

Oregon Real Estate News-Journal

Official Publication of the Oregon Real Estate Agency

Volume 69, Number 1, February 2015



Commissioner
Gene Bentley

The “Clients’ Trust Account” Issue

Gene Bentley, Real Estate Commissioner

This month’s issue of the *Oregon Real Estate News-Journal* is focused on clients’ trust accounts. Some of the most common violations of law the Agency finds relate to clients’ trust accounts. Whether it’s as simple as a failure to name the bank account correctly, or if it’s more serious like conversion (in other words, stealing) of clients’ funds, problems with clients’ trust accounts keep our Regulation Division staff busy.

A large number of the violations are found through random mail-in audits. Depending on the severity of the violation, Agency staff will either give the licensee a

chance to fix the problem or forward it for investigation.

The recordkeeping requirements for clients’ trust accounts are in place to help licensees meet their legal responsibility to their clients. The monies held in clients’ trust accounts belong to the clients. By maintaining accurate and up-to-date records, licensees can at any time assure their clients, the Agency and themselves that all funds are accounted for.

Hopefully, this issue of the *Oregon Real Estate News-Journal* will assist you in making sure your clients’ trust accounts are in compliance before you are chosen for a mail-in audit. ■



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Oregon Real Estate Board Meeting

Monday, April 6, 2015, 10:00 a.m.
in Salem at the [Oregon Real Estate Agency](#)

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

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Views from the Board

The Real Estate Industry Should Reevaluate Current Practices

Warren L. "Lee" Dunn, Oregon Real Estate Board



Lee Dunn

"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.

The times have changed. And it seems that real estate practices and processes have not adapted well to the changes. Consumers have embraced new ways to conduct business, new information sources, and new government regulations and regulators. Perhaps it is time for the industry to make some changes as well.

Consumers may be moving away from traditional sources of real estate information that were provided primarily from the industry in the past. The internet now appears to be the preferred information resource used by the public, with over 90 percent of consumers using it to obtain real estate information. What is read on an internet site often is trusted and relied upon.

However, the information displayed on internet sites can be unreliable, misleading and, in some cases, illegal. This may be a problem as there is no way to know that the information displayed is valid. Once information is displayed on the net, it stays there forever and it seems that rarely is it verified for accuracy.

Most industry internet displays appear to be designed from a sales perspective, selling the features and benefits available through the firm or the licensee.

And since the consumer is looking for information rather than for marketing presentations, they will likely move on to a site that

provides the information they seek. This is unfortunate as the industry sites could be providing information that has been reviewed for accuracy and is in compliance with laws and regulations. This movement by the industry toward marketing services, and away from being a valuable resource for consumer information regarding real estate, may result in the failure of a firm or a licensee.

Internet aggregators obtain and sometimes scrape data from the websites of real estate firms and licensees. These sites are designed to capture names and contact information of consumers in order to sell that information to other parties. Some properties featured as available on these websites were sold months, or even years, prior. The objective of the aggregator is not to provide information, but to reconstitute and re-brand the data obtained from real estate practitioners.

Unfortunately, it appears that consumers may prefer to use these sites instead of industry resources for their real estate information. Information regarding methods that should be used to negotiate transactions and the related costs of services on these sites can be inaccurate and misleading. This can cause disappointment and confusion on the part of anyone that relies solely on the information displayed on these sites.

It seems that the documents used to ne-

"Consumers may be moving away from traditional sources of real estate information that were provided primarily from the industry in the past."

gotiate terms of agreement, such as the sales contracts, listing contracts and supporting documents, have become far too complicated. Forms designed from within the industry are filled with boiler plate language, page after page intended to reduce the liability of the licensee. These forms may contain language that is not easily understood and, in some cases, may have little to do with the agreement between the parties.

The result of complicated forms is that licensees and consumers have been tempted to negotiate transaction terms verbally. The change appears to be driven by ease of negotiation and time savings. This may not be the best practice and can place consumers at risk.

It might be in the best interest of consumers to design forms that are brief, easy to understand, and without verbiage that solely benefits a licensee.

The theory of practical drift emerged in a book titled "Friendly Fire" written by Scott Snook. The book is an analysis of a friendly fire accident that occurred in 1994. Although this book deals with a military situation, practical drift is applicable to real estate practices. Real estate brokerage practice relies on plans and procedures.

"People will always seek to find an easier, cheaper, faster or better way of achieving any task. This can result in the slow steady uncoupling of practice from written procedure," writes Snook. "Over time, behavior that is locally efficient and acquired in practice becomes legitimized through unremarkable repetition." Practical drift is rooted in human nature, and mandated or complicated procedures tend to increase the potential for practical drift.

