS 696.397.

IT IS FURTHER ORDERED that, pursuant to ORS 696.990 and based upon the violation set forth above, Toney pay a civil penalty in the sum of \$200.00, said penalty to be paid to the General Fund of the State Treasury by paying the same to OREA.

IT IS SO STIPULATED:

IT IS SO ORDERED:

Jana Toney  
JANATONEY

Gene Bentley  
GENE BENTLEY

Date 1/23/15

Real Estate Commissioner  
Date 2.20.15

DATE of service: 2-20-2015

**BEFORE THE  
REAL ESTATE AGENCY  
STATE OF OREGON**

IN THE MATTER OF: ) **FINAL ORDER**  
 )  
**CHRISTOPHER FOX,** ) OAH Case No. 1202930  
 ) Agency Case No. 2011-492  
 **Licensee**

This matter came before the Real Estate Commissioner to consider Licensee's exceptions to the Commissioner's Amended Proposed Order of January 24, 2014. Licensee filed exceptions to the Amended Proposed Order on March 24, 2014 following two extensions to the filing deadline.

The Commissioner has reviewed Licensee's exceptions but does not find them to be persuasive. Licensee's exceptions were extensive but raised primarily arguments why certain evidence should be viewed differently. Licensee's exceptions also requested the addition of additional facts that the Commissioner has determined are not necessary for determination of the facts or conclusions of law in this case.

For the foregoing reasons, the Commissioner adopts the Amended Proposed Order as the Final order.

**ORDER**

Based on the foregoing, Licensee's Principal Broker License is hereby revoked.

IT IS SO ORDERED THIS 10<sup>th</sup> day of February, 2015

  
Gene Bentley  
Commissioner

NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days of the service of this order. Judicial review is pursuant to the provisions of ORS 183.482 to the Oregon Court of Appeals.

**BEFORE THE REAL ESTATE AGENCY  
STATE OF OREGON**

IN THE MATTER OF:

**CHRISTOPHER FOX,**  
Licensee

) **AMENDED PROPOSED ORDER**  
)  
) OAH Case No.: 1202930  
) Agency Case No.: 2011-492

This Matter came before the Commissioner to consider the Proposed Order issued by Administrative Law Judge (ALJ) A. Bernadette House. Licensee filed no exceptions to the Proposed Order. For the reasons explained below, the Commissioner adopts the Proposed Order in part and rejects it in part. The Commissioner does not adopt the ALJ's recommendation that Licensee be suspended. The Commissioner instead imposes revocation, which was the sanction proposed in the Notice of Intent.

**HISTORY OF THE CASE**

On July 9, 2012, the Real Estate Agency (Agency) issued a Notice of Intent to Revoke with Notice of Contested Case Rights to Christopher Fox (Licensee). On July 30, 2012, Licensee requested a hearing.

On August 7, 2012, the Agency referred the hearing request to the Office of Administrative Hearings (OAH). Senior Administrative Law Judge (ALJ) Jenifer Rackstraw was assigned to preside at hearing. A hearing was scheduled for October 23 and 24, 2013. The OAH reassigned the matter to Senior ALJ A. Bernadette House.

On September 24, 2012, Michael Gordon, Attorney at Law, notified the OAH that he had been retained by Licensee, and requested a postponement of the hearing date to prepare for the hearing. Mr. Gordon's unopposed motion was granted and the matter was rescheduled.

ALJ House convened a hearing on January 23, 2013 at the Agency's offices in Salem, Oregon. Licensee appeared with counsel, Mr. Gordon, and testified. The Agency was represented by Raul Ramirez, Senior Assistant Attorney General. The Agency also called Michael Donnelly, former manager of the Chatfield Family, LLC, a family trust. Licensee called Peter Bale, Agency investigator, and Grace Burch, real estate broker and former office manager, appearing in person, and T.J. Newby, former real estate broker and Mark Parsons, real estate broker and Licensee's former business associate, appearing by telephone. The record closed at the conclusion of hearing on January 23, 2013.

## ISSUES

1. Whether Licensee's failure to reference zoning issues in promotional materials for the sale of 65 acres of property which he owned, located at 22600 Skyline Boulevard, Portland, Oregon (the property), constituted the following violations: knowing or reckless publication of materially misleading or untruthful advertising, and/or fraudulent or dishonest conduct substantially related to the fitness of Licensee to conduct professional real estate activity, in violation of ORS 696.301(4) and (14)(2005 edition); and/or failure to disclose material facts known by Licensee, as a real estate agent, which are not apparent or readily ascertainable to a party in a real estate transaction. ORS 696.805(2)(c) (2005 edition).
2. Whether Licensee's failure to accurately complete the Residential Real Estate Sale Agreement for the property, in two separate statements, constituted 1) fraud and/or dishonest conduct substantially related to his fitness to conduct professional real estate activity (ORS 696.301(14)) (2005 edition) and/or 2) violated the requirement that a seller's agent disclose material facts known by the seller's agent and which are not apparent or readily ascertainable to a party in a real estate transaction. ORS 696.805(2)(c) (2005 edition).
3. Whether Licensee's incorrect answer, indicating there were no zoning violations or nonconforming issues, on the Seller's Property Disclosure Statement related to the property constituted an act of fraud and/or engaging in dishonest conduct substantially related to the fitness of Licensee to conduct professional real estate activity, in violation of (ORS 696.301(14)) (2005 edition), and/or violated the requirement that a seller's agent disclose material facts known by the seller's agent and which are not apparent or readily ascertainable to a party in a real estate transaction. ORS 696.805(2)(c) (2005 edition).
4. Whether Licensee's signature on the July 17, 2006 warranty deed transferring the real property "free of encumbrances," to Skyline View, LLC, when Licensee was aware at that time of a State Land Division violation regarding the property, was an act of fraud and/or dishonest conduct substantially related to the fitness of Licensee to conduct professional real estate activity. ORS 696.301(14) (2005 edition).
5. Whether Licensee's failure to report a March 16, 2010 adverse judgment to the Agency until October 14, 2011, violated ORS 696.301(3) (2009 edition) and OAR 863-015-0175(4) (2009 edition, 1-1-09) which requires that a licensee notify the commissioner of any adverse decision or judgment resulting from any suit, action or arbitration proceeding in which the licensee was named as a party within 20 calendar days of receiving written notification of the adverse decision.
6. If so, whether the violations are grounds for discipline (ORS 696.301), and if so, whether the violations resulted in significant damage or injury, and exhibited dishonest or fraudulent conduct such that Agency's proposed revocation of Licensee's license is appropriate. ORS 696.396(2)(c)(A) and (C).

## EVIDENTIARY RULINGS

Exhibits A1 through A24, and A26 through A27, offered by the Real Estate Agency, and Exhibits R1 through R19, offered by Licensee, were admitted into the record without objections.

Licensee objected to Exhibit A25, based on relevancy and the ALJ reserved ruling. Exhibit A25 is a copy of Claimant's Confidential Arbitration Hearing Memorandum. Reviewing the record, Licensee's objection is overruled. Licensee opened the door by introducing evidence regarding Licensee's opinion that the arbitration decision was based on an incomplete record, due in part to Licensee having represented himself until the contested case hearing was held. The Agency is entitled to address the record for the arbitration decision in rebuttal. Exhibit A25 is hereby admitted into evidence.

The parties agreed to an amendment to the Notice, at paragraph 2.5, top of page 4, adding the citation to the relevant ORS be added "Violation," immediately after, as ORS 696.301(3). The pleading in the OAH file was amended by hand, initialed and dated by the ALJ. On the record, the ALJ stated a certain order of marking the pleadings. The Agency's exhibits and submissions included a full copy of the pleading documents. The Agency's pleading record is accepted as the official record and a copy of the hand-amended Notice is included in that set of documents.

## FINDINGS OF FACT

(1) Licensee, a licensed real estate principal broker, owns and operates Estate Builders, Inc. (Estate Builders). Licensee incorporated Estate Builders in 1995. Licensed in real estate in Oregon since 1988, Licensee has also been dually licensed in Washington and Oregon for the past twenty years. (Test. of Licensee.)

(2) Licensee has extensive experience in real estate. His background in real estate began at age 15, working with his father throughout the 1960s and 1970s. Licensee's father was an experienced broker, with one of the largest real estate companies in Corvallis, Oregon. His father's office specialized in decreasing outflow and increasing income on properties. Licensee has also been a presenter for continuing education in the practice of real estate and has received commendations for his work. (Test. of Licensee; Ex. R19.)

(3) Licensee's practice historically has been 90 percent income property. Licensee buys, sells, and manages low income properties, including rentals and mobile home parks, throughout Oregon and Washington. Focusing on the type of property acquired and sold, he does not, as a matter of practice, regularly represent either buyers or sellers. Licensee does not regularly engage in property development as part of his real estate business. (Test. of Licensee; Ex. R19 at 2-3.)

### *Relevant facts related to the history of the property*

(4) In 1965, Merlin F. Radke (Radke) purchased one parcel of property (approximately 82 acres) on Skyline Boulevard, and a second parcel (approximately 65 acres) with boundaries contiguous to the first, consisting of two tax lots, in 1966. A house had existed on the second

parcel of property, known as 22600 NW Skyline Boulevard (the property), since at least 1942. (Test. of Licensee; Ex R14.)

(5) In 1967, Radke built a new house on a portion of the property, approximately 100 feet away from the original home-site. In addition to the new house, over time, Radke added other structures to the property, including, a storage/shop building of about 1000 square feet and six other storage units, all built by Radke. In 1971, Radke added substantial improvements to the house. (Test. of Licensee.)

(6) In 1981, Radke and Publishers Paper Company completed a property exchange agreement and a cutting boundary agreement involving two parcels of land with contiguous boundaries between the parties. One part, approximately 17.92 acres, of Radke's property on the downhill side away from Skyline Boulevard, was steep and forested. Publishers Paper owned approximately 19.36 acres of property with a boundary to Radke's parcel and with frontage on Skyline. The Publishers' parcel was relatively flat. (Test. of Licensee; Exs. R1, R2.)

(7) The parties executed the property exchange agreement on May 22, 1981, exchanging Radke's 17.92 acres for Publishers Paper's 19.36 acres. (Test. of Licensee; Ex. R1.) In July 1981, Pioneer National Title Insurance issued an original warranty deed by which Publishers conveyed the real property described in the attached report to Merlin F. Radke and a copy of a warranty deed by which Radke conveyed to Publishers the real property as described in the referenced reports as amended and subject to the noted exceptions. Pioneer issued an owner's title insurance policy in the amount of \$45,000 to insure Publisher's fee simple title to the real property and easements free and clear of all liens and encumbrances to Radke. The consideration for the transfer of title to the property was an equal value exchange of property. (Ex. R1.)

(8) The parties later executed a Cutting Boundary Agreement, which was recorded with Multnomah County Circuit Court on December 31, 1981. (Ex. R2.) Within 6 months, Publishers harvested 500 acres of its property which included the 17 acre parcel from Radke. (Test. of Licensee.)

(9) Multnomah changed the zoning for the 65 acres by map in 1980. The County confirmed the change by rule in 1982, when the minimum acreage necessary for residential use was increased to a minimum of 80 acres. The property, as of 1982, was not large enough for a new residential use. (Test. of Licensee.)

(10) In September 2004, Licensee purchased the 65 acre parcel of property from Radke. The property is located on Skyline Boulevard, at an altitude of approximately 1400 ft. to 1600 ft. elevation. Fifty to sixty percent of the property is flat and the location provides views of the Cascades and the Columbia River. Licensee bought the 65 acres, which included land recorded under three separate tax lots, in a single transaction. (Test. of Licensee.)

(11) At the time Licensee purchased it, the property was zoned CFU 1 (commercial forest use). CFU 1 designates land as a protected natural resource area for future generations. Property so zoned is intended for use in increasing timber harvest within the zoning and to decrease residential use within the zoned area. (Test. of Licensee.)

(12) Licensee did not own the timber rights to the property he purchased from Radke. Approximately two months after Licensee bought the property, the owner of the timber rights harvested the timber. The timber harvest revealed that Radke had disposed of 60 to 70 % more waste on the property than was readily apparent prior to the harvest. The additional waste included 30-to-40 55-gallon barrels of oil or solvents, 30 cars, and materials from 30 years of dumped waste from apartments and ruined buildings. (Test. of Licensee.)

(13) When Licensee purchased the property in 2004, the house did not meet current plumbing and electrical requirements. Radke's improvements had not been permitted and were non-compliant. Licensee knew that a new residence could not be built on the property due to the zoning. Licensee intended to bring the existing house up to code for his personal use under the zoning in effect at that time. Licensee intended to make improvements through a program offered by the City of Portland (the City) acting on behalf of Multnomah County. The program was called the "Get Legal" program. (Test. of Licensee.)

(14) In the Get Legal program, the City assisted owners of property located in rural areas of Multnomah County to bring unpermitted, not-to-code improvements up to current code requirements. The City's engineering, electrical, and plumbing departments worked with program participants to bring existing non-conforming buildings into compliance. (Test. of Licensee.)

(15) After purchasing the property, Licensee began the initial work to bring the house up to code and to clean up the property. He hired several individuals for the work, including an acquaintance, Gordon Linch, (spelling not provided). Through Linch, Licensee met Ernie Casella. (Test. of Licensee.)

(16) In December 2004, after Publisher's logged the parcel it had acquired, a major windstorm caused additional significant damage to the property. Licensee contracted with Casella to repair the additional damage to the house and other structures. (Test. of Licensee.)

(17) Casella also represented himself to be knowledgeable on resolving zoning and permitting issues. Casella told Licensee that he had successful experience as an arbitrator between the City, the County and homeowners in similar land use issues. Licensee researched Casella's reputation in the community. Casella had worked on projects in the Pearl District and other areas, and had a reputation for being thorough and professional in his business dealings. (Test. of Licensee.)

(18) Licensee determined that Casella had the skills and knowledge to resolve the issues with the property. Licensee hired Casella, and over time, spent approximately \$80,000 to work on resolving the permitting and land use problems with the property. (Test. of Licensee.)

(19) On March 8, 2005, Licensee wrote Casella a letter outlining the issues with the property. In Licensee's letter to Casella, he outlined the history and the issues involving the property. Licensee intended the letter to disclose everything he knew about the property. In particular, Licensee wanted Casella to investigate the possibility that the third tax lot, that had been created by the timber company in 1981, could be split off, and sold. Licensee wanted to use the proceeds to keep the remaining acreage and finish the work on the house. (Test. of Licensee; Ex. R6.)

(20) In paragraph 5 of the March 8th letter, Licensee set out the details of the 1981 property exchange between Radke and Publishers, which created the 19-acre parcel (the third tax lot) that he was hoping to sell off. At the time he wrote the letter, Licensee knew that the County had red-flagged the property because it determined that the 1981 property exchange between Radke and Publishers created an illegal lot smaller than the minimum 80 acres required for residential development. (Test. of Licensee; Ex. R6 at 2.) Licensee believed he could work with the County to resolve the problem by offering to merge the third tax lot back with the adjacent original two tax lots, one made up of 37 acres (where the shop was located) and the other with 26.7 acres (where the house was located) to recreate the original larger parcel. Licensee outlined other proposals he believed might be ways to resolve the zoning so some portion of the parcel might be sold and/or the existing structure could be brought up to current building codes. (Test. of Licensee; Ex. R6.)

(21) At approximately the same time as the March 8, 2005 letter, Licensee also sent Casella a document from the Multnomah County Land Use Division which provided information on how an owner of CFU property could get approval for a template dwelling through County processes. Licensee believed the property met the minimum requirements for approval through the template process at the time he told Casella about the process. Licensee provided the information to Casella so that Casella could pursue getting the County's approval for the non-conforming use. (Test. of Licensee; Ex. R13.)

(22) Licensee knew the County had assessed taxes on Radke's improvements and had issued permits for electrical meters while Radke owned the property. The County assessed taxes for July 1, 2004 to June 30, 2005 on the parcel with the market values for the land at \$160,430 and the structure at \$59,600. He believed those actions by the County supported his seeking approval for the nonconforming use. (Test. of Licensee; Ex. A5.)

(23) Throughout the time Licensee owned the property, while he was selling the property, and continuing through the time of the contested case hearing, Licensee believed there were policies and land-use exceptions that would apply to legalize the zoning violations created by the 1981 tax lot division and Radke's improvements to the house on the property. Licensee's belief was based, in part, on the following: research on the applicable land use laws; discussions with County and City employees who worked with zoning and compliance issues in land use; and comparable lots in the area that had been granted exceptions under the County's process. (Test. of Licensee; Exs. A24, R4.)

(24) Licensee exhausted his available funds to clean up the property. He was unable to complete all planned upgrades to the existing house. Licensee decided to sell the property. Acting under his principal broker's license, Licensee listed the property on the Regional Multiple Listing Service (RMLS). (Test. of Licensee; Ex. A8 at 4.)<sup>1</sup>

(25) Licensee wrote the RMLS listing for the property and he was the principal broker at that time. Either Licensee or his staff entered the information into the RMLS system for the listing. The listing date was August 10, 2005. (Test. of Licensee; Ex. A9.)

(26) The RMLS listing format includes an area for "Remarks" where a listing broker can

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<sup>1</sup> This finding of fact was rephrased for clarity. No substantive modifications were made

add information about the property that would be important for an interested party to know. Licensee's listing for the property did not include any statements addressing the property's zoning history and current "red-flag" status with the County. Licensee knew at the time the property was listed that it had been illegally divided in the 1981 Radke/Publishers Paper property exchange. (Test. of Licensee; Ex. A9.)

(27) Licensee, as an Oregon licensed principal broker, also oversaw the business activities of any real estate agents working under his principal broker's license. As a principal broker, Licensee was responsible for those agents' activities, including working with clients and with MLS listings. Licensee was responsible for the accuracy and fairness of the activities of any agent working under Licensee's principal broker's license, including any omissions or incorrect information included on the listing. (Test. of Licensee.)

(28) Licensee's work during the period of time at issue did not include property development. He did not regularly generate advertising for properties in his work but did list approximately 50 percent of his inventory on the RMLS. (Test. of Licensee.)

(29) Licensee met Mike Donnelly through Brent Maxson, a real estate licensee and Licensee's professional colleague at the time. (Test. of Licensee.) Maxson had met Donnelly in college and they remained friends. Maxson helped Donnelly in the past buy both residential and commercial properties. Maxson knew Casella and his reputation for successful permitting and construction projects. Maxson also knew that Casella worked with Michael Crane as a mortgage broker. Maxson believed Casella and Crane would be a good fit with Donnelly. Maxson introduced Donnelly to Casella and Crane for the purpose of considering a purchase of the property. (Ex. R5 at 1.)

