

State of Oregon Real Estate Agency

REAL ESTATE BOARD

**Special Meeting Minutes
January 14, 2008**

MEMBERS PRESENT: Mike Graeper, Chair
Troy Costales, Vice Chair
Warren (Lee) Dunn
Byron Hendricks
Chris Hermanski
Art Kegler
Robert LeFeber
Marianne Wood

MEMBERS ABSENT: Kim Medford, excused

STAFF PRESENT: Gene Bentley, Commissioner
Dean Owens, Deputy Commissioner
Laurie Skillman, Land Development Manager
Selina Barnes, Licensing Section Manager
Becky Osborne, Regulations Division Manager
Louann Rahmig, Board Liaison
Leandra Cooley, Administrative Specialist

GUESTS PRESENT: Tim McCabe, Policy Advisor
Kelly Freels, Budget Analyst
Andrea Bushnell, Oregon Association of Realtors
Colleen Gordon, Keller Williams Realty Professionals
Lane Mueller, KW Realty Portland Premiere
Jana Jarvis, Oregon Association of Realtors
Shaun Jillions, Oregon Association of Realtors

I. BOARD BUSINESS

A. Call to Order. Chair Mike Graeper called meeting to order at 10 a.m. at the Real Estate Agency, 1177 Center Street NE, Salem, Oregon.

B. Roll Call. All Board members are present with the exception of Kim Medford. Chair Graeper stated that Ms. Medford contacted the Agency via email and indicated that her presence would be dependent on road conditions.

C. Approval of the Agenda and Order of Business. Chair Graeper approved the agenda and order of business as submitted.

D. Approval of the December 17, 2008, regular meeting minutes. Mr. LeFeber asked about the confidentiality clause in statute. Chair Graeper responded. Commissioner Bentley responded. Chair Graeper pointed out the “fiduciary standard” language in statute and explained further. Robert LeFeber asked if qualification is contractually or statutorily. Becky Osborne responded by quoting from actual statute 810 (3f) 800 (3) and concluded that statute covered the confidentiality clause.

E. Date of Next Meeting. February 4, 2008, in Salem, Oregon. Chair Graeper asked to be excused from this meeting as he will be out of state. Vice Chair Costales will conduct the meeting in his absence. Mr. Hendricks also asked to be excused.

II. PUBLIC COMMENT. Chair Graeper opens meeting for public comment. No comments. Gene advises new policy advisor from Governor’s office, Tim McCabe has replaced Peter Cogswell and asked for public members to introduce themselves. Commissioner Bentley explains state government staff members and their role to/for Agency.

III. BOARD ADVICE/ACTION

Chair Graeper referred to Draft Advertising Rule and asked Commissioner Bentley to explain legislative concepts process. No questions. Chair Graeper directed attention to handouts of legislative concepts provided in packet as Agenda Item No. III. A.

Art Kegler pointed out that one day mailing of Board packets does not allow sufficient time for Board members to receive the packets.

Byron Hendricks asked if Board is to make suggestions to/for concepts. Commissioner Bentley responded that Board’s input is welcome.

Laurie Skillman offered to go over concepts briefly in terms of organization. Commissioner Bentley gave a brief background. Laurie Skillman reviewed legislative concepts according to Agenda Item No. III. A.

Vice Chair Costales commented from a process point of view, the way these legislative concepts brought forward by a formal committee or individual legislator. The Board may not see concepts again in formal language before 2009.

Chair Graeper indicated that now would be the time for Board to offer suggestions on concepts.

Deputy Commissioner Owens noted that the legislative concepts were born out of rule making committees.

Chair Graeper addressed the legislative concepts to be carried by the Real Estate Industry – Developed by the Brokerage Working Group as follows:

- LC – 1 - Increase education, experience and testing requirements for principal real estate broker. Education work group met with PSI (testing organization that runs the tests for State of Oregon). Robert Lefeber commented that he would like to see some alternative language other than a set ten sales transactions. Commissioner Bentley responded. Art Kegler commented further. Marianne Wood commented based on her notes regarding “raising the bar”. Laurie Skillman directed everyone’s attention to the written portion of the handout and made further comments from the handout. Chair Graeper responded that “responsibility” issue is duplicative. Chair Graeper responded that the Agency has nobody to point to currently. Vice Chair Costales suggested that these six concepts should have Board recognition and endorsement, potentially, as long as it’s not in conflict with the Governor’s directive. Andrea Bushnell clarified that OAR Board meeting will take place in October. Chair Graeper asked that industry report back to REA Board.