A number of years ago, mandatory mediation and arbitration clauses in real estate contracts seemed like a reasonable way to resolve disputes between parties

when first included in sales agreements and other real estate contracts. Today, they may serve little purpose. These methods used to resolve issues between parties are considered by the public to be a cumbersome and unacceptable method for handling disputes.

Most disputes in real estate dealings are for amounts of less than \$20,000. Court systems often refer or suggest mediation and arbitration as an alternative to court proceedings. Would it be best for consumers to

"Should a consumer be obligated to use the method for dispute settlement preferred by the licensee who provided and prepared the sales documents?"

discuss options for remedy with their attorney in the case of a dispute? Should a consumer be obligated to use the method for dispute settlement preferred by the licensee who provided and prepared the sales documents?

Settlements in mediation and decisions in arbitration are usually confidential. This has resulted in the inability

to determine the reasoning behind decisions to guide practitioners in future risk management. In addition, violations of licensing laws or regulations may be discovered in these proceedings, and agreements of confidentiality prevent reporting of these to government regulators. With no evidence of decisions made, necessary adjustments in practices, regulations and law may not occur.

The real estate profession has always been personal. In most situations a consumer must know and like their licensee, knowing that the licensee can provide the needed services that will help them through the purchase or sale. They trust in the licensee's commitment to place them above all other interests. Real estate brokerage was, and should always be, a people business based upon relationships - a relationship based upon trust, placing the needs of the client first. A decision by a firm or licensee to move away from this foundation may place their practice in jeopardy. ■

Common Violations in Clients' Trust Account Mail-In Audits

The Oregon Real Estate Agency randomly selects clients' trust accounts (CTAs) to audit by mail. Licensees who hold selected CTAs must submit records to the Agency. The Agency then reviews the documents for compliance with statute and rule.

Several common violations were found in the CTA Mail-in Audits completed in 2014. The Agency is addressing these violations in this article to assist property managers and principal brokers in making sure their CTA records comply with law.

1. No monthly three-way reconciliation. (OAR 863-025-0025)

Licensees must complete a three-way reconciliation monthly. They must maintain the reconciliation with the supporting documents for six years. The three components of a reconciliation are:

- The check register or a receipts and disbursement journal
- The owners' ledgers or tenants' ledgers
- The bank statement

2. No documentation for check register or receipts and disbursement journal entries. (OAR 863-025-0040)

Each check written from a CTA must be documented in the check register or the receipts and disbursements journal with the following:

- Date check was written
- Check number
- Payee
- Purpose of disbursement
- Owners' identifying code

Each deposit into a CTA must be documented in the check register or the receipts and disbursements journal with the following:

- Date funds were received
- Amount of the funds
- Purpose of funds
- Identity of the person who tendered the funds
- Date the funds were deposited.

3. No detail provided for owners' ledgers. (OAR 863-025-0055)

Licensees must not only report the owners'

ledgers month end balances, but they must also provide the details for each ledger.

For each deposit of funds, the ledger must include:

- The amount of funds received
- The purpose of the funds and identity of the person who tendered the funds
- The check number, cash receipt number or a unique series of letters and/or numbers that established an audit trail to the receipt of funds
- The date the funds were deposited

For each disbursement, the ledger must have:

- The date the funds were disbursed
- The amount of funds disbursed
- The check number or bank-generated electronic tracking number
- The payee of the disbursement
- The purpose of the disbursement
- The balance after each recorded entry

4. Commingling the licensee's funds in the CTA. (ORS 696.247, OAR 863-025-0025 and OAR 863-025-0065)

Licensees mixed their personal monies with their clients' funds in the CTA. This includes running their personal rental income through the CTA to allowing banking fees to be charged to the CTA.

5. Incorrectly named CTA bank account. (ORS 696.241 and OAR 863-025-0065)

A majority of the CTAs are named incorrectly, many using the word "Clients" without an apostrophe. All CTAs must be labeled as a "Clients' Trust Account," with an apostrophe after the "s".

6. No "Notice of Clients' Trust Account" form. (ORS 696.245)

Licensees must maintain a completed Notice of Clients' Trust Account form, signed by a bank representative.

7. Failure to notify the Agency within 10 days of opening or closing a CTA. (ORS 696.241)

Licensees are required to keep an up-to-date list of CTAs in their eLicense account. This meets the notification requirement.

*Please see **Violations** on page 8*

Clients' Trust Account Questions and Answers

Q: When Do I Need a Clients' Trust Account?

A: When you are a principal broker or property manager who receives someone else's money.

