

Oregon Real Estate News-Journal

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Commissioner
Gene Bentley

2015 Legislative Session Approaching

Gene Bentley, Real Estate Commissioner

Although the 2015 regular session of the Oregon Legislature does not start until February 2, the staff of the Oregon Real Estate Agency have been preparing for it since early 2014.

2015-2017 Budget

The Agency began preparing its budget request for the 2015-17 biennium this past summer. After it was reviewed and modified by the Department of Administrative Services for the Governor, the final Governor's Budget for the Agency was published in December. It includes the reduction of one position and a significant reduction of spending authority to realign the Agency's budget with its actual spending projections.

The Agency expects that it will present its budget in February to the Joint Committee of Ways and Means (Subcommittee on Transportation and Economic Development) in order to obtain legislative approval of the budget.

The Agency is not seeking legislative ap-

proval for a fee increase during the upcoming legislative session. Despite a decrease in income and an increase in costs over the years, the Agency has not asked for a fee increase since 1997. This is because several cost saving strategies were implemented and the use of reserve funds were conservatively managed.

Legislation

The Agency is not asking for any changes to Oregon Real Estate License Law (ORS 696). However, there is always the possibility that someone else's bill may impact the laws that govern your professional real estate activity. Agency staff will identify bills to monitor so we can alert licensees to any law changes that may affect their licensed activity.

Bills passed by the Legislature and signed by the Governor can be effective:

- Immediately upon signing by the Governor.

Please see 2015 Legislature on page 2



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2015 Legislature

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- 90 days after adjourning “sine die,” meaning the end of the Legislative session. The session is scheduled to end July 11, 2015.
- Another effective date stated in the bill.

Some bills may have different effective dates for different sections.

Rulemaking

If any bills pass that make changes to ORS 696, the Agency will determine the need to write administrative rules to implement the

bill. Notice of administrative rule making will be posted on the Agency’s website and in the *Oregon Real Estate News-Journal*.

Board Meetings

The Oregon Real Estate Board often holds its meetings throughout the state so that it can stay connected with licensees. But the Board made the decision to schedule its meetings in Salem during the 2015 legislative session. This will allow Agency staff to be available to answer any questions the Legislature may have. ■

Oregon Real Estate Board Meeting

*Monday, February 2, 2014, 10:00 a.m.
in Salem at the [Oregon Real Estate Agency](#)*

- **MEET the Board**
- **LEARN how the Board works with the Agency.**
- **LEARN how the Agency operates.**
- **TALK with Agency staff.**
- **GET your questions answered.**

**Visit the [Real Estate Board webpage](#)
for more information.**

Views from the Board

Licensees Must Be Vigilant and Cognizant of Responsibilities

Marcia Edwards, Oregon Real Estate Board

The beauty of real estate is that it is inherently a limited commodity. As my dear friend and principal broker Bob Nelson says, “They aren’t makin’ any more of it!” Because of this, investing in real estate as a homeowner, or investor, seems so easy conceptually. Historically, even if you paid too much for your real estate when you bought it, the market would take care of you through appreciation during your ownership.

My generation, Generation X (born 1961-1981), had enjoyed a consistently upward trend in real estate prices during all of our adult lives. Despite other indexes, including the prices against average income indicating otherwise (*The Economist*, <http://www.economist.com/blogs/graphicdetail/2014/02/us-house-prices>), we moved in confidence that this trend was sustainable, and that it could and would continue indefinitely. With this perceived security, we Generation X-ers acclimated ourselves to living close to the “equity edge,” leveraging and re-leveraging the equity in our homes. As a driving force in the economy, my generation passed this consumer confidence in real estate on to the next generation.

Regardless of your personal analysis of the cause of the recent recession, our participation as an industry is undeniable. If a Buyer could get a loan, we real estate licensees would gladly sell them a house. Was that wrong? Was it our responsibility as the Buyers’ agent to protect the Buyer from their own choices? We are agents and, by definition, we act on behalf of another person as instructed by that person. Review our duties as defined by [Oregon Administrative Rule 863-015-0215\(4\)](#) and the [Initial Agency Disclosure Pamphlet](#), regardless of who we represent in the transaction. Our duties to our principal include exercising reasonable care and diligence, being loyal to the seller by not taking any action adverse or detrimental to

the seller’s interest in the transaction, and advising the seller to seek expert advice on matters related to the transaction that is beyond our expertise. There are additional duties, but these three seem to be the responsibilities that may be called into question in this case.

Even more important than reflecting on our past actions, we must recognize and identify our job today — as an agent to consumers. The post-recessionary consumer is different. Because Generation X-ers and other consumers have lived to see their basic premise “real estate values always go up” unravel, how do they re-gain their confidence to buy and sell real estate again? And how do we assist them as their agents?