- LC – 5 - Require high school diploma or GED for real estate license. No comment
- LC – 11- Delete responsibility of records retention for “sole practitioner.” Chair Graeper asked Laurie Skillman to expand on this. Laurie Skillman responded.
- LC – 14 – Repeal all references to “sole practitioner”. Require principal broker status to operate sole real estate practice. Chair Graeper commented that majority of people felt that “sole practitioners” is not working.
- LC – 15 – Repeal ORS 696.028 relating to Licensed Personal Assistants. No comment
- LC – 18 –Allow principal broker doing business under one registered business name to take over another principal broker’s professional real estate activity in the absence of the principal broker for a period of time. Byron Hendricks commented that this may be repetitive. Selina Barnes clarified application. Commissioner Bentley responded further. Art Kegler commented further.

Chair Graeper directed meeting to the Legislative Concepts to be Carried by the Real Estate Agency – Developed by the Brokerage Working Group. Laurie Skillman addressed these concepts in the following order:

- Agency LC-101/LC-6 – Allow principal real estate broker to create business entity solely for the purpose of receiving commission payments. Currently real estate brokers have the capability. Vice Chair Costales asked if currently only real estate brokers have the capability, what’s the difference between principal real estate broker and real estate broker? Chair Graeper responded. Laurie Skillman expressed appreciation for Vice Chair Costales’s comments.
- Agency LC-102/LC-7 – Allow certain persons in “companies” and limited liability” companies to be exempt from licensing requiof corporation.” Vice Chair asked whether or not this body of statute is exclusive (things you can’t do) or inclusive (things you can do)?
- Agency LC-103/LC-8 – Authorize commissioner to issue a limited license to an applicant. Vice Chair Costales asked how the Board fit in this process under current delegation of authority relating to license waivers and approvals? Laurie Skillman responded that this particular statute is currently strictly an authority for the Commissioner to issue a license after a revocation. The Board’s authority is for waivers from certain requirements for licensees. Vice Chair Costales asked if 130(2) is going to be modified to say “limited license to previous licensee”? Chair Graeper asked Selina

Barnes to respond. Selina Barnes responded this is one of the requirements that an applicant must go through is a background check and this is an applicant to get a license, or a brand new license, or they could have been a former licensee. This allows the Agency to grant limited license rather denial based on the background check. Byron Hendricks asked if this is a temporary thing or permanent. Selina Barnes responded that it is for a period of time. Chair Graeper responded. Selina Barnes clarified that currently the Commissioner has the authority to issue a limited license to a licensee who has been revoked and the ability to include applicants is the proposed amendment. Vice Chair indicated that he will want to know more on this concept as he is not comfortable with the policy statement and what it opens up.

- Agency LC-104/LC-9 – Clarify that real estate brokers cannot establish branch offices or designate registered business names. Vice Chair Costales asked who can?
- Agency LC-105/LC-10 – Clarify that funds placed in a clients' trust account be placed in a "licensed" escrow depository. Lee Dunn asked about out of stated licenses. Vice Chair Costales suggested that term be defined and establish exactly what "licensed escrow depository" means. Becky Osborne commented that in escrow regulatory scheme there are discussions about this issue and will look into need for clarification and embellishment. Byron Hendricks asked if there is any restriction on the licensed principal broker and if this would have an affect? Commissioner Bentley responded that we are defining the license category for the escrow accounts. Lee Dunn asked why we can't say "licensed in Oregon"? Laurie Skillman asked for a brief recess so she could research further. Laurie Skillman clarified that the only proposed addition is the term "licensed".
- Agency LC-106/LC-13 – Delete requirement to publish names and addresses of applicants whose licenses were refused in OREN-J. Delete requirement to publish addresses of disciplined licensees and require only city and state.
- Agency LC-107/LC-19 – Clarify requirements for real estate brokers who provide limited real estate services to specify the services provided. Byron Hendricks asked if a category is going to be created for limited service and then create a new agency disclosure agreement to deal with all of that? Commissioner Bentley responded that this would be the next step after legislation is in place. Robert Lefeber asked if there is an outcry for this? Bryon Hendricks responded that his personal feeling is that while there is probably not a huge outcry there are those in the industry that assume this is intended to punish somebody that's not providing full service. The real issue that would come forward is if you are going to limit fiduciary duties that are statutorily defined someone needs to know what they are doing. Art Kegler responded that the Agency's responsibility is to protect the consumer. Lee Dunn commented that setting a standard is very important and the Agency disclosure pamphlet does that and disagrees with "limited license" language being used. Deputy Commissioner Owens asked if Agency's intent is covered? Commissioner Bentley and Laurie Skillman both agree that Agency's intent is covered.