You must have a clients' trust account when:

- You are managing rental real estate.
- You are holding security deposits.
- You are a principal broker who receives or handles funds for a sale and does NOT deposit those funds into escrow.

Important Note: Only principal brokers and property managers can hold a clients' trust accounts.

Q: What kind of funds can I hold in a clients' trust account?

A: Only funds you receive on behalf of your clients. This includes rent, security deposits, and earnest money. You cannot hold any other funds in the account, especially your own.

Q: What must I do when I open a clients' trust account?

A: Name the account correctly, notify the bank, and then notify the Agency.

- When setting up the account, the name of the account must include "clients' trust account." If the account holds security deposits, the name must include "clients' trust account – security deposits." This must also be on all checks for the account. Do not abbreviate or shorten.
- Upon opening the clients' trust account, you must have a bank representative sign a "Notice of Clients' Trust Account" form. This form lets the bank know that the account is a clients' trust account.
- Within 10 days of opening the account, log in to your personal eLicense account and add it to your inventory of accounts. This will meet the requirement of notifying the Agency.

Q: How do I maintain my clients' trust account records?

A: For property management, you need to keep:

- A detailed check register or receipts and disbursement journal.
- Owner ledgers or tenant ledgers.
- Bank statement.

For sales transactions, you need to keep:

- A detailed check register or receipts and disbursement journal.
- The sum of all balances of the individual trust account ledgers.
- Bank statement.

Each month, you must use these documents to complete a three-way reconciliation. Once completed, the reconciliation must be signed by you and then filed in chronological order with copies of all supporting documents.

Q: What information does a check register or receipts and disbursements journal need to have?

A: Check registers, or receipts and disbursements journals, need to have the following information:

Please see CTA Q&A on page 6

CTA Q&A

Continued from page 5

Details on all funds received, including:

- The date the funds were received, unless the date is recorded in a separate document.
- The amount of the funds received.
- The purpose of the funds and identity of the person who tendered the funds.
- The date the funds were deposited.
- The owner's identifying code.
- A daily running balance.

Details on all disbursements, including:

- The date the funds were disbursed.
- The amount of funds disbursed.
- The check number and payee of the disbursement.
- The purpose of the disbursement.
- The owner's identifying code.
- A daily running balance.

Q: What information do owner ledgers need to have?

A: You must have at least one separate owner's ledger for each property management agreement. Owner ledgers must have the following:

Details for each deposit of funds, including:

- The owner's name and identifying code.
- The amount of funds received.
- The purpose of the funds.
- Identity of the person who tendered the funds.
- The check number, cash receipt number or a unique series of letters and/or numbers that established an audit trail to the receipt of funds.
- The date the funds were deposited.

Details for each disbursement of funds, including:

- The owner's name and identifying code.
- The date the funds were disbursed.
- The amount of funds disbursed.
- The check number or bank-generated electronic tracking number.
- The payee of the disbursement.
- The purpose of the disbursement.
- The balance after each recorded entry.

Q: What information do tenant ledgers need to have?

A: Tenant ledgers must have the following:

Details for each deposit of funds, including:

- The name of the tenant.
- The legal description of the property, the mailing address of the property and the unit number, or a unique series of letters and/or numbers that establishes an audit trail to the tenant agreement.
- The identifying code.
- The amount of funds received.
- The purpose of the funds and identity of the person who tendered the funds.
- The check number, cash receipt number or a unique series of letters and/or numbers that established an audit trail to the receipt of funds.
- The date the funds were deposited;

Details for each disbursement of funds, including:

- The name of the tenant.
- The legal description of the property, the mailing address of the property and the unit number, or a unique series of letters and/or numbers that establishes an audit trail to the tenant agreement.
- The identifying code.
- The date the funds were disbursed.
- The amount of funds disbursed.
- The check number or bank-generated electronic tracking number.
- The payee of the disbursement.
- The purpose of the disbursement.
- The balance after each recorded entry.

Q: Can I allow an owner to be an authorized signer on a clients' trust account?

A: No. An owner may not deposit, hold, or disburse clients' trust account funds.

Q: Can I keep clients' trust funds in an interest-bearing bank account?

A: For property management, trust funds

Administrative Actions

November 18, 2014 through
December 10, 2014

can be placed in an interest-bearing account only if the following are true:

- The owner/client agrees.
- The bank account is federally insured.
- The property management agreement specifies:
 - To whom the interest earnings belong.
 - When the interest must be disbursed. (OAR 863-025-0025 requires that interest inuring to the property manager be disbursed within 10 calendar days from the date the bank statement on which the interest is first shown.)
 - Any pass-through fees.