The post-recessionary consumer will not move without verifying their real estate purchase or sale will have a likely positive outcome. As the agent to this consumer, we will be asked to provide the data and analysis that will provide that verification or reveal the risks. Our peers in the industry who have made their livelihood by selling investment properties are intimately familiar with this role. Investors continue to expect their real estate licensee to analyze a potential investment, considering the cash-on-cash returns, capitalization rates, and long-term capital improvement/repair requirements. Residential specialists are challenged to hone these skills due to the consumers’ new market demands.

With these new demands from the consumer, real estate licensees must remain vigilant and cognizant of our responsibilities as well as our limitations as required by real estate license law in the State of Oregon. Review the duties that you have to a consumer as stated in Oregon Administrative Rules.

*Please see **Vigilant** on page 5*



Marcia Edwards

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

Complaint and Investigation Process

The Oregon Real Estate Agency receives numerous complaints each year. Forty-eight percent of those result in actual cases opened, and 50 percent of the cases opened result in administrative action.

The following outlines the Agency's complaint and investigation process.

Complaint received

Complaints must be in writing. Once received by the Agency, staff looks to see that, if an allegation in the complaint was true, would it be a violation of real estate license law.

Examples of complaints that fall outside the Agency's jurisdiction are:

- Landlord and tenant law.
- Contract law.
- "For sale by owner" transactions.
- Home owners' association disputes.
- Commission disputes.

Complaint notification letter

If the Agency has jurisdiction, a letter with a copy of the complaint is sent to the licensee. This is the licensee's opportunity to provide a written response to the complaint. Any documentation that backs up the licensee's response should be included.

Licensee's response

The Agency will review the licensee's written response. After reviewing the response, the Agency has three options:

- **Close the complaint:** This happens when it does not appear a violation of real estate license law occurred.
- **Send an Educational Letter of Advice:** If there appears to be a minor violation, the Agency will send a letter to guide the licensee on how to comply with statute and rule.
- **Open an Investigation:** The complaint becomes a case assigned to an investigator.



Open investigation

Investigators gather and analyze information and documents from licensees on both sides of the transaction, the buyer and seller, and escrow, as well as property records. They conduct interviews with anyone who can provide information on the case.

Investigators look at the entire transaction, so other violations could be found that were not part of the original complaint.

It is just as important for investigators to find evidence that no violation has occurred as there is for them to find evidence that it did.

Investigations can take several months to complete.

Investigative report

Upon completion, the investigative report is submitted to the Regulation Division Manager for review. The report only contains what was found during the investigation; the investigator does not make any determination as to whether or not a violation occurred.

Management review

The Regulation Division Manager determines if a violation of real estate license law has occurred.

If a violation has occurred, the following is considered when deciding on an administrative action:

- Was there significant damage or injury?
- Was there dishonest or fraudulent conduct?
- Were there mitigating circumstances?
- Has the licensee been subject to previous administrative action for the same type of violation?
- What administrative actions have been issued to other licensees with similar violations?

Administrative action

The Real Estate Commissioner, with the advice from the Regulation Division Manager, makes the final decision on what disciplinary action to propose.

By law, there are three options for most real estate license law violations: reprimand, suspension and revocation

Civil fines can only be issued for unlicensed real estate activity, failure to produce property management records and for violations of Oregon Escrow Laws.

Settlement offer

The Agency then sends a letter to the licensee. It lists the violations of law identified by the Agency and the proposed administrative action.

The licensee has the choice of accepting the proposed administrative action or asking for a settlement conference.

If a licensee does not respond, a Notice of Intent may be issued.

Settlement conference

A settlement conference is an informal

meeting with the licensee, the investigator and the Regulation Division Manager. The violations and the proposed administrative action are discussed.

The hope is that the licensee and the Agency can come to an agreement on the appropriate administrative action.

If an agreement is reached, a stipulated order is issued. If an agreement is not reached, then the Agency will move forward in the formal disciplinary process by issuing a Notice of Intent.

Contested case hearing

At this point, the licensee may ask for a formal administrative hearing where the case is heard before an administrative law judge (ALJ). This is called a contested case hearing.

At the hearing, the licensee and the Agency have the opportunity to present evidence and testimony in support of their positions. Upon review, the ALJ will issue a proposed order including the findings of fact, conclusions of law, an opinion and a proposed order that includes any recommended administrative actions on the licensee.

The Commissioner will review the ALJ's proposed order, make a final determination on the case and issue a final order.