(30) Donnelly, Crane and Casella agreed to buy the property together for \$650,000. (Test. of Licensee; Exs. A13, R5 at 1.) Donnelly, Crane, and Casella signed the residential real estate purchase and sale agreement (the offer) for 22600 N.W. Skyline Blvd, Portland, Oregon in their individual capacities. Licensee knew that the three individual buyers intended to form Skyline View LLC, to complete the purchase of the property. (Test. of Licensee; Ex. A13 at 1.)

(31) In the transaction, Maxson acted as the Buyers' agent. (Exs. A13 at 1, R5 at 1.) Casella was the primary party acting for the three buyers. Maxson was aware that Casella had been working on permitting issues for the property. Casella told Maxson that he would solve the permit problems. (Ex. R5 at 1.)

(32) When later interviewed by the Agency's investigator (Bale), Maxson said that at some point he became aware that Casella and Crane might have misused funds belonging to Skyline View, LLC. Maxson knew that Crane controlled the funds for Skyline View, LLC. (Ex. R5 at 2.)

(33) The form of the offer was a standard industry form which was familiar to Licensee as one of those regularly used in the real estate industry. Paragraph 10 on page 2 of the offer is entitled "Seller Representations" and states, in part, the following:

(7) Seller has no notice from any governmental agency of any violation of law relating to the Property \* \* \* (9) Seller agrees to promptly notify Buyer if, prior to

closing, Seller receive actual notice of any event or condition which could result in making previously disclosed material information relating to the Property substantially misleading or incorrect. These representations are based upon Seller's actual knowledge. Seller has made no investigations. Exceptions to items (1) through (9) are: \_\_\_\_\_, Buyer acknowledges that the above representations are not warranties regarding the condition of the Property and are not a substitute for, nor in lieu of, Buyer's own responsibility to conduct a thorough and complete independent investigation, including the use of professionals, where appropriate, regarding all material matters bearing on the condition of the Property, its value and its suitability for Buyer's intended use[.]

(Ex. A13 at 2.) (Emphasis in original.)

(34) Licensee was aware at the time the offer was signed that Multnomah County had determined the property had been illegally divided in the prior transaction between Radke and Publisher's Paper. Licensee discussed the property and the details of the transaction with Crane and Casella. Donnelly did not participate in those discussions. Licensee's understanding was that Crane and Casella represented Skyline View, LLC, in those discussions. Licensee knew that Casella had knowledge of all of the issues regarding the property based on his original business relationship with Casella. Licensee had no knowledge as to whether Donnelly, as the third member of Skyline View, LLC, was or was not informed by Casella of the issues with the property. (Test. of Licensee.)

(35) Licensee signed a Seller's Property Disclosure Statement regarding the sale of the property on July 7, 2006. He answered the questions on the form, including question "H" under the heading "Title" on page 2 of the agreement. To the question, "Are there any zoning violations or nonconforming uses?" Licensee checked "No." (Test. of Licensee; Ex. A7 at 2.) That answer was incorrect at the time Licensee completed it. Licensee was aware of the zoning violation regarding Multnomah County. Licensee's omission was not intentional. (Test. of Licensee.) Licensee did not complete the portions of the document that were completed by hand. Licensee initialed each page at the bottom in the area set designated for the Seller's signature. (Test. of Licensee; Ex. A7.)

(36) Licensee signed a warranty deed transferring the "real property free of encumbrances" from FOXC, LLC to the buyer Skyline View, LLC, on July 17, 2006. (Test. of Licensee; Ex. A20.) Licensee was aware of the zoning violations when he signed the deed. (Test. of Licensee.)

(37) Licensee had reviewed land-use law while he owned the property and at the time he was trying to sell the property. Licensee believed that the issues with the zoning could be resolved based on his review of land-use statutes and rules at the time he owned the property and at the time he sold the property. (Test. of Licensee; Exs. R8-R13.)

(38) The County has approved development on non-conforming lots that were less than the minimum 80-acres but that were greater than 19 acres. Licensee knew of those exceptions and he believed that was the reason the parties to the 1981 division created the new tax-lot in the size of 19.3 acres. (Test. of Licensee.)

(39) Michael Donnelly is currently retired. Prior to retiring, Donnelly, among other business interests, managed a LLC for his family trust, the Chatfield Family Trust, LLC. Donnelly, on behalf of the LLC, was looking for property for investment and development purposes. Brent Maxson, a realtor and friend of 25 years, had worked with Donnelly for a long time regarding real estate matters. Maxson brought the listing on the property to Donnelly for consideration. Donnelly was interested. Donnelly and other members of the family trust went to look at the property. (Test. of Donnelly.)

(40) Maxson reviewed the listing of the property with Donnelly, and looked at the property itself. Maxson had been looking for properties with potential for rehabilitation and resale for Donnelly. Donnelly relied upon Maxson's statements about the property when Donnelly told the members of the family LLC about the property. (Test. of Donnelly.)

(41) Donnelly met Licensee at some point and discussed the basics of "the whole deal" including the condition of the house at that time and Licensee's experiences with the property and its history. (Test. of Donnelly.) Donnelly was aware that Casella had performed most of the work as the contractor on the property, and had obtained all of the permits to do the rehabilitation, with the exception of the septic. (*Id.*)

(42) After Donnelly became interested in acquiring the property and forming an LLC, Maxson introduced Donnelly to Crane to assist in securing additional funds. Crane represented himself as having contacts in the financial system. Donnelly, Casella, and Crane decided to form Skyline View LLC. Crane became the managing partner of Skyline View. Crane assured Donnelly that he would be able to acquire additional finances through loans to complete the planned development of the property. (Test. of Donnelly.)

(43) Donnelly did not rely on the RMLS listing written by Licensee when considering the purchase of the property. Donnelly was aware of the extensive history of issues Licensee encountered trying to rehabilitate the house. He was aware of the permitting issues with the City but he did not know about the zoning issue with the County. Donnelly relied on Casella and Crane, as partners in the LLC, to advise him of any problems they encountered, specifically if they had knowledge of any zoning violations. (Test. of Donnelly.)

(44) On January 8, 2006, Donnelly, acting for his family LLC, signed the original offer and earnest money agreement (sale agreement), along with Michael Crane and Ernest Casella. The three purchasers also signed an Addendum to Purchase and Sale Agreement and Receipt for Earnest Money: Addendum A, on the same day. (Test. of Donnelly; Ex. A13 at 6.)

(45) On January 10, 2006, Licensee initialed each page of the purchase agreement including Addendum A, and signed as the Seller. (Ex. A13 at 7.) Licensee did not complete the handwritten portion of the January 10, 2006, Residential Real Estate Sale Agreement but he reviewed, initialed and signed the completed document. (Test. of Licensee; Ex. A13.)

(46) Addendum A included, among other things, an agreement that "all permits shall be issued through E.J. Casella and Associates[.]" "contractor release to E.J. Casella and Associates[.]" and "[p]roperty to be sold "AS IS[.]" (Ex. A14.)

(47) Addendum B, signed by all parties on February 14, 2006, included the statement

that "All parties are aware that Purchasers will create an LLC as the purchasing entity." (Ex. A15.)

(48) Addendum C, signed March 27, 2006, included the statement that the new entity buying the property was "Skyline View, LLC." (Ex. A16.)

(49) Addendum D, signed on April 25, 2006, listed Skyline View LLC as the Buyer. A subsequent addendum listed Skyline View, LLC as the Buyer. (Exs. A17-A18.) The City issued final electrical and plumbing permits. The septic permit took longer and delayed the closing until it was issued. (Test. of Donnelly.)

(50) The Chatfield Family LLC paid the down payment for the purchase price for the property. Neither Casella nor Crane put any money into the property. Donnelly, acting on behalf of the family trust, purchased the property with the intent to complete the current rehabilitation of the existing house, to sell it when rehabilitation was complete, and to possibly keep the 19 acre parcel for the family to develop with a residence for their own use. (Test. of Donnelly.)

(51) The property appraised at \$1,250,000 in September of 2006. (Ex. A22 at 12.)

(52) In February 2012, Peter Bale, Agency investigator, conducted an investigation regarding a complaint filed against Licensee regarding his conduct during the sale of the property. As part of the Agency's investigation, Bale received documents from Donnelly regarding the transaction at issue. One of the documents included was an appraisal of the property commissioned by Michael Crane. (Test. of Bale; Ex. R16.)

(53) The appraisal report included with Donnelly's documents was completed by Carla Johnson, on January 28, 2008. Johnson, a licensed Oregon appraiser with Portland Residential Appraisals, Inc., completed an appraisal of the property for the purpose of a refinance of the existing mortgage. The property appraised at \$1,600,000. In the portion allocated to consideration of the neighborhood, Johnson wrote, in part, that:

[The] area is composed of large tracts of timberland. Where zoning allows, homesites have been created in recent years. Development of large custom homes of substantial value has become commonplace."

(Ex. R16 at 2.)

(54) Under the portion entitled "Site," Johnson indicated, among other things, that the area of the site was 65 acres, that the specific zoning was "CFU-commercial forest" and that the zoning description was "80 to 100 acre minimum lot size for new tracts-restrictive." (Ex. R16 at 1.) Johnson checked the box for "Legal Nonconforming (Grandfathered Use), and on the same line, included the following: "legal site - rebuild of home is ok." To the question "[i]s the highest and best use of subject property as improved (or as proposed per plans and specifications) the present use[,]" Johnson wrote: "issue of a building permit will be adequate proof of legality under zoning. CFU zoning is one of the most restrictive in the County." (*Id.*)

(55) Under "Sales Comparison Approach," Johnson indicated that she had researched

the sale or transfer history of the subject property and comparable sales. (Ex. R16 at 2.)

(56) Following the appraisal, Skyline View, LLC acquired a construction loan to develop the property, secured by an interest in the property as collateral for the loan. Part of the proceeds from the loan was disbursed to repay the Chatfield Family LLC for the down payment loan and part was used to pay off the purchase price. (Test. of Donnelly.)

(57) At some point after Skyline View, LLC purchased the property and began work on the existing structure, Multnomah County issued a Stop-Work order. Donnelly received a copy and called Crane, who was in charge of the work at that time. Crane told Donnelly he had received the Stop-Work order and that it had been "taken care of." (Test. of Donnelly.)

(58) Following the issuance of the original Stop-Work order, on April 9, 2008, the County sent a letter to Skyline View LLC, c/o Donnelly and to Crane as Managing Partner which included a Request for Voluntary Compliance. The County had determined that the County's zoning, which prohibited the project, took precedent over the permits issued by the City of Portland under which the City had allowed the rehabilitation work to proceed. The April 9, 2008 letter set out specific actions and deadlines under which the violations might be resolved. (Test. of Donnelly; Ex. A24.)

(59) On February 18, 2010, Michael Donnelly, acting in his capacity as the managing member of Skyline View, LLC, won an arbitration award against Licensee, FOXC, LLC, and Estate Builders, Inc. The arbitration panel found Licensee liable to Donnelly on Donnelly's claim of intentional fraud and awarded Claimant \$666,450 in damages. Donnelly has been unable to collect on the damages award. (Test. of Donnelly; Ex. A2 at 7.)<sup>2</sup>

(60) Licensee, individually and in connection with his LLCs, was the party Donnelly first sued regarding the property, and the matter went to mandatory arbitration. Licensee was not represented by an attorney at the time arbitration began. Licensee answered requests for admissions and filed an answer to the initial claim without the advice of counsel. Licensee retained counsel for the arbitration hearing itself. Because Licensee did not have legal counsel throughout the arbitration, in Licensee's opinion, a substantial amount of relevant evidence was not submitted for consideration at the hearing. (Test. of Licensee.)

(61) Licensee talked to Crane about testifying at the arbitration proceeding against Licensee. Crane told Licensee he intended to testify to certain facts when he was called as a witness and that he would appear at the arbitration. Crane did not appear as promised. Crane was reached by telephone. Crane's testimony was different from what Crane told Licensee he was going to say. Crane had not been sued at the time of Licensee's hearing. (Test. of Licensee.)

(62) After receiving the arbitration award against Fox, Donnelly subsequently sued Crane and Casella for fraud involving the purchase of the property. Donnelly obtained a judgment against both. Neither Crane nor Casella has paid any portion of the arbitration awards against them. Sometime in 2010, Donnelly had Crane and Casella removed from partnership in Skyline View, LLC., on the basis of the judgments which found that Crane and Casella had

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<sup>2</sup> The Commissioner supplemented this Finding of Fact to reflect Donnelly's testimony on damages,

engaged in fraud. Skyline View, LLC is currently in default on the construction loan, jeopardizing the LLC's ownership of the property. (Test. of Donnelly.)

(63) In Bale's investigative report to the Agency, he included notes of a February 1, 2012 interview with Michael Grimmert, with Multnomah County Code Enforcement. Grimmert told Bale that, considering the then-current situation with the zoning and the issues underlying the stop-work order, no development of the land was possible because there was no established use permitting the present residential use. Grimmert also told Bale that there were solutions to the problem and referred Bale to the August 9, 2008 letter from Multnomah County to Crane and Donnelly. (Test. of Bale; Ex. A24.)

(64) At the time of the sale to Donnelly and Skyline View, LLC., Licensee believed that the zoning issues created by Radke's property exchange with Publisher's Paper Company could be resolved. The property exchange occurred in 1981. The property created was in conformance with the county's then existing property specifications and road frontage requirements. The Forest Practices Act, which rendered the 17 acre parcel transferred to Radke a nonconforming use, was enacted in 1984. Under the Act, Licensee understood that counties could no longer engage in boundary and use issues independent of the state's rights and restrictions under the Act. (Test. of Licensee.)

(65) Licensee and Casella spoke several times prior to the sale. Casella told Licensee that he had had several discussions with individuals at the county. Casella represented to Licensee that the issues could be resolved and that the improvements to the existing house could be legally completed. (Test. of Licensee.)

(66) Licensee researched the law at the time of the sale at issue, including statutes related to minimum lots or parcel sizes. His understanding of the law was that the Forest Practices Act protected the rights of private land owners and their rights to actualize their rights to harvest timber on their properties by working with the timber companies. Licensee believed that any rights accrued to Radke through grandfathered or prior use allowance transferred to Licensee. Licensee believed that it had been legal for Publisher's Paper and Radke to actualize by a transaction that created a parcel larger than 19 acres but smaller than 85 acres under Multnomah County Commercial Forest Use policies as published in 2005. (Test. of Licensee.)

(67) Grace Burch, a real estate principal broker licensed in Washington since 1979, worked for Licensee as an office manager in his Portland office, for over three years beginning in early 2000. Burch completed her Certified Commercial Investment Manager (CCIM) course at the prompting of Licensee. She worked closely with Licensee's property management and business accounts. Based on her work with Licensee, Burch saw no evidence of Licensee having acted in any fraudulent or dishonest conduct in relation to any of his real estate activity. Licensee has a reputation in the real estate community for ethical conduct. (Test. of Burch; Ex. R19 at 1.)

(68) Membership in the CCIM requires that an individual comply with high ethical standards. (Test. of Burch and Gordon.) Qualification for membership includes completion of extensive coursework and international-level review of a candidate's portfolio of activity. Licensee has served as Secretary, Vice-President, President, and Education Chair for the Oregon and Southwest Washington CCIM chapter. The CCIM awarded Licensee multiple "transaction

of the year” awards. In his role as Education Chairman, Licensee initiated bringing additional education for members of the CCIM in the Portland area. (Test. of Burch; Ex. R19 at 1.)

(69) Mark Parsons, real estate agent, licensed in Oregon since 1998, has worked with Licensee, beginning when both were licensed associates working for Donahue and Associates, from 1998 until 2000. Parsons then worked under Licensee as his principal broker from 2000 to 2012. He became an Oregon licensed principal broker in April 2012. Parsons opined, based on his experience as a peer and then working under Licensee’s supervision, that Licensee is honest and ethical. (Test. of Parsons.)

### CONCLUSIONS OF LAW

1. Licensee’s failure to disclose the zoning violations in promotional materials for the sale of the property (as alleged in paragraph 2.1 of the Notice), violated ORS 696.301(4) (2005 edition); ORS 696.301(14) (2005 edition) and ORS 696.805(2)(c) (2005 edition).<sup>3</sup>

2. Licensee’s failure to accurately complete the Residential Real Estate Sale Agreement for the property, in two separate statements (as alleged in paragraph 2.2 of the Notice), violated ORS 696.805(2)(c) (2005 edition) because Licensee failed to disclose material facts known by the seller’s agent and which are not apparent or readily ascertainable to a party in a real estate transaction. Licensee’s conduct also violated ORS 696.301(14) (2005 edition) because he engaged in dishonest conduct related to his fitness to conduct professional real estate activity.<sup>4</sup>

3. Licensee’s incorrect answer, indicating there were no zoning violations or nonconforming issues, on the Seller’s Property Disclosure Statement related to the property (as alleged in paragraph 2.3 of the Notice) violated ORS 696.805(2)(c) (2005 edition) because Licensee failed to disclose material facts known by the seller’s agent and which are not apparent or readily ascertainable to a party in a real estate transaction. Licensee’s conduct also violated ORS 696.301(14) (2005 edition) because he engaged in dishonest conduct related to his fitness to conduct professional real estate activity.<sup>5</sup>

4. Licensee’s signature on the July 17, 2006 warranty deed transferring the real property “free of encumbrances,” to Skyline View, LLC, when Licensee was aware at that time of a State Land Division violation regarding the property. Licensee’s conduct violated ORS 696.301(14) (2005 edition) because he engaged in dishonest conduct related to his fitness to conduct professional real estate activity, without regard to whether the act or conduct occurred in the course of professional real estate activity.<sup>6</sup>

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<sup>3</sup> The Commissioner also found that Licensee violated ORS 696.301(14) (2005 edition) as explained below.

<sup>4</sup> The Commissioner also found that Licensee violated ORS 696.301(14) (2005 edition) as explained below.

<sup>5</sup> The Commissioner also found that Licensee violated ORS 696.301(14) (2005 edition) as explained below.

<sup>6</sup> The Commissioner also found that Licensee violated ORS 696.301(14) (2005 edition) as explained below.

