



Oregon

Theodore R. Kulongoski, Governor

Real Estate Agency

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State of Oregon Real Estate Agency

REAL ESTATE BOARD

Regular Meeting Minutes

December 7, 2009

MEMBERS PRESENT: Art Kegler, Chair
Warren (Lee) Dunn, Vice-Chair
Michael Graeper
George Slape
Chris Hermanski
Kimberly Medford
Marianne Wood
Robert LeFeber
Byron Hendricks

STAFF PRESENT: Gene Bentley, Commissioner
Dean Owens, Deputy Commissioner
Selina Barnes, Regulation Division Manager
Laurie Hall, Licensing Division Manager
Stacey Harrison, Education Division Manager
Laurie Skillman, Land Development Division Manager

GUESTS PRESENT: Bill Gaffney
Lane Mueller, Keller Williams Realty
Sam Shiwall
Ryan Feigelson
Eric Krueger
Jana Jarvis, Oregon Association of Realtors
Kim To, Legislative Fiscal Office
Tamara Brickman, DAS Budget and Management
Danny Santos, Governor's Office



I. BOARD BUSINESS-Chair Kegler

- A. Call to Order.** Chair Kegler called the meeting to order at 10:10 a.m. at the Real Estate Agency office at 1177 Center Street N.E., Salem, Oregon.
- B. Roll Call.** All members were present.
- C. Approval of the Amended Agenda and Order of Business.** The amended agenda was approved as submitted.
- D. Approval of the October 5, 2009, regular draft meeting minutes.** The minutes were approved as submitted.
- E. Election of Chair and Vice-Chair for 2010.** Byron Hendricks and Art Kegler were nominated as Chair. Mr. Kegler was elected. Byron Hendricks was nominated as Vice Chair. There were no other nominations. Mr. Hendricks was elected.
- F. Date of Next Meeting:** February 1, 2010.

II. PUBLIC COMMENT - None

III. REQUESTS FOR WAIVER-Chair Kegler

- A. Waiver Request Log.**
- B. Ryan Feigelson requests experience requirements waiver for a sole practitioner license (provided in packet).** Mr. Feigelson stated that he is an Oregon State University graduate with a business management degree. He began working for a commercial firm in Portland, Oregon in 2006 and in October he decided to separate from the firm to obtain a sole practitioner license. At time of separation, he was 10 days short of the three-year experience requirement. Although his experience has been mainly multi-family transactions, he has handled a wide variety of transactions. Byron Hendricks asked Mr. Feigelson about his future intentions to have other brokers work with him. Mr. Feigelson responded that he intends to work on his own. Commissioner Bentley asked Mr. Feigelson why he chose to request to have the 10 days waived rather than waiting. Mr. Feigelson indicated that it was a timing issue. He also stated that his focus will be on commercial transactions.

**MOTION TO APPROVE REQUEST FOR WAIVER BY BYRON HENDRICKS.
MOTION CARRIED BY UNANIMOUS VOTE.**

- C. William Gaffney requests experience requirements waiver for a principal broker license (provided in packet).** Mr. Gaffney requested approximately two months of the three-year experience requirement be waived because he is starting a new residential brokerage and would like to begin January 1, 2010, to coincide with the company's fiscal year. He was originally licensed in 2004. He was inactive about 18 months when he was concentrating on condominium conversions. He felt that as an owner and developer he obtained considerable knowledge. Byron Hendricks asked Mr. Gaffney to explain the primary difference of a fiduciary to clients versus being a principal. Mr. Gaffney felt that

was one of the strengths he brings to the business. Being able to be a principal in many transactions by putting oneself in the role of the principal or the buyer or the seller, you have been there. Marianne Wood recognized that Mr. Gaffney spent several years as a developer and a principal and now switching to a residential brokerage. She asked if he was planning to sell houses. Mr. Gaffney responded that residential is anything other than commercial, so it would include condominiums as well.

MOTION TO APPROVE REQUEST FOR WAIVER BY BYRON HENDRICKS. Mr. Hendricks stated that while inactive as a principal he gained experience and would have met the experience requirements had he stayed licensed through the process. Ms. Hall was asked if the change to principal broker would be effective immediately or not until January 1, 2010, since he has not supervised anyone. Michael Graeper asked if Gaffney could apply as sole practitioner. Deputy Commissioner Owens asked Ms. Hall to explain the process. Mr. Gaffney could submit a "change license category" form and then he would automatically become a principal broker on January 1. Mr. Gaffney indicated that he would go through the process to become a sole practitioner as soon as possible. Laurie Skillman suggested that the board might want to revise the waiver request to waive the request for a sole practitioner rather than principal broker license. Kim Medford asked Mr. Gaffney to formally request the board to grant his request to waive the experience requirements for a sole practitioner license and Mr. Gaffney formally made his request.