For sales transactions, trust funds can be placed in an interest-bearing account only if the following are true:

- All parties agree in writing.
- The written agreement specifies to whom the interest earnings belong.
- The bank account is federally insured.

Q: Can I use a debit card for the clients' trust account?

A: No, all disbursements must be made by check or electronic transfer as outlined in OAR 863-025-0025.

Q: Can I hire a bookkeeper to maintain my clients' trust account records and conduct the monthly reconciliations?

A: You can delegate your authority to review and approve reconciliations and to receive and disburse funds for a clients' trust account or security deposits account to another as long as you develop a written policy and delegation of authority as required in OAR 863-025-0015. Despite any policies or delegation of authority, you will still be solely responsible for all funds and transactions. ■

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.

CIVIL PENALTIES

Unlicensed Activity

[Rymeski, Jay](#) (Arizona) Unlicensed. Stipulated Order dated December 10, 2014, issuing a \$750 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.

[Bump, Marlon H.](#) (Portland) Broker, 950200232, Stipulated Order dated November 19, 2014 issuing a \$300 Civil Penalty for late renewal.

[Tilton, Patricia J.](#) (Marcola) Principal Broker, 780203215. Stipulated Order dated December 10, 2014 issuing a \$100 Civil Penalty for late renewal. ■

Reporting Outstanding Checks to Oregon Department of State Lands

Are the same outstanding checks showing up each month in your clients' trust account reconciliations?

Then Oregon's Unclaimed Property Law may apply.

The Oregon Department of State Lands administers the state's unclaimed property law. State Lands provides five steps on how to comply with the law.

Step 1: Check your records for unclaimed property to report. Unclaimed property is money that belongs to a person or entity that you cannot find. For a clients' trust account, this is most likely an uncashed check.

Step 2: Determine when you need to report the property to State Lands. In most cases, money held in a clients' trust account is considered dormant after two years.

Step 3: Contact owners to return their property. You must make an effort to find the owners of funds by letter, e-mail, or phone. In your communications, you must tell the owners that their money will be sent to State Lands

if they fail to respond. Your attempts to find the owner must be completed at least 60 days before you can file a report to State Lands.

Step 4: File your report and submit funds to State Lands between October 1 and November 1. You must submit the report electronically in the format approved by the National Association of Unclaimed Property Administrators (NAUPA).

Step 5: Keep good records for three years after reporting. Maintain all records and documents related to unclaimed property reports and your efforts to find the owners. (You still must maintain all records pertaining to your professional real estate activity for six years.)

State Lands offers classes in the spring and summer on how to comply with unclaimed property laws. Check the department's website at <http://www.oregonstatelands.us> for class schedules and other information. *Editor's Note: The Oregon Department of State Lands is currently not a certified continuing education provider. This means that these classes do not count for continuing education.* ■

Questions about Oregon's Unclaimed Property Law? Contact the Oregon Department of State Lands at (503) 986-5200 or dsl@dsl.state.or.us.

Violations

Continued from page 5

8. The accounting software used does not comply with laws. (OAR 863-025-0025)

Many software programs being used by licensees to create, maintain and produce CTA records and reports don't comply with law. In most cases, licensees can manipulate the software's standard reports, or create

new reports, to meet the recordkeeping requirements. The Agency cannot recommend any accounting software programs or give advice on how to generate the required reports. Licensees are responsible to make sure that any accounting software they use can produce the required CTA records and reports. ■

Highlighting Clients' Trust Accounts

A **CLIENTS' TRUST ACCOUNT** is a bank account opened by a **principal broker or property manager**. It **PROTECTS** your clients' funds by keeping them **SEPARATE** from your personal or business funds.

Use [eLicense](#) to notify the Agency when you **OPEN OR CLOSE** a clients' trust account.

No COMMINGLING
Your personal or business funds must not be mixed with your clients' funds.

Use Oregon Department of State Lands [procedures](#) for **UNCLAIMED TRUST FUNDS**.

3-WAY RECONCILIATIONS
must be done monthly. The Agency conducts random audits requesting information from reconciliations.

Do you **MANAGE PROPERTY FOR OTHERS?** You must have **AT LEAST 1** clients' trust account for property management. You need at least 2 trust accounts if you handle **SECURITY DEPOSITS**.

**Find out more about
clients' trust accounts requirements:**

[ORS 696.241 and 696.361](#)

[OAR 863-015-0250 through 863-015-0275](#)

[OAR 863-025-0025 through 863-025-0065](#)

OREGON REAL ESTATE
NEWS-JOURNAL
Official Publication
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Mesheal Heyman, Editor
Vol. 69, No. 1
February 2015