Chair Graeper indicated that Board action was probably not necessary and invited Vice Chair to expand on his questions regarding the limited license issue. Vice Chair Costales asked for clarification on the Board's role/authority vs. the Agency's role/authority when issuing limited licenses. Commissioner Bentley responded. Vice Chair Costales responded that the back drop is

having legislators and legislature in general has said the Board should become more involved, more active in the advisory role now if not in the authority role in the future. We've got a concept going forward that appears to be administrative and not the Board's. Commissioner Bentley responded and clarified what the process is currently and what is being proposed.

Lee Dunn responded that he believed some objective standards needed to be tied in and more definition. Commissioner Bentley responded.

Chair Graeper asked Commissioner Bentley if it would be helpful to have the Board's approval of the legislative concepts. Commissioner Bentley responded that it would be helpful. Chair Graeper recommended an action from the Board.

MOTION BY VICE CHAIR COSTALES TO, IN CONCEPT, ENDORSE AGENCY CONCEPTS 101, 102, 103, 104, 105, 106, AND 107 FOR CONSIDERATION FOR FILING WITH THE GOVERNOR'S OFFICE FOR THE 2009 LEGISLATIVE SESSION. No discussion.

MOTION CARRIED WITH UNANIMOUS VOTE.

Chair Graeper directed meeting to the Legislative Concepts to be Discussed with Brokerage and Property manager Work Groups Combined. Laurie Skillman addressed these concepts in the following order:

- LC-20 – Allow individuals to hold broker license and property manager licenses and each license may be associated with different registered business names. Byron Hendricks asked if there would be a restriction if you had two licenses? Commissioner Bentley responded that more work need to be done on this concept as far as details. Byron Hendricks commented further. Robert LeFeber commented. Chris Hermanski commented.
- LC-PM1 – Allow commissioner to assess civil penalty up to \$1,000 per day against a property manager for failure to produce records. Group consensus. Art Kegler responded that he thought there needed to be some date specifics so that a property manager has proper knowledge ahead of time of process. Laurie Skillman responded that there would be very specific notification to property managers. Lee Dunn commented that a standardized response time should be in place. Commissioner Bentley responded. Vice Chair Costales gave additional information regarding the appeal side of the internal workings of the Agency, equality.
- LC- PM2-Real estate broker/principal real estate broker must have a specific “endorsement” to engage in property management. Group consensus. Byron Hendricks asked if licensed real estate brokers are being asked to get additional licensing? Commissioner Bentley responded that the key here is a newly admitted property manager will be required to be supervised. Discussion.
- LC-PM3-Consider supervision of newly licensed property managers. Consider use of experience for license rather than mentoring/apprenticeship by a supervisor. Group wants discussion. Vice Chair Costales asked if anybody had a sense of the supply is of those

who will be the overseers? Lee Dunn responded that compliance with the county is the issue and can be dealt with by policy within the Agency. Selina Barnes responded that since 3 audits are currently required it would have to be dealt with in statute and administrative rules. Becky Osborne responded that there would be a staffing issue to consider and due process requirements with the license. Lee Dunn responded. Commissioner Bentley responded. Byron Hendricks responded.

Chair Graeper directs meeting to the Legislative Concepts Deleted-Developed by the Brokerage Working Group. Laurie Skillman reviews these concepts in the following order:

- LC-2-Clarify the term “compensation” in ORS 696. Becky Osborne commented on the generality and goal is to tighten up on it.
- LC-3-Use of term “fiduciary” in ORS 696.015(1) is out-of-date. Becky Osborne commented that the term is very general and hope was to tighten it up but it was decided that it wasn’t a point to open up the Agency’s mission on.
- LC-4-Clarify “within this state” in ORS 696.020(2) applies to property located within the state.
- LC-16-Authorize licenses for real estate companies/firms.
- Discussion-Limit number of times applicant may take examinations. Board agreed that a limit should be set. Byron Hendricks commented further.

Chair Graeper directs meeting to Other Concepts to Consider. Laurie Skillman reviews these concepts in the following order:

- LC-17-Authorize commissioner to issue temporary license for non-licensed owner of real estate firm to take over principal real estate broker business and conduct professional real estate activity if principal real estate broker is terminated or leaves the company. Byron Hendricks commented. Robert LeFeber asked if it would be more appropriate to issue a temporary principal broker’s license to a broker who at least has experience in the business? Laurie Skillman clarified that these cases were strictly where there was a sole principal broker. Robert LeFeber responded. Chair Graeper responded. Commissioner Bentley responded.
- LC-12-Clarify that a grounds for discipline is failure of a principal real estate broker to supervise a real estate broker because 696.301(15) does not provide such authority.
- Errors and omissions insurance/surety bonds as a requirement for principal real estate brokers. Discussed as part of LC-1. Tabled for further information from Oregon Association of Realtors.