MOTION CARRIED BY UNANIMIOUS VOTE

D. Eric Krueger requests experience requirements waiver for a sole practitioner license (provided in packet). Eric Krueger stated that he was applying for a sole practitioner license because he has a four-year bachelor's degree from the University of Arizona in two real estate related fields, one in finance with emphasis in real estate as well as a Regional Development Degree for the practices of commercial and economical development of land. He has two years of commercial real estate experience at a national development firm called OPUS Corporation. The company just filed for bankruptcy so that "terminated" his licenses in Arizona, California, and Oregon. They are all inactive at this point so requesting a sole practitioner while searching for a job to practice his profession. Byron Hendricks asked why he doesn't license with a principal broker. Mr. Krueger answered that he planned to switch his license to the NW office but they were acquired by someone else. Hendricks asked why he was resistant to becoming a principal broker with an established business and beginning a real estate career here in Oregon. Mr. Krueger responded that there is no resistance but he hasn't found a "proper fit." He has been talking to different companies and organizations but hadn't found the right one. Bob LeFeber asked about the type of work done at OPUS. It sounds like mainly development activity and not necessarily transaction work. Mr. Krueger explained that OPUS was set up into three different divisions: construction, architecture, and development. He was in development which involved all the site acquisition (leasing and sales) so had "hands on" experience with leasing and the sale of over a million square feet of office, industrial and mixed-use. Mr. LeFeber asked if when leasing if this was

primarily using outside brokers and supervising them, or doing the direct leasing. Mr. Krueger responded that in order to keep a good relationship with the brokerage community, outside brokers were hired. However, all of our development team was required to have a real estate license so were very hands on in that experience. A lot of times we would take on the leasing transaction and wouldn't have the brokers present. We would negotiate leases with our clients' attorneys and a lot of times the transaction was run through the brokerage for a legal review so we could keep the relationship with the commissions and so forth but we were present. LeFeber remarked that there was no detail about the transactions that you did. Krueger answered that it was primarily in office industrial and mixed-use leases. Transactions ranged from 3,000 square feet to 150,000 square feet. In building sales, \$5 million product type with the most substantive one \$80 million. Mr. Hendricks asked if in those transactions if he was the broker in charge or the sales associate in charge of those transactions, or were you working on a team? Mr. Krueger replied that the team associate would probably be one member of OPUS, usually one or two members of the brokerage community, and the client. Chair Kegler asked if the license time here in Oregon seven months from February 2008 with OPUS. Mr. Krueger answered that he was in Phoenix, licensed with OPUS in Arizona, California and Oregon. He wasn't permanently located here at that time. Mr. Kegler asked how long he has been in Oregon. Mr. Krueger responded three months. He indicated he had not done any transactions in Oregon. He actually was licensed since 2006 in California. There was a year of inactive experience and since May of 2007, active status. He passed the test in Oregon in 2007, was one year inactive, and then eight months active.

MOTION TO DENY REQUEST BY BYRON HENDRICKS. Byron Hendricks moved to deny based on lack of experience representing others. Work on getting more transactional experience and then move forward.

MOTION CARRIED BY UNANIMOUS VOTE. Chair Kegler recommended Mr. Krueger find someone here in Oregon to associate with for a period of time.

IV. BOARD ADVICE/ACTION-Commissioner Bentley

A. Escrow Rules Update. Laurie Skillman explained that there was concern about the wording for background checks and the timing of the ability to apply for a person who is going to be in a management position so we made some modifications to the rules for SB 141. In the language for criminal background check we used the terminology that we used for brokers, principal brokers, and property management licensees. For escrow, it really is a criminal background check. We require fingerprints and a criminal background check on individuals with greater than five percent ownership in the escrow agent and corporate officers in charge of escrow operations. SB141 took pieces of licensing that were in the escrow laws and stated that the agency shall adopt rules for licensing. We expanded that because these individuals are not licensees. The escrow agent is the licensee and these people are people who are the individuals who basically are in charge or own the company. We don't do anything beyond a criminal

background check and all our criminal background check rules are in Division 5. The concern was that the agency could delve into all kinds of other issues besides criminal background so we narrowed the focus. SB141 also had provisions for criminal background checks when a new person took ownership in the company or when there was a change of the original corporate officer in charge of escrow operations. This parallels the license application. When an escrow agent applies for a license, they submit information about the entity and how it is going to run and then we do criminal background checks on those two types of individuals. When there is a change we may not find out about it for several months after the fact. Since it was a requirement for approving the original license, we included language that a person needs to pass a criminal background check before they buy into the escrow agent. That works for people who are going to have an ownership greater than five percent but for individuals in charge of escrow operations, it was extraordinarily challenging for an escrow agent to get what we would call pre-approval. We modified the rule to say that if you are going to have an ownership interest, you must be pre-approved, fill out an application form, do the criminal background check, have criminal background check clearance and then the change is approved. For corporate officers or individuals in charge of escrow operations we allow the change but an application must be submitted within five business days of the date of the change along with fingerprint cards. If that individual passes the criminal background check clearance, they are good to go. If they don't then the escrow agent must immediately remove that person from escrow operations. One change is basically housekeeping and the other is a little more substantive.