Judicial Review

If the licensee wishes to appeal a final order issued by the Agency, a petition for judicial review can be made to the Oregon Court of Appeals.

Additional information can be found in [Oregon Revised Statutes chapter 183](#). ■

Vigilant

Continued from page 3

Recognize that “reasonable care and diligence” is a moving target, dependent upon business practices in our state and dependent upon the consumers’ expectations. Stay up-to-date on the tools and opportunities that you can offer in order to provide reasonable care. Encourage consumers to get additional insight from other experts specific to their

circumstances. Check in with your buyer and seller to confirm that your actions are continuously loyal to their intent and interests.

The real estate climate will continue to change throughout our career. It is our responsibility to adapt quickly to change within the boundaries and scope of our license. ■

Administrative Actions

September 24, 2014 through November 17, 2014

The Agency is required by Oregon Real Estate License Law to publish disciplinary actions. A list of those actions are listed below. The final order for each action can be viewed by clicking on the named individual.

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

Finally, please note that stipulated settlements do not necessarily reflect all the factual violations initially alleged by the Agency, and the sanction(s) may have been adjusted as part of the negotiation process. Such settlements may not, therefore, directly compare in severity/sanction with other cases.



REVOCATION

[Chisholm, Geoffrey](#) (Sisters) Broker, 201001104. Default order dated September 23, 2014, issuing a Revocation.

[Chase, Karen](#) (Saint Helens) Property Manager, 200705324. Default order dated October 27, 2014, issuing a Revocation.

CIVIL PENALTIES

Escrow Agents

[First American Title Company of Oregon](#) (Portland) Escrow Company, 850600257. Stipulated Order dated September 23, 2014 issuing \$1000 a Civil Penalty.

Unlicensed Activity

[Marquez, Teresa](#) (Redmond) Unlicensed. Default Order dated November 13, 2014, issuing a \$4500 Civil Penalty for unlicensed activity.

Expired - Late Renewals

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

[Koch, Patricia](#) (Sutherlin) Property Manager, 200311122, Stipulated Order dated September 25, 2014 issuing a \$1300 Civil Penalty for late renewal.

[Brown, David](#) (Lake Oswego) Principal Broker, 901100027. Stipulated Order dated October 23, 2014 issuing a \$2600 Civil Penalty for late renewal.

[Halvorsen, Mark](#) (Sunriver) Principal Broker, 780200997. Stipulated Order dated November 17, 2014 issuing a \$2600 Civil Penalty for late renewal.

Online Security – What We Do, What You Can Do

The Oregon Real Estate Agency takes the security of your financial data very seriously. This is how we protect your information when you use the Agency's online payment system. We have also provided you some steps you can take to further protect yourself online.

How we protect your financial information

- **Your credit card number or bank account information is not entered into or stored by the Agency's eLicense system.** When you make a payment in eLicense, you are transferred directly to U.S. Bank's secure E-Payment Services portal.
- **U.S. Bank's payment portal does not allow recurring payments.** This means your information is not saved for future payments. Your payment information is stored with U.S. Bank only to facilitate refunds. Your complete payment information is never available to the Agency.
- **You enter your credit card number or bank account information straight into U.S. Bank's payment portal.** All transactions are completed online by you, eliminating the need for you to provide sensitive payment information to Agency staff. If you need a refund, only the last four digits of your original payment information is available to staff to assist you in the process.
- **The Agency's lobby computer is available to you to access eLicense and make online payments.** This machine resides on a secure network connection that is separate from the Agency's computer system. Loaded with up-to-date security patches and anti-virus software, the computer is regularly scanned for

viruses and malware. The computer uses Secure Sockets Layer technology, so any confidential information entered is not remembered.

What you can do to protect your information

From [OnGuardOnline.gov](http://www.OnGuardOnline.gov)

- **Protect your personal information.** Know how your information will be used before providing it.
- **Know who you are dealing with.** When online shopping, look for the seller's physical address and a working telephone number.
- **Use anti-virus software and a firewall, and update both regularly.** Do your research to find software that can combat older as well as newer viruses. Make sure your firewall is installed properly.
- **Be sure set up your operating system and your web browser properly, and update them regularly.** Set the security settings as high as you can. Make sure you know when a security patch is released so that you can update your system.
- **Protect your passwords.** Keep your passwords in a secure place. Don't store them on the Internet, in e-mail, or on the phone.
- **Back up important files.** Copy important files onto a removable disk and store in a safe place.
- **Learn who to contact if something goes wrong online.** Visit www.OnGuardOnline.gov and click "File a Complaint" to see who to contact. ■

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

Mesheal Heyman, Editor

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