Chair Graeper asked Commissioner Bentley if action was required from the Board. Commissioner Bentley replied that Board should give their input. Chair Graeper asked for further comments. Byron Hendricks commented.

B. Board review and recommendations on proposed temporary advertising rule OAR 863-015-0125. Board action required. Commissioner Bentley gave a brief background of draft rule and asked Board members for feedback.

Byron Hendricks commented regarding team leaders and that consumers may not understand level of authority. He also commented regarding the language “immediately noticeable and conspicuous in all advertising” that there should be more definition. Art Kegler responded. Bryon Hendricks further commented on the meaning of principal broker. Lee Dunn responded. Byron Hendricks commented further. Commissioner Bentley responded with clarification points. Byron Hendricks responded. Commissioner Bentley responded that the issue is who is the subordinate? Vice Chair Costales asked what is the definition of “imply?” He suggested that “state” should be used instead. Laurie Skillman clarified that this rule is two years old and some language has been in place for that length of time. Commissioner Bentley commented that being broad covers intent with advertising. Lee Dunn commented that language in D could be used to clarify C. Commissioner Bentley responded. Further discussion. Laurie Skillman commented that whole concept of rule comes from statute. Robert LeFeber asked if board members could get a copy of all the rules and laws. Commissioner Bentley responded that Agency will provide these to Mr. LeFeber. Further discussion. Laurie Skillman responded that (4) covers the issue of what name is to be used in advertising. Chair Graeper responded.

Byron Hendricks asked for more clarification on 9(a), internet advertising. Commissioner Bentley responded. Bryon Hendricks asked for further clarification. Art Kegler responded. Robert LeFeber asked if in (3), does it have to say State of Oregon? Commissioner Bentley responded. Further discussion.

Laurie Skillman addressed (9) as it deals with electronic communication and specifies that “in addition” is the key phrase. Commissioner Bentley responded that the public needs to understand who they are dealing with and the brokers are being put in the position to be responsible for this. Chair Graeper responded. Byron Hendricks commented

Deputy Commissioner Owens pointed out that rule #4 does have the words necessary for clarification. Lee Dunn suggested language. Laurie Skillman responded with suggested revisions. Bryon Hendricks responded and recited his last concern with item 11-D being that it is unclear if every licensed persons name is required to be listed. Laurie Skillman clarified that ALL team members must be listed. Byron Hendricks asked for more clarification. Marianne Wood asked how this would affect those who don’t want to list names. Lee Dunn expressed concern with number 8. Laurie Skillman responded to Mr. Dunn Lee Dunn commented further. Laurie Skillman responded. Further discussion. Robert LeFeber and Vice Chair Costales both asked if rule applied to strictly Oregon licensees? Commissioner Bentley responded that discussions are ongoing regarding this issue. Marianne Wood asked if item number 5 is referring to written documentation? Selina Barnes responded that broker must have proof of form of notification. Lee Dunn responded. Further discussion. Robert LeFeber addressed definition of advertising and suggested that clarification be implemented. Commissioner Bentley responded. Laurie Skillman responded with further clarification. Byron Hendricks responded that C should be removed. Commissioner Bentley responded. Vice Chair Costales addressed changes suggested for C, D, and 9. Laurie Skillman clarifies suggested revisions.

MOTION BY VICE CHAIR COSTALES TO ADOPT DRAFT RULE 2C, D, AND SECTION 9.

MOTION CARRIED BY UNANIMOUS VOTE.

IV. REPORTS Discussion of the board's recommendations and proposals for legislative concepts for education. Chair Graeper reported that work group will be meeting on 1/28/08. Chair Graeper also reported that additional information was obtained from Psychological Services, Inc. (P.S.I). Commissioner Bentley requested that the Board find a representative for the Escrow Work Group. Byron Hendricks indicated that he would volunteer in the event that no one else is available.

V. NEW BUSINESS. None.

VI. COMMUNICATIONS - None

VII. ANNOUNCEMENTS.

A. Governor's Food Drive the month of February. Deputy Commissioner Owens explained the process and asked Board for support and their participation.

B. Next regular Board meeting February 4, 2008, in Salem, Oregon.

VIII. ADJOURNMENT

Respectfully submitted:

Respectfully submitted:

GENE BENTLEY
COMMISSIONER

TROY COSTALES
BOARD VICE CHAIR

Exhibits distributed:

- A. Legislative Concepts Developed by Working Groups – January 10, 2008, *Agenda Item No. III.A.*
- B. Draft Temporary Advertising Rule to Become Effective In January 2008-Date of Draft-January 9, 2008, *Agenda Item No. III.B.*
- C. Education Requirements Table, *Real Estate Board Exhibit 1*