5. Licensee's failure to report a March 16, 2010 adverse judgment to the Agency until October 14, 2011, violated OAR 863-015-0175(4) (2009 edition) because licensee did not notify the commissioner of any adverse decision or judgment resulting from any suit, action or arbitration proceeding in which the licensee was named as a party within 20 calendar days of receiving written notification of the adverse decision.

6. The above violations are grounds for discipline.

### OPINION

The Agency proposes to revoke Licensee's real estate principal broker license based on the violations alleged in the Notice, paragraphs numbered 2.1 through 2.5. Regarding the alleged violations and the appropriate sanction, the burden of proof falls upon the Agency as the proponent of a fact or position. ORS 183.450(2). *Harris v. SAIF*, 292 Or 683 (1982) (general rule regarding allocation of proof is that burden is on the proponent of the fact or position); *Gallant v. Board of Medical Examiners*, 159 Or App 175 (1999) (in the absence of legislation adopting a different standard, the standard of proof in an administrative hearing is by a preponderance of the evidence). Proof by a preponderance of evidence means that the fact finder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989).

#### *Authority of the Agency to Act*

Licensee holds a real estate principal broker's license, issued by the Agency, authorizing him to conduct business as an agent in Oregon. The Agency proposes to revoke Licensee's real estate principal broker's license as a disciplinary action for the violations alleged in the Notice of Intent to Revoke.

#### *Statutes and Rules Governing the Conduct of Real Estate Licensees Relevant to Licensee's Conduct*

Former ORS 696.301<sup>7</sup> provides grounds for disciplinary action by the Real Estate Commissioner for real estate licensees. In pertinent part, ORS 696.301 provides:

Grounds for discipline. Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

\* \* \* \* \*

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<sup>7</sup> All references to the Oregon Revised Statutes (2005 edition) and to the Oregon Administrative Rules are to those in effect at the time of the alleged conduct. Counsel for the Agency provided a copy of OAR 863-027-0020, entitled "Progressive Discipline of Licensees," certified effective date of January 1, 2009, which is the source of the rule relied upon in this decision.

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

(4) Knowingly or recklessly published materially misleading or untruthful advertising.

\* \* \* \* \*

(14) Committed an act of fraud or engaged in dishonest conduct substantially related to the fitness of the applicant or licensee to conduct professional real estate activity, without regard to whether the act or conduct occurred in the course of professional real estate activity.

Additionally, a seller's agent has an affirmative duty to disclose the zoning issues and land-division violation to the parties pursuant to ORS 696.805. ORS 696.805, governing the conduct of a real estate licensee acting as a seller's agent, provides in relevant part that:

(2) A Seller's agent owes the seller, other principals and the principal's agents involved in a real estate transaction the following affirmative duties:

\* \* \* \* \*

(c) To disclose material facts known by the seller's agent and not apparent or readily ascertainable to a party."

The Real Estate Commissioner is charged with promulgating rules providing for the progressive discipline of real estate licensees and to provide for an objective method for the investigation of complaints alleging grounds for discipline under ORS 696.301. ORS 696.396. OAR 863-027-0020 (renumbered from OAR 863-015-0230, ef. 1-1-09) is the Agency rule addressing progressive discipline of real estate licensees. OAR 863-027-0020 states, in relevant part, that:

(1) The goal of progressive discipline is to correct a licensee's inappropriate behavior, deter the licensee from repeating the conduct, and educate the licensee to improve compliance with applicable statutes and rules. Progressive discipline means the process the agency follows, which may include using increasingly severe steps or measures against a licensee when a licensee fails to correct inappropriate behavior or exhibits subsequent instances of inappropriate behavior.

(2) The commissioner will evaluate all relevant factors to determine whether to issue a non-disciplinary educational letter of advice or to discipline a licensee through reprimand, suspension or revocation under ORS 696.301, including but not limited to:

- (a) The nature of the violation;
- (b) The harm caused, if any;

- (c) Whether the conduct was inadvertent or intentional;
- (d) The licensee's experience and education;
- (e) Whether the licensee's conduct is substantially similar to conduct or an act for which the licensee was disciplined previously;
- (f) Any mitigating or aggravating circumstances;
- (g) The licensee's cooperation with the investigation;
- (h) Any agency hearing orders addressing similar circumstances; and
- (i) The licensee's volume of transactions.

\* \* \* \* \*

(4) A reprimand is the maximum disciplinary action the commissioner may issue against a licensee if the licensee has committed an act or conduct that constitutes grounds for discipline under ORS 696.301 and such act or conduct does not:

- (a) Result in significant damage or injury;
- (b) Exhibit incompetence in the performance of professional real estate activity;
- (c) Exhibit dishonesty or fraudulent conduct; or
- (d) Repeat conduct or an act that is substantially similar to conduct or an act for which the real estate licensee was disciplined previously.

(5) The commissioner may impose suspension or revocation only if the licensee has committed an act that constitutes grounds for discipline under ORS 696.301 and such act also meets the requirements of 696.396(2)(c).

The progressive discipline requirements of ORS 696.396 were embodied in HB 2604 and apply to conduct that occurred on or after January 1, 2006. For conduct occurring prior to January 1, 2006, the Commissioner may impose sanctions as deemed appropriate.

### *Violations and analysis of penalty factors in order*

#### *Violations alleged in paragraph 2.1 of the Notice*

The Agency alleged that Licensee created promotional materials for the property which failed to reference known zoning problems and the land-division violation, that Licensee provided those materials to Donnelly, and that Donnelly relied upon those documents relevant to his decision to make an offer on, and to purchase, the property. The Agency met its burden on the first allegation. Licensee generated, or was responsible for the generation of, the published listing documents, including the property description and the RMLS listing. The documents, as set out in the findings of fact, did not alert potential buyers of the then-current zoning history, including the land-division violation and its potential impact on the property, in those locations in the documents where it is reasonable to expect such issues to be addressed, in violation of ORS 696.805(2)(c).

In ORS 696.301, the legislature did not define the terms "reckless," "fraud" or "dishonest." In the context of use by the Agency, there is no indication that those terms are

terms of art. Therefore, they are to be given their plain, natural, and ordinary meaning. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 611 (1993). The ordinary meaning is presumably what is reflected in a dictionary. *Masse and Masse*, 328 Or 195 202 (1999). According to *Webster's Third New International Dictionary*, "knowing" is defined as "having or reflecting knowledge, information, or insight: marked by understanding and intelligence[.]" *Webster's Third New Int'l Dictionary*, 1252 (unabridged ed 2002). The evidence at hearing was that Licensee had knowledge of the violations prior to marketing the property for sale. Licensee therefore violated ORS 696.301(4) because he knowingly published materially misleading advertising in the form of the listing documents and promotional materials that he created to market the property.

While it is sufficient for the Commissioner to establish that Licensee's publication of the materially misleading advertising was *knowing*, the Commissioner also finds that Licensee's publication of the materially misleading information was reckless and therefore rejects the ALJ's opinion that it was not. Reckless conduct requires that one acts in a manner "lacking in caution: deliberately courting danger," or "marked by a lack of foresight or consideration[.]" *Webster's* at 1896.

Licensee has substantial experience over many years engaging in professional real estate activity. Licensee invested considerable resources on the property, including trying to remedy the zoning violations before he decided to market the property. Licensee was aware that the nature of the zoning violations restricted a person's ability to remodel or build a residence on the property. Given Licensee's experience and his knowledge of the nature and extent of the zoning violations, it is not credible that Licensee's failure to disclose the zoning violations was a simple oversight. It is not a defense to state that Cassella (as one of the buyers) was aware of the zoning violations because Licensee has an independent duty to not publish materially misleading information. Moreover, at the time that the parties entered into the sale agreement, each of the buyers was acting in an individual capacity. It was not until later in the transaction that the buyers formed an LLC and agreed that the LLC would be the purchaser. Also, at the time that Licensee listed the property on the MLS, no other prospective buyer would have been aware of the zoning violations.

The Commissioner also rejects the ALJ's opinion that Licensee had a reasonable belief that the zoning violations would be resolved by working through Casella. The Commissioner rejects this reasoning because it is not logically connected to whether or not Licensee's conduct violated former ORS 696.301(4) or (14). Assuming for the sake of argument that Licensee believed the zoning violations would be resolved at some point *in the future*, it doesn't follow that Licensee did not knowingly publish materially misleading advertising, or did not recklessly publish the materially misleading information.

Because the ALJ opined that Licensee's conduct was merely a mistake or oversight, she concluded that his conduct was not dishonest for purposes of ORS 696.301(14). The Commissioner rejects this reasoning as well. Dishonesty, according to *Webster's*, is "characterized by lack of truth, honesty, probity, or trustworthiness, or by an inclination to mislead, lie, cheat, or defraud[.]" *Webster's* at 650. In this case, neither the marketing materials nor the listing documents alerted a potential buyer of the serious zoning violations affecting the property. Respondent failed to include the zoning violations in the listing and promotional materials even though he was aware of them and had been attempting to remedy the violations. Instead, Licensee presented an untruthful and incomplete version of the facts regarding the property in his effort to sell the property because he was essentially out of resources. Licensee's actions mislead Donnelly into looking at the property as an investment. Under these circumstances, the Commissioner finds that Licensee's actions were inclined to mislead Donnelly in furtherance of Licensee's own financial interests, and were therefore dishonest.

The Agency also alleged that Licensee's publication of the listing materials without reference to the zoning or land-division issues violated the duties required of a real estate agent under ORS 696.805(2). In the current matter, Licensee, acting as his own agent, was required to comply with the affirmative duties set out in ORS 696.805(2)(c). Licensee did not meet that obligation. Licensee admitted that he did not include known information regarding the zoning issues and the land-division violation.

*Violations alleged in paragraph 2.2 of the Notice*

On the January 10, 2006 Residential Real Estate Sales Agreement, Licensee, as the seller, represented that he had no notice from any governmental agency of any violation of law relating to the property. Licensee did not complete the handwritten portions of the January 2006 agreement but he did initial each page and he signed the agreement. Licensee, as a principal broker, was responsible for any agent working under his license. Licensee knew at the time he signed the Agreement that Multnomah County considered the land-division which occurred in 1981 illegal. Licensee's misrepresentation was a violation of his affirmative obligation, under ORS 696.805(2)(c), to disclose material facts of which he was aware and which were not readily apparent or readily ascertainable to a party in a real estate transaction.

The ALJ found that Licensee did not violate ORS 696.301(14) because she believed that licensee was credible when he testified that he had a 'good faith belief that the [zoning violations] would be resolved'. The Commissioner rejects this reasoning because Licensee's beliefs about resolving the zoning violations *in the future* do not affect his affirmative obligation to make honest representations on the Real Estate Sale Agreement. Licensee had an obligation to answer honestly and not omit material facts regardless of what he believed the future held. The key issue is not what Licensee believed would happen, but instead what the other party to the agreement might believe would happen (if supplied with all relevant information). By depriving Donnelly of relevant information, Licensee denied him the opportunity to come to an independent conclusion about closing on the transaction or regarding the likelihood that the zoning violations would be resolved. Furthermore, if Licensee *had* held the belief that the zoning violations would be remedied at some point in the future, it follows that he should have been more inclined to disclose the violations on the agreement. Instead, Licensee concealed those

facts. The Commissioner finds that by doing so, Licensee acted in a dishonest manner and therefore violated ORS 696.301(14).

*Violations alleged in paragraph 2.3 of the Notice*

Regarding the Seller's property disclosure statement, Licensee did, as alleged, mark "no" in answer to the question "[a]re there any zoning violations or nonconforming issues." That answer was not true. The ALJ concluded, however, that Licensee's false answer did not rise to the level of dishonesty or fraud because (1) Cassella was aware of the zoning violations; (2) Licensee relied on Cassella's knowledge of the problems; and (3) Licensee believed that Cassella would inform the other buyers of the zoning violations.

The Commissioner rejects the ALJ's conclusion that Licensee's response was not dishonest. The purpose of the Seller's Property Disclosure Statement is to *disclose* any potential defects with a property being conveyed, whether or not a seller has any reason to believe that a buyer is aware of a particular defect. Here, there is no dispute that Licensee was the seller and that he was aware of the zoning violations. Licensee initialed and signed the form, and acknowledging that the disclosures are based on 'SELLER'S ACTUAL KNOWLEDGE'. Licensee's false answer to the question on the Disclosure Statement fits squarely within the definition of 'dishonesty' because it lacked truth and probity, and was designed to mislead by affirmatively denying the existence of a known defect. The ALJ concluded there was no dishonesty because Licensee believed that the violations would be remedied, but those beliefs do not relieve Licensee of his responsibility to provide full disclosures.

As previously discussed, the zoning violations were material facts that were not readily ascertainable. Consequently, the Commissioner finds that by falsely answering this question on the Seller's Property Disclosure Statement, Licensee violated ORS 696.805(2)(c) (2005 edition)

*Violations alleged in paragraph 2.4 of the Notice*

As alleged by the Agency, Licensee signed the July 17, 2006 warranty deed transferring the "real property freed of encumbrances," to Skyline View LLC, knowing at that time of the land-division violation. The ALJ concluded that Licensee's false representation also did not rise to the level of dishonesty because Licensee held an honest belief that (1) the buyer knew of the violations and (2) Licensee believed the zoning violations would be remedied. The Commissioner rejects the ALJ's reasoning and conclusion. As stated before, Licensee's beliefs about what may happen in the future do not relieve him from the responsibility not to provide false answers or omit material facts on real estate documents. Here, it is also undisputed that Licensee was aware of the zoning violations and misrepresented the absences of any encumbrances by signing the warranty deed as shown in Exhibit A20. Again, Licensee's conduct fits squarely within the definition of dishonesty. For these reasons, the Commissioner finds that Licensee violated ORS 696.301(14)(2005 edition)

*Violation alleged in paragraph 2.5 of the Notice Failure to timely report*

Failure to comply with the Agency's rules constitutes grounds for disciplinary action against a licensee. ORS 696.301(3). OAR 863-015-0175(4) (2009 edition) required that a

licensee notify the commissioner of any adverse decision or judgment resulting from any suit, action or arbitration proceeding in which the licensee was named as a party within 20 calendar days of receiving written notification of the adverse decision. As shown by the findings of fact, Licensee failed to timely notify the Agency of the April 29, 2010 Arbitration Award and thus, he violated his obligation under the rule. The Agency has grounds for imposing disciplinary action for this violation.

### *Sanction*

Regarding an appropriate sanction for the violations Licensee committed, the factors set out under OAR 863-027-0020(2) must be considered in determining the severity of the sanction. These factors are applicable only to conduct that occurred on or after January 1, 2006. For conduct that occurred prior to that date, the Commissioner has discretion to impose an appropriate sanction.

To begin, Licensee failed to include zoning issues and the land-division violation, which were relevant data affecting the potential use and/or development of the property, in the published promotional materials. Likewise, Licensee failed to mark the appropriate boxes and complete the required disclosures in the sales agreement and warranty deed. Licensee also failed to report the adverse arbitration award to the Agency within the required time-limit.

As set out in the findings, Licensee knew about the zoning issues and land-division violations when he listed the property for sale. Licensee admitted that he wrote the listing, and entered the information into the RMLS data base, or, at the very least, he was responsible for the actions of any of his agents who may have entered the information. At each opportunity to disclose, as set out in the findings of fact, Licensee failed to do so. The Commissioner rejects the ALJ's conclusion that these omissions were merely mistakes on the part of Licensee. There was a consistent pattern in his failure to disclose that the Commissioner believes is compelling and establishes that Licensee acted with an intent to deceive so that he could effect a sale of the property.

The evidence established that Donnelly was harmed in the transaction. Donnelly was looking at the property he purchased from Licensee as an investment, including remodeling of the home. That has not been possible because of the zoning violations still present in the property. Donnelly explained that he ended up with nothing more than a 'tree farm' because of the zoning violations. It may be that the other buyers did not fully disclose material facts to Donnelly, but Licensee had an independent duty to act in good faith and adherence to the real estate licensing rules. He failed to do so and as a result Donnelly has incurred substantial economic damage because of the zoning violations, and in pursuing Licensee through legal action.

The Commissioner rejects the ALJ's reliance on an appraisal to suggest that Donnelly was not damaged. The appraisal that the ALJ relied on presumed that the site was ok to build on, but that was inaccurate. The appraisal was prepared before the County issued a stop work order, effectively preventing any work on a new or existing structure on the property. The appraisal is therefore not a reliable document to determine the value of the parcel as it relates to the level of damages.

Licensee has never been the subject of any disciplinary action in Oregon or Washington. He has been active and licensed in both states for a lengthy period of time and has a high reputation in the real estate community for ethics and knowledge. Licensee reported the matter once he was made aware that he had violated the reporting provision. Licensee was cooperative with the investigation. Licensee has extensive experience in real estate but not in the particular type of transaction that resulted in this proposed agency disciplinary action. Licensee has a reputation for competence in real estate.

For conduct that occurred after January 1, 2006 (Allegations 2.2 to 2.6) the record establishes for purposes of ORS 696.396(2)(A) that Licensee's conduct resulted in significant damage or injury to Donnelly. Further, for purposes of ORS 696.396(2)(C), the record establishes that Licensee's conduct exhibited dishonesty as explained above

### ORDER

For the foregoing reasons, Licensee's Real Estate Principal Broker License is hereby revoked.

IT IS SO ORDERED THIS 24<sup>th</sup> day of January, 2014

OREGON REAL ESTATE AGENCY

  
\_\_\_\_\_  
GENE BENTLEY  
Real Estate Commissioner

This is the Commissioner's Amended Proposed Order. If the Amended Proposed Order is adverse to you, you have the right to file written exceptions and argument to be considered by the Real Estate Commissioner in issuing the Final Order. Your exceptions and argument must be received by the 20th day from the date of service. Send them to:

Denise Lewis  
Oregon Real Estate Agency  
1177 Center St. NE  
Salem OR 97301-2505

The Real Estate Commissioner will issue a Final Order, which will explain your appeal rights.

1 REAL ESTATE AGENCY  
2 BEFORE THE REAL ESTATE COMMISSIONER  
3

4 In the Matter of the Real Estate License  
5 of  
6 HOLLY BOOREN

7 )  
8 ) STIPULATED FINAL ORDER  
9 )

10 The Oregon Real Estate Agency (OREA) and Holly Booren (Booren) do hereby agree  
11 and stipulate to the following:

12 FINDINGS OF FACT  
13 &  
14 CONCLUSIONS OF LAW

15 1.

16 1.1 At all times mentioned herein, Booren was licensed as a principal broker with  
17 D&D Realty Group LLC and Integrity Property Management.

18 1.2 On November 7, 2014, OREA received a complaint from Sharon and Mike Jewett  
19 (the Jewetts) regarding Booren's property management activities. On December 2, 2014, the  
20 Jewetts notified OREA that two checks issued by Booren were returned by their bank for "not  
21 sufficient funds." One of the checks was from the tenants' security deposits clients' trust  
22 account (CTA).

23 1.3 On December 9, 2014, an investigation was opened and assigned to OREA  
24 investigator Peter Bale (Bale).

25 1.4 On December 12, 2014, Bale spoke with Booren on the telephone and said he  
26 wanted to set up a meeting with her on December 22, 2014. Booren said she was represented  
27 by attorney Anthony Kuchulis (Kuchulis) of Hart Wagner LLP in Redmond.

28 1.5 On December 16, 2014, Bale met with the Jewetts at their home in Florence.  
29 The Jewetts gave Bale copies of the bank notifications dated November 28, 2014, containing  
30 the information about the two checks which were returned for insufficient funds.

1 1.6 The information on the returned checks was as follows:

- 2 • Check number 2636, was issued from tenants' security deposit CTA ending in #  
3 8977 at Columbia Bank on November 17, 2014. The check was from Integrity  
4 Property Management payable to Touchstone Realty Company (owned by Mike  
5 Jewett) for \$5,425.50.
- 6 • Check number 11267, was issued from D&D Realty Group LLC's operating  
7 account #8969 at Columbia Bank on November 17, 2014. The check was  
8 payable to M and S Jewett for \$3,036.19.

9 1.7 During the meeting between Bale and the Jewetts on December 16, 2014, the  
10 Jewetts said the checks had since cleared.

11 1.8 On December 22, 2014, Bale met with Booren and Kuchulis at Booren's office in  
12 Madras.

13 1.9 At the meeting, Booren confirmed the tenants' security CTA had been depleted.  
14 She said she had deposited a check in the account that day, December 22, 2014, for  
15 \$38,000.00.

16 1.10 Booren provided Bale with a list of tenants' security deposits that were held by  
17 her. The total amount of tenants' security deposits to be held by Booren was listed as  
18 \$40,784.00

19 1.11 On December 23, 2014, Booren provided a copy of the tenants' security deposits  
20 CTA bank account statement, confirming the deposit of the \$38,000.00 on December 22,  
21 2014. The bank statement showed a balance of \$40,152.17.

22 **Violation:** By issuing two checks to the Jewetts, without having sufficient funds in the  
23 banks account to cover the checks and by allowing the tenants' security deposit CTA to  
24 become depleted, Booren violated ORS 696.3012(12) (2013 Edition), which states a licensee  
25 may be disciplined if they have demonstrated incompetence or untrustworthiness in performing  
26 any act for which the licensee is required to hold a license.

27 1.12 Booren acknowledged that her principal broker license would be revoked.

28 1.13 On March 2, 2015, Booren transferred ownership of D&D Realty Group LLC and  
29 Integrity Property Management to Delilta Cordes.

30 ///

2.

2.1 The foregoing violations are grounds for discipline pursuant to ORS 696.301. Based on these violations a revocation is appropriate under ORS 696.396(2)(c)(C) (2013 Edition). According to ORS 696.396, OREA may revoke a real estate license if the material facts establish a violation of a ground for discipline under ORS 696.301 that exhibits incompetence in the performance of professional real estate activity.

2.2 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, in which case an amended notice of intent may be issued in this matter. 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.

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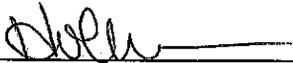
ORDER

IT IS HEREBY ORDERED that the principal broker license of Holly Booren be revoked, with said revocation to be effective the date of this order.

IT IS FURTHER ORDERED that Booren will not own, have partial ownership, or be an employee of a property management company or any company that engages in the management of rental real estate.

IT IS SO STIPULATED:

IT IS SO ORDERED:



HOLLY BOOREN

GENE BENTLEY

Real Estate Commissioner

Date 3/2/15

Date 3.9.15

DATE of service: 3-9-2015

**BEFORE THE  
REAL ESTATE AGENCY  
STATE OF OREGON**

IN THE MATTER OF:  <b>CAROL ROSENBERG,</b>	) <b>FINAL ORDER</b> ) ) OAH Case No. 1403704 ) Agency Case No. 2014-110
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This matter came before the Real Estate Agency to consider the Proposed Order issued by Administrative Law Judge (ALJ) Rick Barber on January 28, 2015. No exceptions were filed to the Proposed Order.

After considering the records and the file herein, the Agency adopts the attached and incorporated Proposed Order as the Final Order.

IT IS HEREBY ORDERED that the broker license of Carol Rosenberg be revoked, with said revocation to be effective the date of this order.

Dated this 16<sup>th</sup> day of March 2015.

  
\_\_\_\_\_  
Gene Bentley  
Real Estate Commissioner

Date of Service: 3-16-2015

NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days of the service of this order. Judicial review is pursuant to the provisions of ORS 183.482 to the Oregon Court of Appeals.

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
REAL ESTATE AGENCY**

IN THE MATTER OF: ) **PROPOSED ORDER**  
 )  
**CAROL ROSENBERG** ) OAH Case No. 1403704  
 ) Agency Case No. 2014-110

**HISTORY OF THE CASE**

On April 29, 2014, the Real Estate Agency (Agency) issued a Notice of Intent to Revoke to Carol Rosenberg (Licensee). On May 12, 2014, Licensee's former attorney, Jesse Conway, requested a hearing on Licensee's behalf. Licensee later retained the services of David McDonald to represent her in the case.

On May 28, 2014, the Agency referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned Administrative Law Judge (ALJ) Rick Barber to preside at hearing. The ALJ convened a prehearing conference on July 22, 2014, and the parties agreed upon a January 6, 2015 hearing date. The parties also set a schedule for motions for summary determination.

On July 31, 2014, the Agency filed a Motion for Summary Determination, with six exhibits attached. On September 8, 2014, Licensee filed a Response with eight attached exhibits. On September 18, 2014, the Agency filed a Reply with an additional exhibit. On September 22, Licensee filed a Supplemental Response, along with an additional exhibit, as well as a Motion to Allow a Deposition and to Stay the Motion for Summary Determination. On September 24, 2014, the Agency denied Licensee's request for a deposition.

On October 24, 2014, ALJ Barber issued a Ruling on Motion for Summary Determination, concluding that the Agency had established its Dishonest Conduct charge against Licensee, but reserving the other charge and the appropriate sanction for hearing. The Ruling is hereby incorporated in this Proposed Order.

Hearing was held on January 6, 2015, as scheduled. Licensee did not attend the hearing, but was represented by Mr. McDonald. Certified Law Student Jacqueline Houser represented the Agency,<sup>1</sup> along with Senior Assistant Attorney General Raul Ramirez. Agency investigator Frances Hlawatsch and complainant Holly Consol testified for the Agency. The hearing record closed on January 6, 2015.

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<sup>1</sup> Documentation of Ms. Houser's representation and certification were presented by Mr. Ramirez on December 22, 2014, and are in the file.

## ISSUES

1. Whether Licensee knowingly or recklessly published materially misleading or untruthful advertising, thereby violating ORS 696.301(4).
2. Whether Licensee committed an act of fraud or engaged in dishonest conduct when she forged her tenant's signature on the Tenant Notice and Waiver Form, thereby violating ORS 696.301(14). [*Decided by Ruling on Summary Determination*].
3. Whether, if Licensee committed the violations, her license should be revoked.

## EVIDENTIARY RULING

Exhibits A1 through A7, offered by the Real Estate Agency, and Exhibit L1, offered by Licensee, were admitted into evidence without objection. Procedural Documents P1 through P16 are also included in the record.

## FINDINGS OF FACT

1. Licensee has been licensed by the Agency at all times relevant to this proceeding. She was<sup>2</sup> the owner of a duplex at 15007 Boones Way, Lake Oswego, Oregon. (Ex. A1, A2). Holly Consol was a tenant on one side of the duplex. (Test. of Consol).
2. Licensee, through her attorney Jesse Conway, began the application process to convert her duplex into two condominiums. One of the requirements in a condominium conversion is to give existing tenants 120 days to find a new place to live. The 120 day time period can be waived by a tenant. Knowing that Consol did not want to waive the 120 day time period, Licensee forged Consol's name to the notice and waiver form without Consol's permission and instructed her attorney to submit it to the Agency. (Ruling on MSD).
3. Before the conversion was complete, Licensee put two listings on the MLS, one for an individual unit and one for the entire duplex. The duplex listing claimed to be a "Home like Plex being converted to condos[.]" The individual unit listing claimed to be a "Home like Condo, one of only two units[.]" (Ex. A7 at 1).
4. Consol discovered that the condominium conversion process was ongoing when she viewed the "for sale" sign on the property and then obtained a copy of the listing from real estate agent Aaron Heard. (Test. of Consol; Ex. A7). Consol contacted the Agency to find out her rights and discovered Licensee's forgery of her signature on the waiver form. Consol filed a complaint with the Agency. (Test of Consol; Ex. A6).
5. Investigator Frances Hlawatsch interviewed Licensee to ask about the signatures on the waiver form, and Licensee admitted she had signed Consol's name without her permission. Hlawatsch also asked Licensee about the two listings she had placed on the MLS before the condominium conversion was complete. Hlawatsch told her the listings were

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<sup>2</sup> It is unclear whether she remains the owner of the property.

premature. (Test. of Hlawatsch). Licensee indicated she would change the listings to comply with the Agency's desires, and she did so. (Ruling on MSD).

6. On April 29, 2014, the Agency sent a Notice of Intent to Revoke to Licensee. The Notice alleged the following violations:

**Violation:** By advertising the subject property as a condominium on the Regional Multiple Listing Service prior to completion of the conversion process, Rosenberg violated ORS 696.301(4), which states that a licensee may be disciplined if they have knowingly or recklessly published materially misleading or untruthful advertising.

\* \* \* \* \*

**Violation:** By forging Consol's signature on the Tenants' Notice and Waiver form, Rosenberg violated ORS 696.301(14), which states that a licensee may be subject to discipline if they have committed an act of fraud or engaged in dishonest conduct substantially related to the fitness of the licensee to conduct professional real estate activity, without regard to whether the act or conduct occurred in the course of professional real estate activity.

Based upon the two violations alleged, the Agency proposed to revoke Licensee's real estate license. (Pleading 1, at 3-4).

7. In her dealings with Hlawatsch, Rosenberg was cooperative and "forthcoming," admitting that she had signed Consol's name without her permission, and agreeing to make the changes that Hlawatsch suggested on the MLS listing. (Test. of Hlawatsch).

8. On June 4, 2014, Licensee was arrested in Clackamas County and charged with one count each of Forgery II and Identity Theft, arising from signing Consol's waiver form. On July 24, 2014, Consol signed a Civil Compromise Agreement by which she waived her right to sue Licensee and agreed to dismissal of the criminal charges, in return for a monetary settlement. (Ex. L1).

### CONCLUSIONS OF LAW

1. Licensee knowingly or recklessly published materially misleading or untruthful advertising, thereby violating ORS 696.301(4).

2. Licensee committed an act of fraud or engaged in dishonest conduct when she forged her tenant's signature on the Tenant Notice and Waiver Form, thereby violating ORS 696.301(14).

3. Licensee's real estate license should be revoked.

## OPINION

The Real Estate Agency contends that Licensee knowingly or recklessly published materially misleading or untruthful advertising, violating ORS 696.301(4). Based upon that charge and the charge of Dishonest Conduct previously established on summary determination, the Agency contends that Licensee's real estate license must be revoked. As the proponent of these positions, the Agency has the burden of proof. *Sobel v. Board of Pharmacy*, 130 Or App 374, 379 (1994), *rev den* 320 Or 588 (1995) (standard of proof under the Administrative Procedures Act is preponderance of evidence absent legislation adopting a different standard). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely true than not. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987). The burden of proof encompasses two burdens, the burden of production of evidence in support of an assertion, and the burden to persuade the fact-finder that the facts asserted are true. *Marvin Wood Products v. Callow*, 171 Or App 175 (2000).

As noted, the Ruling on Summary Determination decided the Dishonest Conduct charge, leaving only the questions whether Licensee's listing of her property on MLS was knowing or reckless, and also leaving the question of what sanction is appropriate. Because the serious violation has already been established, and because I find that it alone justifies the sanction of revocation, comments on the publishing charge will be brief.

### **Knowing or Reckless Publishing**

The Agency's publishing charge in this case is governed by ORS 696.301, which states in part:

**Grounds for discipline.** Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

\* \* \* \* \*

(4) Knowingly or recklessly published materially misleading or untruthful advertising.

Licensee did not attend and did not testify at hearing, so the only evidence concerning her mental state when she listed the property is found in the MSD exhibits. In her affidavit for the Response to the motion, Licensee indicated she did not realize that listing the properties during the conversion process would be a problem. The record indicates that Licensee did not "knowingly" try to be misleading or untruthful when listing her property on the MLS, and there is no evidence to establish that she knew she was violating the law. However, given Licensee's knowledge of her profession, including how to legally list properties, her decision to post the listings without knowing the legality of it was reckless.

As noted above, there were two listings in the MLS. One listing was for the entire duplex, and the listing explained that the conversion process was ongoing. Therefore, although it

was probably reckless for Licensee to list the property before it could be listed, there was nothing materially misleading or untruthful about that listing.

For the individual condo listing, however, the MLS listing was misleading and it was untruthful. The listing did not mention the conversion process; it represented that a "home like condo" was available, when it was not. The dwelling was not yet a condo, and it was not yet available. This listing was also reckless, so I conclude that Licensee violated ORS 696.301(4).

Looking at this violation in a vacuum, without consideration of the more serious dishonest conduct charge, I would be recommending a sanction of a reprimand or, perhaps, a short suspension for the violation. Given the progressive discipline standard discussed in more detail below, and taking into account Licensee's lack of prior discipline, those would have been the appropriate sanctions for the publishing charge.

**Nature of the Sanction.** However, setting the sanction for the more serious dishonest conduct charge is not as simple, nor is the result the same. For the reasons that follow, I propose that the Agency revoke Licensee's real estate license.

Licensee correctly contends that the Real Estate Agency requires a consideration of progressive discipline when sanctioning its licensees. Licensee relies on ORS 696.396, which states:

**Investigation of complaints and progressive discipline; rules.** (1) The Real Estate Commissioner shall provide by rule for the progressive discipline of real estate licensees and an objective method for investigation of complaints alleging grounds for discipline under ORS 696.301.

(2) The rules adopted by the commissioner under this section:

(a) Must establish procedures for the discovery of material facts relevant to an investigation and for the reporting of those facts without conclusions of violation or grounds for discipline to the commissioner or the commissioner's designee by the individual assigned to investigate the complaint.

(b) Must provide for progressive discipline designed and implemented to correct inappropriate behavior.

(c) May not authorize imposition of a suspension or a revocation of a real estate license unless the material facts establish a violation of a ground for discipline under ORS 696.301 that:

(A) Results in significant damage or injury;

(B) Exhibits incompetence in the performance of professional real estate activity;

(C) Exhibits dishonesty or fraudulent conduct; or

(D) Repeats conduct or an act that is substantially similar to conduct or an act for which the real estate licensee was disciplined previously.

Licensee contends that her lack of prior discipline with the Agency precludes the Agency from revoking her license. Under her theory, the Agency must utilize progressive discipline and impose a lesser sanction than revocation because of her lack of previous discipline.

Relying on the same statute, the Agency disagrees with Licensee's argument. Subsection (2)(c) of the statute notes four circumstances justifying the revocation of a license. The Agency relies upon (2)(c)(C), contending that Licensee "[e]xhibit[ed] dishonesty or fraudulent conduct" when she signed Consol's name to the waiver without her permission. I agree with the Agency.

Licensee's action in this case clearly involved dishonesty and fraudulent conduct, despite her later attempts to make things right with Consol and others. The language of the statute indicates that even in a system of progressive discipline there are circumstances too serious for lesser sanctions. This is such a case. The Agency contends that Licensee's license should be revoked, and I agree.

### ORDER

I propose the Real Estate Agency issue the following order:

The Agency's April 29, 2014, Notice of Intent to Revoke is AFFIRMED, and Licensee's license to practice real estate is revoked.

Rick Barber

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Administrative Law Judge  
Office of Administrative Hearings

### NOTICE

This is the Administrative Law Judge's Proposed Order. If the Proposed Order is adverse to you, you have the right to file written exceptions and argument to be considered by the Real Estate Commissioner in issuing the Final Order. Your exceptions and argument must be received by the 20th day from the date of service. Send them to:

Denise Lewis  
Oregon Real Estate Agency  
1177 Center St. NE  
Salem OR 97301-2505

The Real Estate Commissioner will issue a Final Order, which will explain your appeal rights.

**CERTIFICATE OF MAILING**

On January 28, 2015, I mailed the foregoing PROPOSED ORDER issued on this date in OAH Case No. 1403704.

By: First Class Mail

David McDonald  
Attorney at Law  
David T McDonald PC  
510 SW 3rd Ave Suite 400  
Portland OR 97204

Jacqueline Houser  
Department Of Justice  
1162 Court Street NE  
Salem, OR 97301-4096

Denise Lewis  
Real Estate Agency  
1177 Center Street NE  
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Raul Ramirez  
Senior Assistant Attorney General  
Department of Justice  
1162 Court St NE  
Salem OR 97301-4096

Ryan Clark  
Administrative Specialist  
Hearing Coordinator

**CERTIFICATE OF MAILING**

On March 16, 2015, I mailed the foregoing Final Order issued on this date in OAH Case No. 1403704 and Agency Case No. 2014-110.

By: First Class Mail

CAROL ROSENBERG  
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Attorney at Law  
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Carolyn Kalb  
Compliance Specialist

1 REAL ESTATE AGENCY  
2 BEFORE THE REAL ESTATE COMMISSIONER  
3

4 In the Matter of the Real Estate License of )

5  
6 SANDRA ELAINE BITTLER

) STIPULATED FINAL ORDER  
7  
8

9  
10 The Oregon Real Estate Agency (OREA) and Sandra Bittler (Bittler) do hereby agree  
11 and stipulate to the following:

12 FINDINGS OF FACT

13 &

14 CONCLUSIONS OF LAW

15 1.

16 1.1 Bittler was licensed as a principal broker with Oregon First from April 26, 2011  
17 until September 2, 2014.

18 1.2 On September 1, 2014, OREA received an email from Arthur Donaghey  
19 (Donaghey). Based on a newspaper article regarding the transaction, Donaghey requested  
20 OREA investigate Bittler's 2013 purchase of her neighbor's property.

21 1.3 On September 3, 2014, OREA received a hand delivered envelope from Oregon  
22 First. The envelope contained a copy of an email to Bittler dated August 31, 2014, from Ken  
23 Mistler (Mistler), President and Principal Broker for Oregon First. Mistler alleged Bittler had  
24 violated licensing administrative rules.

25 1.4 Bittler and her husband, Michael Leland (Leland), moved into their neighborhood  
26 about seven years ago. At that time, they told their neighbor, Elmo Marquette (E. Marquette)  
27 to let them know if he ever wanted to sell the 2.02 acre parcel (subject property) that abutted  
28 both the Marquettes' property and Leland and Bittler's property.

29 ///

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1           1.5    Bittler told OREA investigator Rob Pierce (Pierce) that she and her husband saw  
2 E. Marquette around the neighborhood and spoke with him many times over the next seven  
3 years. Bittler said the subject property was not discussed with E. Marquette again until E.  
4 Marquette rang Bittler's doorbell in November 2013 and said he was ready to sell the subject  
5 property.

6           1.6    Bittler said it was E. Marquette that set the asking price at \$22,000.00. Bittler  
7 said she had only done residential homes transactions and was not well versed in bare land  
8 transactions, but she thought the price seemed a little low.

9           1.7    On November 4, 2013, at 11:05 am, Bittler sent an email to Heidi Gamelgaard  
10 (Gamelgaard), Sr. Escrow Officer for Fidelity National Title, asking her to send her any  
11 information she had on the subject property, specifically asking Gamelgaard if the subject  
12 property was a buildable lot and if there was anything attached to the subject property or the  
13 title that would be conveyed in a sale. Bittler also asked Gamelgaard if she could use a simple  
14 Earnest Money Agreement to buy the subject property and follow the normal transaction route  
15 using Gamelgaard as the escrow office, even though there was no structure on the property.

16           1.8    On November 4, 2013, at 12:36 pm, Melissa Scott, Customer Service  
17 Representative for Fidelity National Title responded to Bittler's email. Scott told Bittler the  
18 subject property was zoned R10 with a P&C overlay. The email was copied to Gamelgaard.

19           1.9    On November 4, 2013, at 2:55 pm, Bittler sent an email to Gamelgaard,  
20 explaining to Gamelgaard, from what she was able to find online, that the P&C overlay was  
21 environmentally protected land area that would make developing the subject property very  
22 difficult. In her email, Bittler said she thought the subject property was not really all that  
23 valuable, considering the fact the subject property was landlocked, combined with the zoning  
24 restrictions. In her email, in regards to the subject property, Bittler said, "it would be awesome  
25 to clear it and extend our back yard if it really was only for \$20k."

26           1.10   A review of a City of Portland zoning map confirms the subject property is zoned  
27 R10 with a P&C overlay covering approximately half of the 2.02 acre parcel. According to the  
28 City of Portland Ordinance 33.430.15, development would only be approved in the  
29 environmental protection zone only in rare and unusual circumstances.

30 ///

1           1.11 On the zoning map, SW 59<sup>th</sup> Avenue appears to extend to the subject property  
2 providing access to the land. However, a review of google maps and google maps street view  
3 for the Marquettes' home located at 5857 SW Garden Home Road shows the street listed as  
4 SW 59<sup>th</sup> Avenue is actually a gravel driveway that ends at the Marquette house and does not  
5 extend the entire distance of the easement back to the subject property.

6           1.12 On November 12, 2013, Bittler and Leland wrote an offer to purchase the subject  
7 property from E. Marquette and his wife Mellitta Marquette (the Marquettes) for \$22,000.00.

8           1.13 On page one of the offer, in the section for final agency acknowledgement, Bittler  
9 did not fill in the name of the selling licensee or the name of the registered business name she  
10 worked under. Also, Bittler failed to check the box indicating she was representing the buyer  
11 only.

12           1.14 On page three of the offer, Bittler disclosed she was a real estate broker, but did  
13 not contain any language stating she was representing herself as the buyer in the transaction.

14           **Violation:** By failing to fill out the final agency acknowledgement on page one of the  
15 sale agreement and failing to state she was representing herself as the buyer in the  
16 transaction, Bittler violated ORS 696.301(3) (2013 Edition) as it incorporates OAR 863-015-  
17 0145(1) (4-1-2013 Edition), which states if a licensee, whether active or inactive, either directly  
18 or indirectly offers or negotiates for the sale, exchange, lease option, or purchase of real estate  
19 and the licensee is a principal to the transaction, the licensee must disclose to the other party  
20 to the offer or transaction that the licensee is a real estate licensee. The licensee must make  
21 the disclosure in any advertising or display signs, and it must appear in writing on at least the  
22 first written document of agreement concerning the offer or transaction. The disclosure set  
23 forth on the agreement document also must state that the real estate licensee is representing  
24 himself or herself as either the buyer or seller in the transaction.

25           1.15 Bittler said she advised E. Marquette more than once to get representation, but  
26 he did not want to be represented. Bittler said E. Marquette wanted to keep the transaction  
27 simple and would have sold the property on a handshake deal if he could. Bittler said E.  
28 Marquette asked her to draw up the documents so they could close the transaction. Bittler  
29 said she walked the Marquettes through the contract, explaining all of it, including the selling  
30 price that had been agreed upon.

1           1.16 On November 13, 2013, the Marquettes accepted the offer.

2           1.17 On November 18, 2013, signing was scheduled for the subject property. The  
3 signing was to happen at the Marquettes' home and Gamelgaard asked Bittler to meet her at  
4 the Marquettes house for the signing. Gamelgaard said she always uses a buddy system  
5 when doing an outside closing and in this case thought Bittler would be the logical choice,  
6 since Bittler was friends with the Marquettes, lived around the corner from the Marquettes, and  
7 was also one of the buyers of the property.

8           1.18 Bittler said when she arrived at the Marquettes' home prior to Gamelgaard, on  
9 November 18, 2013, Meliitta Marquette said they weren't getting enough for the property.

10          1.19 Bittler said when Gamelgaard arrived, she immediately told Gamelgaard the deal  
11 was off because Meliitta had changed her mind.

12          1.20 Galmegaard told Pierce that when she got to the Marquettes' house she was told  
13 right away by Bittler there was a problem. Gamelgaard said Meliitta Marquette was not happy  
14 with the price they were getting and thought they should be getting more. Gamelgaard gave  
15 the Marquettes the folder with the escrow documents and left without attempting to get the  
16 closing documents signed.

17          1.21. Gamelgaard said Bittler walked out with her and apologized for Gamelgaard  
18 having to come out for nothing.

19          1.22 The next day, on November 19, 2013, Bittler said E. Marquette called and told  
20 Bittler they were ready to move forward with the transaction. E. Marquette said he had  
21 discussed it with his wife and they decided it would be best to go ahead and sell the property  
22 to Bittler at the agreed upon price, rather than spending more time trying to get a higher price.

23          1.23 On November 21, 2013, Gamelgaard returned for the second time for the signing  
24 of the closing documents. Bittler said Gamelgaard explained each and every document in  
25 detail to the Marquettes. Bittler said Gamelgaard was specific about the price being  
26 \$22,000.00, mentioning the price in several documents and both Marquettes seemed to be in  
27 agreement regarding the price.

28          1.24 Bittler said there was no hesitation by Meliitta Marquette regarding the price at  
29 the second signing, and Bittler was confident that the Marquettes completely understood the  
30 transaction, including the price they were selling the subject property for.

1           1.25 Gamelgaard said she explained each document to the Marquettes in detail  
2 before she had them sign, to make sure they understood what they were signing.

3           1.26 Gamelgaard said she explained the preliminary title report to the Marquettes.  
4 The preliminary title report had been mailed to the Marquettes on November 15, 2013, so they  
5 had a couple days to look it over prior to signing the closing documents. Gamelgaard said the  
6 preliminary title report clearly showed the selling price to be \$22,000.00. Gamelgaard said she  
7 did not remember if she specifically said \$22,000.00 or if she just pointed out the amount.

8           1.27 Gamelgaard said she explained the Sale Escrow Instructions to the Marquettes,  
9 which showed that a title insurance policy was to be obtained in the amount of \$22,000.00.

10          1.28 Gamelgaard said she explained the Seller's Estimated Settlement Statement to  
11 the Marquettes. The Seller's Estimated Settlement Statement clearly showed the selling price  
12 of the property to be \$22,000.00, and the total amount to be deposited to the Marquettes' Key  
13 Bank account, including prorations to be \$23,581.74.

14          1.29 A Substitute Form 1099-S was prepared for the sale of the property that showed  
15 the proceeds of the sale to be \$22,000.00. Galemgaard said she explained this form to the  
16 Marquettes and they signed it on November 21, 2013.

17          1.30 A Statutory Warranty deed was prepared, transferring title to the property from  
18 the Marquettes to Leland and Bittler for true and actual consideration in the amount of  
19 \$22,000.00. Gamelgaard said she explained the Warranty Deed to the Marquettes and they  
20 signed it on November 21, 2013. Gamelgaard was confident that by walking the Marquettes  
21 through all the closing documents and the explanations she had given them, the Marquettes  
22 understood the transaction.

23          1.31 Regarding possible future development on the subject property, Bittler said there  
24 was a verbal agreement to not develop the subject property as long as the Marquettes lived  
25 there. Bittler said it was not part of the written contract because of the friendly nature of the  
26 transaction and because she did not know how the agreement might affect the deed if it was in  
27 writing.

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1           **Violation:** By making a verbal agreement not to develop the subject property and failing  
2 to include it in the written sale agreement Bittler violated ORS 696.301(3) (2013 Edition) as it  
3 incorporates OAR 863-015-0135(5) (4-1-2013 Edition), which states real estate licensees must  
4 include all of the terms and conditions of the real estate transaction in the offer to purchase or,  
5 directly or by reference, in the counter-offer, including but not limited to whether the transaction  
6 will be accomplished by way of deed or land sales contract, and whether and at what time  
7 evidence of title will be furnished to the prospective buyer.

8           1.32 Bittler failed to turn her transaction with the Marquettes in to Oregon First, the  
9 registered business name she worked under. She said the reason she did not turn it in to  
10 Oregon First was because she didn't think she was required to. Bittler said because she is a  
11 principal broker herself, she did not think state law required her to submit her personal  
12 transactions for another broker's approval. Bittler said this was the first and only transaction  
13 that she had ever done that did not involve Oregon First.

14           **Violation:** By failing to turn the transaction documents in to Oregon First, Bittler  
15 violated ORS 696.301(3) (2013 Edition) as it incorporates OAR 863-015-0260(1)(a) (4-1-2013  
16 Edition), which requires that transactions involving a licensee as a principal to the transaction  
17 must be processed in the same manner as the licensee's other professional real estate  
18 activities and comply with the records requirements under OAR 863-015-0250. Additionally,  
19 Bittler violated ORS 696.301(3) (2013 Edition) as it incorporates OAR 863-015-0260(1)(a),  
20 which states that records of professional real estate activity may be stored at the principal  
21 broker's main office, and records of professional real estate activity originating at a branch  
22 office may be maintained and stored at either that branch office or at the principal broker's  
23 main office.

24           1.33 Bittler said she and Leland first learned of the Marquettes' displeasure with the  
25 purchase price of the subject property after being contacted by a reporter for a story that ran  
26 August 30, 2014.

27           1.34 On September 5, 2014, attorneys for Bittler, Leland and the Marquettes  
28 announced a settlement. According to the terms of the settlement, the subject property was  
29 returned to the Marquettes by Bittler and Leland with no restrictions regarding future  
30 development. The Marquettes were allowed to keep the \$22,000.00 that Bittler and Leland had

1 paid them for the subject property.

2 1.35 On September 30, 2014, Pierce attempted to interview the Marquettes regarding  
3 the transaction with Bittler and Leland. Meliitta Marquette said the disagreement with Bittler  
4 and Leland had been resolved to her satisfaction and she and E. Marquette would not discuss  
5 the matter any further.

6 2.

7 2.1 OREA reserves the right to investigate and pursue additional complaints that  
8 may be received in the future regarding this licensee.

9 **STIPULATION & WAIVER**

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

20 I hereby agree and stipulate to the above findings of fact and conclusions of law and  
21 understand that the order which follows hereafter may be completed and signed by the Real  
22 Estate Commissioner or may be rejected by the Real Estate Commissioner, in which case an  
23 amended notice of intent may be issued in this matter. I understand that, in accordance with  
24 the provisions of ORS 696.445(3), notice of this order shall be published in the Oregon Real  
25 Estate News Journal.

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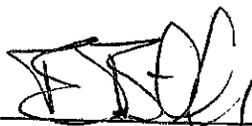
ORDER

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

IT IS SO STIPULATED:

IT IS SO ORDERED:

Sandra Elaine Bittler



SANDRA ELAINE BITTLER

GENE BENTLEY

Real Estate Commissioner

Date 2-2-15

Date 2-17-15

DATE of service: 2-18-2015

1 REAL ESTATE AGENCY  
2 BEFORE THE REAL ESTATE COMMISSIONER  
3

4 In the Matter of the Real Estate License of )

5  
6 MARC D. SLAVIT )

STIPULATED FINAL ORDER

7  
8  
9  
10 The Real Estate Agency (OREA) and Marc D. Slavit (Slavit) do hereby agree and  
11 stipulate to the following:

12 FINDINGS OF FACT  
13 &  
14 CONCLUSIONS OF LAW

15 1.

16 1.1 Slavit was licensed as a real estate broker with Keller Williams Realty Southern  
17 Oregon from November 9, 2009, through September 24, 2014.

18 1.2 Dated June 11, 2013, OREA received a complaint from Alejandro Zaragoza (A.  
19 Zaragoza) against Slavit. A. Zaragoza alleged Slavit listed properties for sale without  
20 permission from the property owner. A. Zaragoza's wife, Luisa Zaragoza (L. Zaragoza), is the  
21 sister of one of the property owners, Carlos Valentin Pelagio (C. Pelagio).

22 1.3 On June 30, 2013, OREA opened an investigation.

23 1.4 Prior to this complaint, Slavit represented C. Pelagio and his family in purchasing  
24 property in 2010. C. Pelagio is an attorney who lives in Mexico. Slavit said C. Pelagio came to  
25 the United States in 2010 to purchase property for himself and his children.

26 1.5 On November 5, 2010, Slavit helped C. Pelagio purchase 3148 Timothy Ave,  
27 Medford (Timothy Ave. property), and on December 28, 2010, Slavit helped C. Pelagio's son,  
28 Juan Carlos Valentin Estrada (J. Estrada), purchase 1477 Johnson St., Medford (Johnson St.  
29 property).

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1           1.6     A review of the documents shows that five offers, over three distinct dates, were  
2 made for the Johnson St. property and the Timothy Ave. property. C. Pelagio and Slavitt  
3 communicated several times about the need to have another person able to sign on his behalf  
4 for the purchases for himself and his children. C. Pelagio mentioned his sister, L. Zaragoza,  
5 should sign as power of attorney on his behalf.

6           **Johnson St. Property:**

7           1.7     On November 29, 2012, Slavitt emailed C. Pelagio and attached the Slavitts' offer  
8 on the Johnson St. property. Slavitt and his wife were the buyers, represented by Slavitt. J.  
9 Estrada was the seller as a for-sale-by-owner. Slavitt stated to C. Pelagio, "Please review the  
10 offer and if it is acceptable to you, please sign, and date and/or initial at every astrix/arrow (sic)  
11 which is at the top, middle or bottom of each page." It appears J. Estrada signed the  
12 acceptance of the offer on December 4, 2012.

13          1.8     Slavitt turned the accepted offer, signed December 4, 2012, in for his principal  
14 broker's, Stacey Boals (Boals), review around February 5, 2013. Boals said she supervises  
15 Slavitt's activity as a principal broker and has a 24 to 48 hour turnaround from when documents  
16 are turned in to her until they are reviewed. She said Slavitt is known to turn documents in late.  
17 Boals said this offer was turned in for review when she was looking at the next offer.

18          **Violation:** By waiting until around February 5, 2013, to submit the accepted offer to his  
19 principal broker for review, Slavitt violated OAR 863-015-0255(3) (9-14-2012 Edition), which  
20 requires a real estate broker to transmit to the broker's principal real estate broker within three  
21 banking days of receipt any money, checks, drafts, warrants, promissory notes, or other  
22 consideration and any documents received by the licensee in any professional real estate  
23 activity in which the licensee is engaged. Additionally, Slavitt violated OAR 863-015-0145(3) (9-  
24 14-2014 Edition), which requires each real estate transaction involving a licensee as a  
25 principal to the transaction, to be conducted under the supervision of the licensee's principal  
26 broker and all documents and funds must be transmitted through the licensee's principal real  
27 estate broker.

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1           1.9     On January 24, 2013, Slavik emailed C. Pelagio. Slavik stated he had an issue  
2 with his loan because of a credit issue within the past two-and-a-half years. He stated he had  
3 another buyer for both properties. Slavik stated C. Pelagio would need to get a specific power  
4 of attorney on both homes for L. Zaragoza to sign for C. Pelagio.

5           1.10    Slavik wrote a second offer for the Johnson St. Property, on behalf of Christine  
6 Swanson (Swanson), the buyer. The agreement was dated January 24, 2013.

7           1.11    J. Estrada signed, accepting the offer on January 28, 2013.

8           1.12    On February 27, 2013, Swanson signed an addendum to the Johnson St. sales  
9 agreement. The addendum stated Swanson was unable to secure financing due to a change  
10 in her credit qualifications. All earnest money was to be returned to Swanson.

11          1113    J. Estrada signed a POA related to this property on February 28, 2013,  
12 authorizing L. Zaragoza (aunt to J. Estrada) to sign on his behalf. L. Zaragoza signed the  
13 sales agreement addendum on February 27, 2013, a day before the POA was in effect.

14          **Violation:** By failing to address the error made when L. Zaragoza signed the sales  
15 agreement addendum on behalf of J. Estrada, before the POA was executed, Slavik violated  
16 ORS 696.810(3)(a) (2013 Edition), which states a buyer's agent owes the buyer involved in a  
17 real estate transaction the following affirmative duty: (a) To exercise reasonable care and  
18 diligence.

19          1.14    The sales agreement addendum, winding down the offer from Swanson, was  
20 accepted on February 27, 2013, but was not reviewed by Boals until March 25, 2013.

21          **Violation:** By failing to provide the addendum to his principal broker in a timely manner,  
22 Slavik violated OAR 863-015-0255(3) (9-14-2012 Edition), which requires a real estate broker  
23 to transmit to the broker's principal real estate broker within three banking days of receipt any  
24 money, checks, drafts, warrants, promissory notes, or other consideration and any documents  
25 received by the licensee in any professional real estate activity in which the licensee is  
26 engaged.

27          1.15    Dated February 27, 2013, Slavik wrote another offer on behalf of himself and his  
28 wife for the Johnson St. property. L. Zaragoza accepted the offer and signed as POA for J.  
29 Estrada on February 27, 2013. A POA notarized February 28, 2013 and signed by J. Estrada  
30 gave L. Zaragoza the ability to sign documents related to the Johnson St. property.

1           **Violation:** By failing to address the error that the power of attorney was executed after it  
2 was used, Slavik violated ORS 696.810(3)(a) (2013 Edition), which states a buyer's agent  
3 owes the buyer involved in a real estate transaction the following affirmative duty: (a) To  
4 exercise reasonable care and diligence.

5           1.16 Slavik failed to obtain principal broker review of the documentation of his  
6 February 27, 2013, offer on the Johnson St. property until March 20, 2013.

7           **Violation:** By failing to provide the agreement for the Johnson St. property to his  
8 principal broker in a timely manner, Slavik violated OAR 863-015-0255(3) (9-14-2012 Edition),  
9 which requires a real estate broker to transmit to the broker's principal real estate broker within  
10 three banking days of receipt any money, checks, drafts, warrants, promissory notes, or other  
11 consideration and any documents received by the licensee in any professional real estate  
12 activity in which the licensee is engaged.

13           **Timothy Ave Property:**

14           1.17 On January 24, 2013, Slavik filled out and signed a document titled, "One-Party  
15 Listing, Agency Disclosure & Commission Agreement," which stipulated C. Pelagio owns the  
16 Timothy Ave. property and agreed to let KW Realty and Slavik market the property to Swanson  
17 as the buyer. It appears J. Estrada instead of C. Pelagio signed the commission agreement on  
18 January 28, 2013.

19           1.18 On January 24, 2013, Slavik emailed C. Pelagio. Attached to this email was the  
20 offers and "commission paperwork" for the Johnson St. and Timothy Ave. properties with  
21 Swanson as the buyer (See 1.10 regarding the Johnson St. property offer for Swanson). Slavik  
22 wrote nothing about ensuring the correct owner signed the appropriate offers and commission  
23 paperwork. Slavik wrote, "I have attached the offers and paperwork for you to sign at every  
24 arrow and astrix. (sic) You will get more money from each home on both offers than when we  
25 previously talked about price. It is a win win for you. Please review this and return both offers  
26 signed As Soon As Possible." Slavik attached an offer from Swanson for the Timothy Ave.  
27 property dated January 24, 2013.

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1           1.19 Slavit said when working with C. Pelagio and J. Estrada in Mexico, J. Estrada did  
2 not have an email address, so documents were emailed to C. Pelagio to get signatures from  
3 both him and J. Estrada, depending on who owned the property. Slavit stated that either C.  
4 Pelagio or J. Estrada signed and then returned the signed documents through C. Pelagio's  
5 email.

6           1.20 J. Estrada, instead of the owner, C. Pelagio accepted this offer.

7           **Violation:** By writing the offer for Swanson as buyer and C. Peligio as seller, and failing  
8 to address the error made when J. Estrada signed the commission agreement and offer  
9 instead of C. Pelagio, Slavit violated ORS 696.810(3)(a) (2013 Edition), which states a buyer's  
10 agent owes the buyer involved in a real estate transaction the following affirmative duty: (a) To  
11 exercise reasonable care and diligence.

12           1.21 On February 27, 2013, Swanson signed an addendum to the Timothy Ave.  
13 property agreement as the buyer. The addendum stated Swanson was unable to secure  
14 financing due to a change in her credit qualification. All earnest money was to be returned to  
15 Swanson.

16           1.22 On February 27, 2013, L. Zaragoza (sister to C. Pelagio), signed the addendum  
17 terminating the sales agreement as power of attorney on behalf of C. Pelagio. Notarized on  
18 February 28, 2013, an attempt was made to give L. Zaragoza authority to sign documents  
19 related to the Timothy Ave property. But J. Estrada signed the POA related to this property  
20 instead of the owner, C. Pelagio.

21           **Violation:** By failing to address the errors made, when the authority to sign as power of  
22 attorney was executed after L. Zaragoza had already signed on behalf of another, and the  
23 power of attorney was signed by the wrong person, Slavit violated ORS 696.810(2)(a) (2013  
24 Edition), which states a buyer's agent owes the buyer involved in a real estate transaction the  
25 following affirmative duty: (a) To exercise reasonable care and diligence.

26           1.23 The February 27, 2013, addendum terminating the agreement for the Timothy  
27 Ave. property was not submitted timely for Boals' review. The addendum document which was  
28 accepted on February 27, 2013, was not reviewed by Boals until March 25, 2013.

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1           **Violation:** By failing to provide the addendum to his principal broker in a timely manner,  
2 Slavit violated OAR 863-015-0255(3) (9-14-2012 Edition), which requires a real estate broker  
3 to transmit to the broker's principal real estate broker within three banking days of receipt any  
4 money, checks, drafts, warrants, promissory notes, or other consideration and any documents  
5 received by the licensee in any professional real estate activity in which the licensee is  
6 engaged.

7           1.24 Slavit signed a one-party listing agreement dated February 27, 2013, which listed  
8 C. Pelagio as the owner. L. Zaragoza signed the listing agreement as "POA for Carlos  
9 Valentin" (J. Estrada) on February 27, 2013.

10           1.25 Dated February 27, 2013, Slavit wrote an offer for Dave Husel (Husel) for the  
11 Timothy Ave. property. L. Zaragoza signed accepting the offer as "POA for Carlos Valentin" (J.  
12 Estrada) on February 27, 2013.

13           1.26 Addendum A to the sale agreement was signed by L. Zaragoza "POA for Carlos  
14 Valentin" (J. Estrada) on March 27, 2013

15           1.27 J. Estrada, instead of C. Pelagio (actual owner of Timothy Ave. property), signed  
16 the power of attorney, which was notarized on February 28, 2013, allowing L. Zaragoza to sign  
17 on his behalf. On April 15, 2013 C. Pelagio signed the power of attorney.

18           **Violation:** Slavit, by failing to address the errors made on the commission agreement,  
19 offer, and addendum when the power of attorney was executed after it was used and signed  
20 by the wrong person, violated ORS 696.810(3)(a) (2013 Edition), which states a buyer's agent  
21 owes the buyer involved in a real estate transaction the following affirmative duty: (a) To  
22 exercise reasonable care and diligence.

23           1.28 The commission agreement, offer, and addendum for the Timothy Ave. property  
24 were not provided timely to Boals for review.

25           **Violation:** By failing to provide the commission agreement, offer, and addendum to his  
26 principal broker in a timely manner, Slavit violated OAR 863-015-0255(3) (9-14-2012 Edition),  
27 which requires a real estate broker to transmit to the broker's principal real estate broker within  
28 three banking days of receipt any money, checks, drafts, warrants, promissory notes, or other  
29 consideration and any documents received by the licensee in any professional real estate  
30 activity in which the licensee is engaged.

1 1.29 Through the above listed violations Slavik engaged in conduct below the standard  
2 of care for the practice of professional real estate activity in Oregon.

3 **Violation:** ORS 696.301(15) (2013 Edition), which states a licensee's real estate  
4 license can be disciplined if they have engaged in any conduct that is below the standard of  
5 care for the practice of professional real estate activity in Oregon as established by the  
6 community of individuals engaged in the practice of professional real estate activity in Oregon.

7 2.

8 2.1 OREA reserves the right to investigate and pursue additional complaints that  
9 may be received in the future regarding this licensee.

10 STIPULATION & WAIVER

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

21 I hereby agree and stipulate to the above findings of fact and conclusions of law and  
22 understand that the order which follows hereafter may be completed and signed by the Real  
23 Estate Commissioner or may be rejected by the Real Estate Commissioner, in which case an  
24 amended notice of intent may be issued in this matter. I understand that, in accordance with  
25 the provisions of ORS 696.445(3), notice of this order shall be published in the Oregon Real  
26 Estate News Journal.

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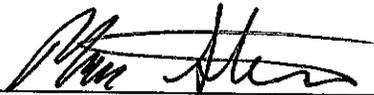
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ORDER

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

IT IS SO STIPULATED:

IT IS SO ORDERED:



MARC SLAVIT

GENE BENTLEY

Real Estate Commissioner

Date 3-9-15

Date 3.18.15

DATE of service: 3-18-2015

1 REAL ESTATE AGENCY  
2 BEFORE THE REAL ESTATE COMMISSIONER

3  
4 In the Matter of the Unlicensed Professional  
5 Real Estate Activity of  
6  
7 JANA TONEY  
8

STIPULATED FINAL ORDER

9  
10 The Oregon Real Estate Agency (OREA) and Jana Toney (Toney) do hereby agree and  
11 stipulate to the following:

12 FINDINGS OF FACT  
13 &  
14 CONCLUSIONS OF LAW

15 1.

16 1.1 At all times mentioned herein, Toney was not licensed to conduct professional  
17 real estate activity in Oregon.

18 1.2 On September 4, 2013, OREA received a complaint from Cindy Pickering-  
19 Smolen (Smolen) and CJ Smolen (Cindy and CJ referred to together as the Smolens), former  
20 tenants of 1090 Edwina Ave., Central Point, Oregon (subject property). Smolen stated Toney  
21 was unlicensed and alleged Toney acted as the property manager of the subject property on  
22 behalf of the owner, James Stanley "Stan" Phillips (Phillips), during the Smolens' tenancy.

23 1.3 Toney said she was friends with Phillips and was doing him a favor by looking  
24 over the subject property and picking up the rent from the tenants.

25 1.4 A residential lease agreement dated November 16, 2009, was signed between  
26 "TP Management" and the Smolens. Toney of "Toney Property Management" signed as the  
27 management on the agreement.

28 1.5 A "Month- to Month Rental Agreement" dated November 16, 2009, was signed by  
29 Toney of "Toney Property Management." The rental agreement stated rent was \$644.00 per  
30 month.

1           1.6     Documentation from the Housing Authority of Jackson County (HAJC) shows  
2 "Cynthia Pickering" as the tenant and "Jana Toney TCS" as manager from December 1, 2009,  
3 to August 31, 2012. "Cynthia Pickering" is Cindy Pickering-Smolens (Smolens). Additionally, the  
4 business address, check address, and correspondence address of "Jana Toney TCS" was  
5 Taney's post office box address.

6           1.7     Payments were made from HAJC on behalf of Smolens to "Jana Toney TCS" for  
7 rent at the subject property.

8           1.8     A review of the financial documents shows the following:

- 9                 • For January 2010-March 2010, total rent received was \$800.00 each  
10                 month. HAJC paid Jana Toney TCS \$475.00 per month on behalf of  
11                 Smolens. The Smolens paid an additional \$325.00 in cash to Toney for  
12                 rent each month.
- 13                 • For April 2010, HAJC paid Jana Toney TCS \$475.00 on behalf of Smolens.
- 14                 • For May 2010-November 2010, total rent received by Toney was \$800.00  
15                 each month. HAJC paid Jana Toney TCS \$475.00 per month on behalf of  
16                 Smolens. The Smolens paid an additional \$325.00 in cash to Toney for  
17                 rent each month.
- 18                 • For December 2010 and January 2011, total rent received was \$800.00  
19                 per month. HAJC paid Toney TCS \$550.00 per month on behalf of  
20                 Smolens. The Smolens paid an additional \$500.00 total, in cash, to Toney  
21                 for December 2010 and January 2011 combined.
- 22                 • For February 2011-July 2011, total rent received was \$800.00 per month.  
23                 HAJC paid Toney TCS \$550.00 per month on behalf of Smolens. For  
24                 these months, the Smolens paid an additional \$250.00 in cash to Toney  
25                 for rent each month.
- 26                 • For August 2011, HAJC paid Toney TCS \$550.00 on behalf of Smolens.
- 27                 • For September 2011-November 2011, total rent received was \$800.00 per  
28                 month. HAJC paid Toney TCS \$550.00 per month on behalf of Smolens.  
29                 For these months, the Smolens paid an additional \$250.00 in cash to  
30                 Toney for rent each month.

- 1 • For December 2011, total rent received was \$800.00 per month. HAJC  
2 paid Toney TCS \$420 on behalf of Smolen. The Smolens paid Toney an  
3 additional \$380.00 in cash for rent.
- 4 • For January 2012, total rent received was \$800.00. HAJC paid Toney  
5 TCS \$420.00 on behalf of Smolen. The Smolens paid Toney an additional  
6 \$380.00 in cash for rent.
- 7 • For February 2012, total rent received was \$800.00. HAJC paid Toney  
8 TCS \$420.00 on behalf of Smolen. The Smolens paid Toney an additional  
9 \$380.00 in cash for rent.
- 10 • For March 2012, HAJC paid Toney TCS \$420.00 on behalf of Smolen.
- 11 • For April 2012-July 2012, total rent received was \$800.00 per month.  
12 HAJC paid Toney TCS \$420.00 on behalf of Smolen. The Smolens paid  
13 Toney an additional \$380.00 in cash for rent per month.
- 14 • For August 2012, HAJC paid Toney TCS \$420.00 on behalf of Smolen.
- 15 • For September 2012, total rent received was \$800.00, split between  
16 Phillips and Toney. HAJC paid Phillips \$420.00 on behalf of Smolen. The  
17 Smolens paid Toney an additional \$380.00 in cash for rent.
- 18 • For October 2012-November 2012, HAJC paid Phillips \$420.00 per month  
19 on behalf of Smolen.
- 20 • For December 2012, total rent received was \$804.00, split between Phillips  
21 and Toney. HAJC paid Phillips \$424.00 on behalf of Smolen. The  
22 Smolens paid Toney an additional \$380.00 in cash for rent.

23 1.9 Toney managed the subject property from January 2010 through December 2012  
24 for Phillips. Toney stated that during the time she was managing the property, she did not  
25 receive any compensation for her work. However, Phillips later sent Toney a check for  
26 \$1,200.00 as a "thank you" for her work with the property.

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1 **Violation:** By engaging in the management of rental real estate for Phillips, Toney  
2 violated ORS 696.020(2) (2009 and 2011 Editions), which states an individual may not engage  
3 in, carry on, advertise or purport to engage in or carry on professional real estate activity, or  
4 act in the capacity of a real estate licensee, within this state unless the individual holds an  
5 active license.

6 2.

7 STIPULATION & WAIVER

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

18 I hereby agree and stipulate to the above findings of fact and conclusions of law and  
19 understand that the order which follows hereafter may be completed and signed by the Real  
20 Estate Commissioner or may be rejected by the Real Estate Commissioner, in which case an  
21 amended notice of intent may be issued in this matter.

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ORDER

IT IS HEREBY ORDERED that, pursuant to ORS 696.397, Toney immediately cease and desist from engaging in any professional real estate activity as defined in ORS 696.010(14)(a) to (n) (2013 Edition) unless Toney first obtains a real estate license from the OREA. The Commissioner's authority for this order is under ORS 696.397.

IT IS FURTHER ORDERED that, pursuant to ORS 696.990 and based upon the violation set forth above, Toney pay a civil penalty in the sum of \$200.00, said penalty to be paid to the General Fund of the State Treasury by paying the same to OREA.

IT IS SO STIPULATED:

IT IS SO ORDERED:

Jana Toney  
JANATONEY

Gene Bentley  
GENE BENTLEY

Date 1/23/15

Real Estate Commissioner  
Date 2.20.15

DATE of service: 2-20-2015

**REAL ESTATE BOARD  
REGULATION DIVISION REPORT  
April 6, 2015**

Regulation Division Manager: Selina Barnes  
Compliance Specialist 3 (Compliance Coordinator): Deanna Hewitt  
Financial Investigators (Investigator-Auditor): Peter Bale, Jeremy Brooks, Aaron Grimes,  
Frances Hlawatsch, Philip Johnson, Meghan Lewis, Rob Pierce  
Compliance Specialist 2: Carolyn Kalb  
Compliance Specialists 1: Denise Lewis, Lindsey Nunes, Danette Rozell  
Administrative Specialist: Christy Davis

Division Overview

The Regulation Division receives complaints and determines validity and assignment for investigation. Investigators gather facts (from interviews and documents), prepare a detailed written report and submit to the Manager for review. The Manager determines whether the evidence supports charging a person with a violation of Agency statutes or administrative rules, as well the appropriate resolution. The Manager conducts settlement conferences to resolve cases without a contested case hearing. If a hearing is requested, the investigator works with the Assistant Attorney General in preparing for and presenting the case at hearing.

The Compliance Specialists are responsible for conducting: mail-in audits of licensee's clients' trust accounts (CTA), continuing education (CE) audit investigations, expired activity investigations, background checks and self-administered compliance reviews. They also respond to inquiries regarding regulations and filing complaints from the public, licensees, and other governmental agencies.

Workload and Activity Indicators

**Court Ordered Receivership**

- On February 4, 2015, the Agency issued to Terry Shockley a Notice of Intent to Revoke his principal broker license. Mr. Shockley has requested a hearing in this matter. *[see attached Notice of Intent]*
- On February 5, 2015, Lane County Circuit Court Judge Carlson appointed Pivotal Solutions, Inc., as receiver of TS Property Management, Inc., dba Property Management Concepts, and dba Eugene Rentals. *[see attached Order Appointing Receiver]*
- The receiver determined the business was not economically viable; notified all the owners the business was being closed; provided all the owners copies of rental/lease agreements, keys, etc.; and has closed the business.
- The Agency shared information with law enforcement. The Eugene Police Department and the FBI are investigating.

For information on investigations resulting in administrative actions, please review the "Administrative Actions Summary" section of the Board packet.

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CIRCUIT COURT OF OREGON  
FOR LANE COUNTY



IN THE CIRCUIT COURT OF THE STATE OF OREGON BY \_\_\_\_\_

FOR THE COUNTY OF LANE

STATE OF OREGON, Acting by and through  
Gene Bentley, Commissioner of the Oregon Real  
Estate Agency,

Plaintiff,

v.

TS PROPERTY MANAGEMENT, INC, an  
Oregon corporation, and TERRY SHOCKLEY,

Defendants.

Case No. 16 15 01749

ORDER APPOINTING RECEIVER

THIS MATTER came before the court on the stipulation of the parties for an order appointing a receiver pursuant to ORS 696.785. The court, having reviewed the evidence and stipulations submitted by the parties, finds that it is necessary for a receiver to take charge of, manage, and liquidate if necessary, the assets of TS Property Management, Inc., dba Property Management Concepts, and dba Eugene Rentals. Failure to appoint a receiver could result in further financial loss to third parties.

It is THEREFORE ORDERED THAT:

1. Pivotal Solutions, Inc., acting by and through its agents and officers, Richard A. Hooper and Marcia A. Frey be, and hereby is, appointed receiver of all of the property and assets of TS Property Management, Inc., dba Property Management Concepts, and dba Eugene Rentals (hereafter, TS Property Management, Inc., dba Property Management Concepts, and dba Eugene Rentals, or the Receivership).
2. The receiver shall take any and all action necessary to manage and control the

1 business and financial affairs of TS Property Management, Inc., dba Property  
2 Management Concepts, and dba Eugene Rentals. Such action may include  
3 disciplining, terminating, suspending, or employing current employees, including  
4 Terry Shockley, to carry out the day-to-day functions of the business. However,  
5 under no circumstances may Terry Shockley be allowed to handle any money of the  
6 receivership without further court order.

- 7 3. The receiver shall assume full and exclusive control of, and conserve, hold, manage,  
8 and liquidate as it deems necessary all the assets of the receivership, including all its  
9 cash, brokerage accounts, bank accounts, rents, and real estate, and is authorized to  
10 take all steps necessary to secure such property and to close such accounts or open  
11 new accounts for the receivership.
- 12 4. The receiver may establish accounts at any financial institutions insured by an agency  
13 of the United States government, shall deposit in those accounts funds received in  
14 connection with the receivership property, and shall deposit in interest-bearing  
15 accounts money not expended for receivership purposes.
- 16 5. The receiver shall assume custody and control of all the books and records of the  
17 receivership; it shall maintain accurate records of all receipts and expenditures.
- 18 6. All persons and entities who become aware of the court's order, including the parties  
19 named in this action, shall have an affirmative duty to cooperate with the receiver,  
20 shall, refrain from interfering with the receiver in the exercise of its duties, shall  
21 refrain from exercising any control with respect to the receivership or its assets, and  
22 such persons shall immediately turn over to the receiver all books and records of the  
23 receivership, as well as any other property of the receivership, as requested by the  
24 receiver.

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- 1           7. The receiver is and shall be the holder of all privileges held by TS Property  
2           Management, Inc., dba Property Management Concepts, and dba Eugene Rentals,  
3           including the attorney-client, accountant-client and all other evidentiary privileges,  
4           with the power to waive such privileges, in the receiver's sole discretion.
- 5           8. The receiver is authorized to enter into contracts, obtain professional services,  
6           including attorneys, accountants, and real estate professionals, pay claims, purchase  
7           insurance as necessary to carry out the terms of the receivership, as the receiver  
8           deems reasonable and necessary, and the receiver may appear in, prosecute, and  
9           defend such legal actions as are necessary to carry out its obligations.
- 10          9. The receiver is entitled to compensation at normal hourly rates for services performed  
11          as a receiver and is entitled to reimbursement for all costs and expenses, including but  
12          not limited to professional fees, incurred in performing services in this matter. The  
13          receiver's compensation and reimbursements shall be paid from the assets of the  
14          receivership. The receiver shall give notice to the parties to this litigation and any  
15          person who requests special notice of the receiver's fees, costs, and expenses to be  
16          paid on a monthly basis and shall be authorized to make such payments unless the  
17          receiver receives a written objection within ten days of such notice.
- 18          10. The receiver may seek further instructions from the court as to any matter pertaining  
19          to the administration of the receivership and shall file reports with the court no less  
20          frequently than monthly after the initial report describing the status of the  
21          receivership and the nature of the duties performed pursuant to this order.
- 22          11. The receiver shall file the initial report with the court within 60 days of the entry of  
23          this order, describing the status of the receivership and the prospects for its future.
- 24          12. The receiver and any professional retained by the receiver, including, but not limited  
25          to, its attorneys and accountants, be and hereby are authorized to withdraw from its  
26          respective appointments or representations and apply for payment of their

1 professional fees and costs at any time after the date of this order, for any reason in  
2 their sole and absolute discretion, by sending written notice seven (7) days prior to  
3 the date of the intended withdrawal to the court and to the parties along with a written  
4 report describing the receiver's work, findings, and recommendations, as well as an  
5 accounting for all funds and assets in possession or control of the receiver. The  
6 receiver and professionals shall be relieved of all liabilities and responsibilities, and  
7 the receiver shall be exonerated and the receivership deemed closed seven (7) days  
8 from the date of the mailing of such notice of withdrawal. The court will retain  
9 jurisdiction to consider the fee applications, report, and accounting submitted by the  
10 receiver and the professionals. The written notice shall include an interim report  
11 indicating the receiver's actions and reflect the knowledge gained along with the fee  
12 applications of the receiver and its professionals. The report shall also contain the  
13 receiver's recommendations, if any.

14 13. No bond is required in connection with the appointment of the receiver. Except for  
15 an act of gross negligence, bad faith, or willful malfeasance, the receiver and the  
16 professionals will not be liable for any loss or damage by reason of any act performed  
17 or omitted to be performed by the receiver and the professionals in connection with  
18 the discharge of its duties and responsibilities, including, but not limited to, their  
19 withdrawal from the case under the previous section.

20 14. Receiver shall not be required to file tax returns on behalf of TS Property  
21 Management, Inc., dba Property Management Concepts, and dba Eugene Rentals.  
22 Upon reasonable notice to the Receiver, Receiver shall provide to TS Property  
23 Management, Inc., dba Property Management Concepts, and dba Eugene Rentals, its  
24 shareholders (or their authorized agents) reasonable access to the financial  
25 information necessary for TS Property Management, Inc., dba Property Management  
26 Concepts, and dba Eugene Rentals Inc., to prepare tax returns.

1 IT IS FURTHER ORDERED that Terry Shockley and all other officers, directors,  
2 stockholders, members, agents, and employees of TS Property Management, Inc., dba Property  
3 Management Concepts, and dba Eugene Rentals, are enjoined from:

- 4 1. transacting any professional real estate activities;
- 5 2. selling, transferring, disposing, encumbering, or concealing the assets of TS Property  
6 Management, Inc., dba Property Management Concepts, and dba Eugene Rentals, its  
7 clients, or Terry Shockley;
- 8 3. committing or permitting any waste of the assets of TS Property Management, Inc.,  
9 dba Property Management Concepts, and dba Eugene Rentals, or Terry Shockley; and
- 10 4. demanding, collecting, or in any other way diverting or using any of the rents or other  
11 funds relating to the property managed by TS Property Management, Inc., dba  
12 Property Management Concepts, and dba Eugene Rentals, or Terry Shockley,  
13 except as directed by the receiver.

14  
15 15/ Charles D. Carlson  
16 Circuit Court Judge

17  
18 Feb. 5, 2015

CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL DOCUMENT CONSISTING OF 5 PAGES, WHICH IS FILED IN THIS OFFICE AND OF WHICH I AM THE LEGAL CUSTODIAN

DATED 2-5-15

Circuit Court  
Lane County, Oregon

By *C. Morgan*





# Oregon

John A. Kitzhaber, MD, Governor

**Real Estate Agency**

1177 Center ST NE

Salem, OR 97301-2505

Phone: (503) 378-4170

Regulations Fax: (503) 373-7153

Admin. Fax: (503) 378-2491

Licensing Fax: (503) 378-3256

[www.rea.state.or.us](http://www.rea.state.or.us)

February 4, 2015

TERRY S SHOCKLEY  
1670 HIGH STREET  
EUGENE, OR 97401-0000

NOTICE OF INTENT – SERVED IN PERSON

Case No: 2014-876

Dear TERRY S SHOCKLEY:

Attached is the Notice of Intent regarding the revocation of your real estate license. If you desire a hearing in this matter, a written request must be made within 20 days of the issuance of the enclosed notice.

If no request for hearing is made by either you or your attorney, a default order will be entered. If a hearing is scheduled and you do not make an appearance at the hearing, a default order will be made by the Real Estate Commissioner.

If you desire to appear at the hearing, you may do so on your own or you may be represented by an attorney and, in either case, you may present evidence and witnesses on your behalf. The Real Estate Agency will be represented in this matter by an Assistant Attorney General.

Hearings are conducted in accordance with the procedures set forth in ORS Chapter 183 and the Rules of Practice and Procedures adopted by the Attorney General of the State of Oregon. Enclosed find a document entitled Notice of Contested Case Rights and Procedures, which is required pursuant to ORS 183.413.

Respectfully,

Selina Barnes  
Regulations Manager  
Regulation Division  
[Selina.M.Barnes@state.or.us](mailto:Selina.M.Barnes@state.or.us)  
503.378.4637

Attachments

cc: Attorney James Mountain

1 REAL ESTATE AGENCY  
2 BEFORE THE REAL ESTATE COMMISSIONER  
3

4 In the Matter of the Real Estate License of )  
5 )  
6 TERRY S. SHOCKLEY ) NOTICE OF INTENT TO REVOKE  
7 )  
8 \_\_\_\_\_ )  
9

10 The Oregon Real Estate Agency (OREA) is the state agency responsible for licensing,  
11 disciplining and regulating real estate licensees in Oregon. Terry S. Shockley (Shockley) is  
12 licensed by OREA to conduct professional real estate activity in Oregon.

13 1.

14 OREA proposes to take disciplinary action against Shockley's real estate license and  
15 alleges that the acts and conduct of Shockley described below constitute violations of Oregon  
16 Revised Statutes (ORS) and Oregon Administrative Rules (OAR) as follows:

17 1.1 At all times mentioned herein, Shockley was licensed as a principal broker doing  
18 business under the registered business name of Property Management Concepts (PMC),  
19 which is an assumed business name for TS Property Management Inc., registered with the  
20 Oregon Secretary of State. Shockley also conducted real estate business under the name  
21 Eugene Rentals. Eugene Rentals is an assumed business name for TS Property Management  
22 Inc., registered with the Oregon Secretary of State.

23 1.2 Shockley was selected for a mail-in clients' trust account (CTA) audit on  
24 February 5, 2013, and was required to send OREA the three-way reconciliation and supporting  
25 documents for the month of December 2012 for CTA ending in #6014 at Umpqua Bank. From  
26 the review of the reconciliation documents submitted, Shockley's audit was cleared.

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1           1.3    As part of the December 2012 CTA audit, the December 2012 bank statement  
2 submitted by Shockley for the CTA ending in #6014, showed a closing balance of  
3 \$1,988,567.24. According to the December 2012 reconciliation documents provided for the  
4 audit, there was \$1,079,742.15 in outstanding/unpresented checks, causing the adjusted bank  
5 balance to be \$908,825.09.

6           1.4    On November 3, 2014, OREA received a complaint from Ronald D. Smetana  
7 (Smetana) alleging two checks issued by PMC were returned due to insufficient funds.

8           1.5    Smetana alleged that the checks were issued from PMC's CTA. The first check,  
9 #47211, was issued on October 16, 2014, from the CTA ending in #6014, for the amount of  
10 \$2,002.00, for Smetana's owner draw. Smetana complained to PMC, and a second check,  
11 #47406, was issued by PMC on October 27, 2014, also from the CTA ending in #6014, in the  
12 amount of \$2,014.00 to cover Smetana's owner draw and the fee of the returned check. The  
13 second check was also returned for insufficient funds.

14          1.6    On January 5, 2015, OREA opened an investigation.

15          1.7    On January 23, 2015, Shockley provided to OREA bank statements, for account  
16 ending in #6014, including a bank statement for January 2013. The opening balance on the  
17 January 2013 bank statement was \$112,020.83.

18          1.8    Based on the balance of the January 2013 bank statement, OREA reviewed the  
19 records Shockley submitted for the December 2012 CTA audit. The review revealed the  
20 closing balance of \$1,988,567.24 listed on the bank statement was incorrect and appeared to  
21 have been altered.

22          1.9    On January 28, 2015, a December 2012 bank statement for CTA ending in  
23 #6014 was obtained from Umpqua Bank, with an end of the month balance of \$112,020.83 for  
24 December 2012. This confirmed the December 2012 bank statement submitted by Shockley  
25 for the CTA audit was incorrect and had been altered.

26          1.10   During his interview on January 27, 2015, with OREA investigator, Peter Bale  
27 (Bale), Shockley took responsibility for what happened and acknowledged he was the "author"  
28 of the altered bank statement which he submitted with the 2012 CTA reconciliation. Shockley  
29 said he altered the bank statement so he could send to OREA, "something you would like to  
30 see."

1           **Violation:** By presenting an altered bank statement that he knew was inaccurate for the  
2 December 2012 CTA audit, Shockley violated ORS 696.301(12) (2013 Edition), which states a  
3 licensee may be subject to discipline if they have demonstrated incompetence or  
4 untrustworthiness in performing any act for which the licensee is required to hold a license.  
5 Additionally, by his actions Shockley committed an act of fraud or engaged in dishonest  
6 conduct substantially related to the fitness of the applicant or licensee to conduct professional  
7 real estate activity in violation of ORS 696.301(14) (2013 Edition).

8           1.11 Later, in his interview on January 27, 2015, with Bale, Shockley said it was a long  
9 time since he had completed a three-way reconciliation of the CTA. He later said he could not  
10 remember ever doing one, and that it must have been over 20 years since he had last done  
11 one.

12           **Violation:** By failing to complete the required three-way reconciliations, Shockley  
13 violated ORS 696.301(3) (2007, 2009, 2011 and 2013 Editions) as it incorporates: OAR 863-  
14 025-0025(20) (11-14-08, 1-1-09, 6-15-10, 4-15-11, 9-1-11, 9-14-12, 4-1-13, 5-15-14, Editions),  
15 which states a property manager must reconcile each clients' trust account within 30 calendar  
16 days of the date of the bank statement, requiring three components for the reconciliation; OAR  
17 863-025-0025(19) (3-12-07, 4-13-07, 8-15-07, 11-15-07), which states a property manager  
18 shall reconcile each clients' trust account at least once a month; and OAR 863-025-0025(5) (9-  
19 15-06 Edition), which states a property manager shall prepare and reconcile all property  
20 management clients' trust accounts at least once each month. Also, by failing to complete the  
21 required reconciliations, Shockley demonstrated incompetence per ORS 696.301(12) (2007,  
22 2009, 2011 and 2013 Editions), which states a licensee can be subject to discipline if they  
23 have demonstrated incompetence or untrustworthiness in performing any act for which the  
24 licensee is required to hold a license.

25           1.12 On January 20, 2015, PMC staff supplied Bale with owner statements for  
26 November 2014. An estimate of the tenants' security deposits and owner reserves for  
27 November 2014 combined, prepared from these statements totaled \$945,369.80. The CTA  
28 ending in #6014 at Umpqua Bank, containing owners' funds and tenants' security deposits  
29 showed a balance of \$9,172.33 on November 30, 2014.

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4.

Shockley is entitled to a hearing on this matter. The hearing is conducted by an Administrative Law Judge from the Office of Administrative Hearings on behalf of the Commissioner. In the event that Shockley desires such a hearing, he must so notify the Commissioner, in writing, within 20 days from the date of the mailing of this notice. Submissions to OREA prior to the mailing date of this notice are not considered requests for hearing. At the hearing, Shockley may be represented by an attorney and present evidence and witnesses on Shockley's behalf. 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. A Notice of Contested Case Rights and Procedures as required under ORS 183.413-415 is enclosed with this notice.

5.

If Shockley fails to request a hearing within 20 days, waives his right to a hearing, withdraws a hearing request, notifies OREA or the Administrative Law Judge that he will not appear, or fails to appear at the hearing as scheduled, OREA may issue a final order by default and impose the above sanctions against Shockley. Shockley's submissions to OREA to date regarding the subject of this disciplinary case and all information in OREA's files relevant to the subject of this case automatically become part of the evidentiary record of this disciplinary action upon default for the purpose of proving a prima facie case. ORS 183.415(6).

Dated this 4<sup>th</sup> day of FEBRUARY, 2015.

OREGON REAL ESTATE AGENCY



GENE BENTLEY

Real Estate Commissioner

Date of Service: 2-4-2015

Notice of Contested Case Rights and Procedures  
(OAH Hearings)  
Real Estate Agency

Pursuant to ORS 183.413(2), you are entitled to be informed of the following:

1. **Time and place of hearing.** The hearing is not yet scheduled. After a hearing has been requested, you will receive notice from the Office of Administrative Hearings of the time, date and place of the hearing once the hearing is scheduled.

2. **Issues to be considered at hearing.** The issues to be considered at hearing are set forth in the notice issued by the agency, and those issues related to the notice that are properly before the presiding officer to this proceeding. You have the right to respond to all issues properly before the presiding officer and to present evidence and witnesses on those issues.

3. **Authority and Jurisdiction for Hearing.** The matter set for hearing is a contested case. The hearing will be conducted as provided in Chapter 183 and Chapter 696 of the Oregon Revised Statutes; the administrative rules of the Oregon Real Estate Agency, OAR 863-001-0000 to 863-060-0015, and the Attorney General's Office of Administrative Hearing Rules, OAR 137-003-0501 to 137-003-0700.

4. **Right to attorney.** You may be represented by an attorney at the hearing. You are not required to be represented by counsel, unless you are an agency, trust, corporation or association. If you are not represented at the hearing and during the hearing you determine that representation by an attorney is necessary, you may request a recess to allow you an opportunity to secure the services of an attorney. The hearing officer or administrative law judge will decide whether to grant such a request. The Oregon Real Estate Agency will be represented by an attorney.

Legal aid organizations may be able to assist a party with limited financial resources.

5. **Administrative Law Judge.** The person presiding at the hearing is known as the administrative law judge (ALJ). The ALJ will rule on all matters that arise at the hearing, subject to agency consideration of matters transmitted for agency decision under OAR 137-003-0635 or matters subject to agency review under OAR 137-003-0640 or OAR 137-003-0570. The ALJ will be assigned by the Chief ALJ from the Office of Administrative Hearings (OAH). The OAH consists of employees of, and independent contractors with, the Chief ALJ. The ALJ does not have the authority to make the final decision in the case. The final determination will be made by the Real Estate Commissioner.

6. **Discovery.** Discovery is permitted in this proceeding. Discovery is permitted as provided in OAR 137-003-0570, OAR 137-003-0572 and OAR 137-003-0573. You must first ask the agency, and the other parties if applicable, to provide you with copies of documents or other information relevant to this proceeding. If you are not satisfied with the response of the agency or the other parties, you may ask the ALJ to order production of the information you seek in accordance with applicable rules.

7. **Witnesses.** A witness must testify under oath or affirmation to tell the truth. The agency or ALJ will issue subpoenas for witnesses on your behalf upon a showing that their testimony is relevant to the case and is reasonably needed by you to establish your position. If you are represented by an attorney, your attorney may issue subpoenas for attendance of witnesses at hearing. Payment of witness fees and mileage to the person subpoenaed is your responsibility.

8. **Order of evidence.** A hearing is similar to a court proceeding but is less formal. Its general purpose is to determine the facts and whether the Real Estate Agency's proposed action is appropriate. The order of presentation of evidence is normally as follows:

- a. Testimony of witnesses and other evidence of the Real Estate Agency in support of its proposed action.
- b. Testimony of your witnesses and your other evidence.
- c. Rebuttal evidence by the Real Estate Agency and by you.

9. **Burden of presenting evidence.** The burden of presenting evidence to support an allegation or position rests upon the proponent of the allegation or position. If you have the burden of proof on an issue, or if you intend to present evidence on an issue in which the agency has the burden of proof, you should approach the hearing prepared to present the testimony of witnesses, including yourself, and other evidence that will support your position. All witnesses are subject to cross-examination and also to questioning by the ALJ.

10. **Admissible evidence.** Relevant evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs is admissible and will be received. Evidence that is irrelevant, immaterial, or unduly repetitious is excluded. Hearsay evidence is often admissible. The fact that it is hearsay generally affects how much reliance the agency or ALJ will place on it in reaching a decision.

There are four kinds of evidence:

- a. Knowledge of the agency or ALJ. The agency or ALJ may take "official notice" of facts based on the agency's or ALJ's knowledge in a specialized field. This includes notice of general, technical or scientific facts. The agency or ALJ may also take "judicial notice" of a fact that is not subject to reasonable dispute in that it is generally known or is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. You will be informed if the agency or ALJ takes "official notice" or "judicial notice" of any fact and you will be given an opportunity to contest any facts so noticed.
- b. Testimony of witnesses. Testimony of witnesses, including you, who have knowledge of the facts may be received in evidence.
- c. Writings. Written documents including letters, maps, diagrams and other written material may be received in evidence.
- d. Experiments, demonstrations and similar means used to prove a fact. The results of experiments and demonstrations may be received in evidence.

11. **Objections to evidence.** Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on one of the following grounds:

- a. The evidence is unreliable;
- b. The evidence is irrelevant or immaterial and has no tendency to prove or disprove any issue involved in the case;
- c. The evidence is unduly repetitious and duplicates evidence already received.

12. **Continuances.** There are normally no continuances granted at the end of the hearing for you to present additional testimony or other evidence. However, if you can show that the record should remain open for additional evidence, the ALJ may grant you additional time to submit such evidence.

13. **Record.** A record will be made of the entire proceeding to preserve the testimony and other evidence for appeal. This may be done by use of a tape or digital recorder or court reporter. The record is generally not transcribed, unless there is an appeal to the Court of Appeals. However, you may obtain a copy of the tape recording upon payment of the costs of making a copy of the tape. If a court reporter is used, you may obtain a transcript or a copy of the court reporter's transcript upon payment of a transcription fee or other fee that the parties may agree upon.

14. **Proposed Order and Exceptions.** The ALJ will issue a proposed order in the form of findings of fact, conclusions of law and recommended agency action. You will be provided with a copy and you will be given an opportunity to make written objections, called "exceptions," to the ALJ's recommendations. You will be notified when exceptions to the proposed order must be filed.

15. **Final Order.** The agency will render the final order in this case. The agency may modify the proposed order issued by the ALJ. If the agency modifies the proposed order in any substantial manner, the agency in its order will identify the modification and explain why the agency made the modification. The agency may modify a proposed finding of "historical" fact only if there is clear and convincing evidence in the record that the proposed finding is wrong.

16. **Appeal.** If you wish to appeal the final order, you must file a petition for judicial review with the Oregon Court of Appeals within 60 days after the final order is served upon you. *See* Oregon Revised Statute 183.482.

**NOTICE TO ACTIVE DUTY SERVICEMEMBERS:** Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act (SCRA). For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

**CERTIFICATE OF SERVICE**

On February 4, 2014, I served the attached Notice of Intent to Revoke, related to OREA case # 2014-876, by personally delivering a copy of said Notice of Intent to Revoke to Terry S. Shockley.

  
Regulations Division Manager

**REAL ESTATE BOARD**  
**EDUCATION DIVISION REPORT**  
**April 6, 2015**

Manager: Stacey Harrison

**Division Overview**

This division carries out the Agency's mission by providing for the advancement of education and research in connection with the educational requirements for the securing of licenses for real estate licensees. The division does this by approving pre-license and post-license courses, certifying continuing education providers, developing and maintaining exams and test items, developing informational publications and providing customer services via phone and electronic mail.

**Workload and Activity Indicators**

	<u>Sep</u>	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>	<u>Jan</u>	<u>Feb</u>
<u>Exams Administered</u>						
ALL LICENSING EXAMS Total	314	306	272	306	332	342
Broker	227	226	190	230	239	256
Property Manager	37	23	19	26	24	26
Principal Broker	50	57	63	50	69	60

Year to date examination totals for February 2015 showed a 24% increase in the number of examinations administered for the same period in 2014.

**Pass Rates**

PSI, the Agency's examination provider, implemented the following new examinations on January 1, 2013:

- Broker State: 50 items, Broker National: 80 items
- Principal Broker State: 50 items, Principal Broker National: 80 items
- Property Manager: 130 items

	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2015</u>	<u>2015</u>	<u>2015</u>	<u>2015</u>
<u>First Time Pass Rate Percentage</u>				<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>
Broker State	76	65	72	69	71			
Broker National	78	77	78	79	85			
Principal Broker (pre 1/1/13)	81	n/a	n/a	n/a	n/a			
Principal Broker State (post 1/1/13)	n/a	46	61	62	68			
Principal Broker National(post 1/1/13)	n/a	86	86	66	84			
Property Manager	72	55	61	55	65			

\*Pass rate statistics include exam candidates from all schools. Exam candidates may have completed the course prior to the new course requirements effective January 1, 2013.

The Division is researching audit processes for continuing education providers.

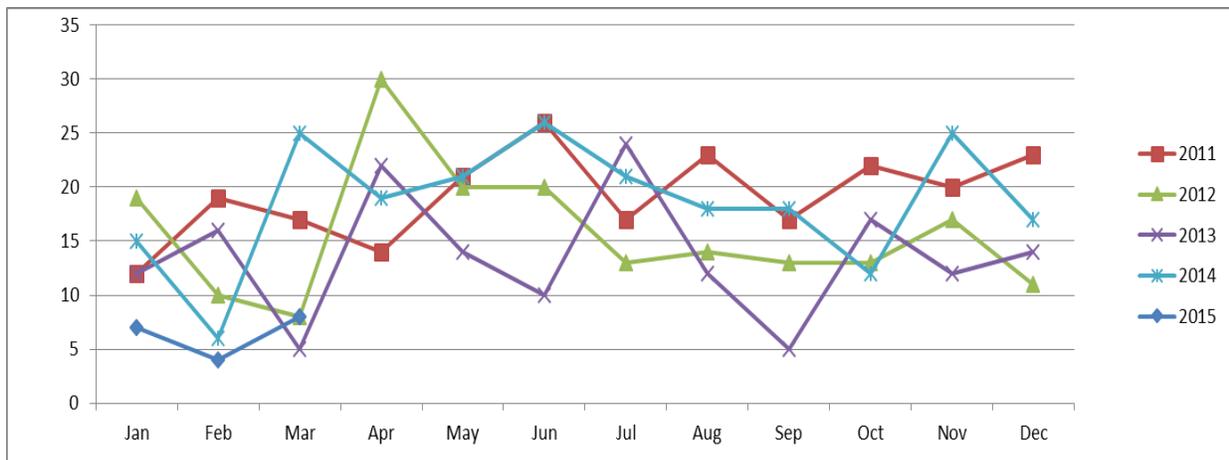
**REAL ESTATE BOARD  
LAND DEVELOPMENT DIVISION REPORT  
April 6, 2015**

Division Manager: Michael Hanifin

Administrative Specialist: Colleen Peissig

Section Overview: The Land Development Division reviews filings made with the agency related to condominiums, timeshares, subdivisions and membership campgrounds. The section reviews the foundational documents creating these properties, as well as later amendments to those documents, to verify compliance with statutory requirements. We also issue the Disclosure Statement or Public Report (depending on the type of filing) which summarizes the nature of the interest being offered for sale to consumers.

Workload and Activity Indicators: Filing activity so far in 2015 has been slower than last year. We are not aware of any decisive issue causing the slower filing rate. With the increase in filing volume we saw in 2014 (37% jump), it is reasonable to assume that one factor may be developers taking time to recapitalize by selling their interests in the current development.



Program Changes:

There have been no program changes over the last two months.

Current Projects:

GAP fit analysis on COTS software upgrades is ongoing. The section is also updating condominium filing form packets.

Analysis of section costs related to processing of condominium and subdivision filings.

**REAL ESTATE BOARD  
BUSINESS AND LICENSING SERVICES DIVISION REPORT  
April 6, 2015**

Manager: Erica Kleiner  
Accountant: Caty Karayel  
Systems Administrator: Tiffani Miller  
Efficiency Specialist: Anna Higley  
Program Analyst: Madeline Alvarado  
Licensing Specialists: Tami Schemmel and Ruslan Putintsev  
Receptionist: Sue Davenhill

Section Overview

The Business and Licensing Services Division acts as support to the Agency. This division manages budget/allotment preparation, accounting, purchasing and contracting, inventory control, facilities, payroll, special projects, Information Technology (IT), and licensing services.

Licensing services include assisting real estate brokers, principal brokers, property managers and escrow agencies as they manage their licenses using eLicense, assisting customers as they process registered business names and branch office registrations in eLicense, registering membership campground contract brokers, completing license applicant criminal background check investigations, processing escrow licensing and security/bonding files, maintaining all licensing history records, electronic processing of fees, and providing general reception services. Please see related statistics on the following page.

2015 Budget Update

Personal Services: No estimated remaining limitation;

- The Agency is fully staffed and no vacancies are expected for the remainder of the biennium.
- The Agency's Information Systems Specialist 3 position is eliminated in the 2015 budget.
- Services & Supplies: Estimated remaining limitation of \$595,269.
- Agency Budget – total savings of \$577,040 of our limitation.

Revenue: A conservative revenue estimate for this biennium is **\$5.7 million**. As of February 2015, the Agency is still on target to bring in this level of revenue. The Agency began the biennium with a balance of **\$1.9 million** (cash reserves). Five months of operating expenses would total approximately \$1.2 million. The Agency estimates that it will close the biennium with a \$1.2 million ending balance.

Updates/Future Advancements

- DAS is working on a Request for Proposal (RFP) to solicit proposals for a new office building for the Agency. The Agency toured several buildings which came about in response to a Request for Information (RFI) posted by DAS in mid-March.
- The Agency continues to work with its eLicense system vendor, Iron Data, to upgrade to the new version of eLicense. The system will include a modernized look and feel as well enhanced capabilities for ongoing system enhancements. Regression testing and debugging are ongoing.
- The functionality to allow the “anytime” entry of continuing education credits is expected to closely follow the launch of the new version of eLicense.

Licensing Statistics

*Total Licenses:*

<b>Individuals (Persons)</b>	<b>May</b>	<b>June</b>	<b>July</b>	<b>Aug</b>	<b>Sept.</b>	<b>Oct.</b>	<b>Nov.</b>	<b>Dec.</b>	<b>Jan.</b>	<b>Feb.</b>
<b>Broker</b>	<b>11,397</b>	<b>11,518</b>	<b>11,571</b>	<b>11,598</b>	<b>11,598</b>	<b>11,653</b>	<b>11,764</b>	<b>11,787</b>	<b>11,850</b>	<b>11,972</b>
Active	9,815	9,957	10,032	10,070	10,070	10,146	10,290	10,243	10,264	10,390
Inactive	1,582	1,561	1,539	1,528	1,528	1,507	1,474	1,544	1,586	1,582
<b>Principal Broker</b>	<b>6,498</b>	<b>6,491</b>	<b>6,470</b>	<b>6,446</b>	<b>6,446</b>	<b>6,427</b>	<b>6,418</b>	<b>6,398</b>	<b>6,396</b>	<b>6,393</b>
Active	6,089	6,098	6,076	6,061	6,061	6,044	6,032	5,998	5,988	5,988
Inactive	409	393	394	385	385	383	386	400	408	405
<b>ALL BROKERS</b>	<b>17,895</b>	<b>18,009</b>	<b>18,041</b>	<b>18,044</b>	<b>18,044</b>	<b>18,080</b>	<b>18,182</b>	<b>18,185</b>	<b>18,246</b>	<b>18,365</b>
<b>Active</b>	<b>15,904</b>	<b>16,055</b>	<b>16,108</b>	<b>16,131</b>	<b>16,131</b>	<b>16,190</b>	<b>16,322</b>	<b>16,241</b>	<b>16,252</b>	<b>16,378</b>
<b>Inactive</b>	<b>1,991</b>	<b>1,954</b>	<b>1,933</b>	<b>1,913</b>	<b>1,913</b>	<b>1,890</b>	<b>1,860</b>	<b>1,944</b>	<b>1,994</b>	<b>1,987</b>
<b>Property Manager</b>	<b>786</b>	<b>788</b>	<b>798</b>	<b>799</b>	<b>799</b>	<b>794</b>	<b>808</b>	<b>806</b>	<b>812</b>	<b>818</b>
Active	723	728	740	738	738	734	747	749	755	761
Inactive	63	60	58	61	61	60	61	57	57	57
<b>MCC Salesperson</b>	<b>80</b>	<b>80</b>	<b>82</b>	<b>83</b>	<b>83</b>	<b>80</b>	<b>81</b>	<b>81</b>	<b>84</b>	<b>85</b>
<b>MCC Broker</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>
<b>TOTAL INDIVIDUALS</b>	<b>18,764</b>	<b>18,880</b>	<b>18,924</b>	<b>18,929</b>	<b>18,929</b>	<b>18,957</b>	<b>19,073</b>	<b>19,074</b>	<b>19,144</b>	<b>19,270</b>
Active	16,710	16,866	16,933	16,955	16,955	17,007	17,152	17,073	17,093	17,226
Inactive	2,054	2,014	1,991	1,974	1,974	1,950	1,921	2,001	2,051	2,044

*New Licenses:*

<b>Individuals (Persons)</b>	<b>May</b>	<b>June</b>	<b>July</b>	<b>Aug.</b>	<b>Sept.</b>	<b>Oct.</b>	<b>Nov.</b>	<b>Dec.</b>	<b>Jan.</b>	<b>Feb.</b>
<b>Broker</b>	137	141	150	108	130	130	86	121	139	146
<b>Principal Broker</b>	3	5	4	3	2	5	2	4	4	4
<b>TOTAL BROKERS</b>	<b>140</b>	<b>146</b>	<b>154</b>	<b>111</b>	<b>132</b>	<b>135</b>	<b>88</b>	<b>125</b>	<b>143</b>	<b>150</b>
<b>Property Manager</b>	7	8	7	7	5	15	12	5	10	8
<b>MCC Salesperson</b>	3	0	1	0	0	0	0	0	0	1
<b>MCC Broker</b>	0	0	0	0	0	0	0	0	0	0
<b>TOTAL INDIVIDUALS</b>	<b>150</b>	<b>154</b>	<b>162</b>	<b>118</b>	<b>137</b>	<b>150</b>	<b>100</b>	<b>130</b>	<b>153</b>	<b>159</b>

Real Estate Agency  
2013-2015 Biennium  
Through February 2015

	<u>Legislative Approved Budget</u>	<u>Expected Total Expenditures for Biennium (current)</u>	<u>Expected Remaining Limitation at end of Biennium</u>	<u>Notes</u>
<b>Total Personal Services</b>	<b>5,104,693</b>	<b>5,122,922</b>	<b>(18,229)</b>	
<b>Services &amp; Supplies and Capital Outlay Detail:</b>				
Travel	99,629	97,062	2,567	Includes both instate & out of state travel
Office Expenses	388,893	160,498	228,395	Includes employee training & recruitment, office expenses, postage, office furniture, private collection company fees & VISA and Mastercard processing fees
Publicity & Publications	119,804	10,735	109,069	Includes licensing forms & packets, no longer printing Q & A books, discontinued printing of Manuals and OREN-J
Telecom/Tech Services & Support	26,814	51,714	(24,900)	
Data Processing	40,732	26,560	14,172	Server support & data processing (ie customer service survey processing and email subscription service)
Professional Services	239,625	281,869	(42,244)	Includes database contracts and maintenance agreements (including maint. agrmt for licensing system)
IT Expendable Property	146,994	0	146,994	Includes all IT related equipment
State Govt Service Charge	203,240	161,290	41,950	Includes DAS Assessments, Treasury charges, State Library service charges, etc...
Attorney General Legal Fees	225,288	143,657	81,631	
Facilities Rent & Taxes	421,009	406,715	14,294	
Agency Program Related S&S	37,258	13,917	23,341	
<b>Total Services &amp; Supplies and Capital Outlay</b>	<b>1,949,286</b>	<b>1,354,017</b>	<b>595,269</b>	
<b>Totals</b>	<b>7,063,979</b>	<b>6,476,939</b>	<b>577,040</b>	