B. Education groups. Commissioner Bentley reported that the Agency is planning to do basically three things in the education groups which are the board's responsibility, and someone from the board needs to be involved.

1. Three-hour course (Lee Dunn volunteered)
2. Review of test pool of questions monitored by PSI (Bob LeFeber volunteered)
3. Test questions for broker to principal broker (Byron Hendricks volunteered)

C. Issues for future rule review. Commissioner Bentley reported that the Agency is gearing up to do rule reviews and to deal with a number of issues that were covered in the previous rule review in 2007-08. Mr. Bentley distributed a list of issues (**Exhibit A**) and asked the board if anything else needs to be added. The list was broken down by broker/principal broker issues, property management questions, and questions that deal with both. There are two tentative meeting dates in January and February. Legislative concepts need to be submitted to the Governor's office by April 1. We are going to have 15 to 16 industry people involved and seven or eight from the Agency.

Mr. Bentley introduced Danny Santos from the Governor's office. Mr. Santos commended the board for traveling to other locales for meetings. The board should not be impacted by the February session as the session will be primarily about general fund budgets.

V. NEW BUSINESS-Chair Kegler

A. 2010 Board Meeting Calendar. Chair Kegler referred to requests from boards for visitations for the 2010 board meetings. Commissioner Bentley proposed the following:

- February 1, 2010-Springfield
- April 5, 2010-Roseburg
- June 7, 2010-Bend
- August 2, 1010-Wallowa
- October 4, 2010-Florence
- December 6, 2010-Hood River

Mr. Graeper asked if the February 1 board meeting would conflict with the start of the legislative session. Mr. Santos advised that the first day would be an organizational day for them. Graeper pointed out that the board recently met in Hood River and Florence, and meeting in Salem is not a bad idea. Mr. LeFeber agreed particularly since one of our requirements is to respond to people's waiver requests. He felt that the board should have at least two meetings in Salem during the year and recommended omitting both Florence and Hood River. Ms. Medford agreed, particularly since the board was there recently. We could ask them to invite us in 2011, which will be even more challenging because we will be back in another full legislative session. The commissioner indicated that was one of the thoughts about trying to do all of them in 2010 because in 2011 the February and April meetings ought to be in Salem. Ms. Medford suggested scheduling Florence and Hood River in 2011 after session is over, and not solicit any invitations for that year. The commissioner feels that the more we are seen by our licensees the better, so it is a "philosophical" question rather than a "circumstance" question. Mr. Hermanski supported going. He was impressed that people drove to Baker for waivers, so felt if they are motivated they will travel to "reasonable" locations such as Roseburg, Hood River, or Springfield. Mr. Kegler suggested that if the board decided not to do Mid-Columbia (which is Hood River) or Florence in October and December, we could rearrange the schedule. Mr. Hendricks felt one-half of the board meetings should be in Salem.

Deputy Commissioner Owens advised that we included in the budget for one-half to three-quarters of the meetings to be out of town. We are very accessible as an agency to the I-5 corridor from Portland to Eugene. We do not typically have people drive from Hood River, Florence or other outlying communities. We had a very strong showing in both of those places. We like having managers accessible and recognizable to those people with whom they are doing business. We have had many favorable comments from licensees in those areas. We understand it is taxing on people to rearrange their schedules and travel to be overnight and try to be mindful of that.

B. List of Associations interested in hosting meetings for 2010.

- Mid-Columbia Association of Realtors
- Roseburg Board
- Central Oregon Association of Realtors
- Wallowa County Board of Realtors
- Springfield Board of Realtors
- Central Oregon Coast Board of Realtor

MOTION TO ACCEPT COMMISSIONER BENTLEY'S PROPOSED MEETING SCHEDULE FOR 2010 BY CHRIS HERMANSKI. Discussion. Ms. Medford agrees as two of these are on the I-5 corridor, which simplifies our access. Mr. Owens pointed out that we had several people last year travel from the eastern or western part of the state to Salem to appear regarding waiver requests.

MOTION CARRIED WITH 8 AYES AND 1 NAY

VI. COMMUNICATIONS-Chair Kegler-Administrative Actions Summary. Discussion. Mr. Hermanski asked where the money goes. The commissioner advised the General Fund.

VII. OREGON REAL ESTATE NEWS JOURNAL-Chair Kegler. Bob LeFeber will submit an article for June 2010 issue and Kim Medford for the September 2010 issue. Mr. Graeper has been making some notes of the differences between what the board was like in March 2001 and what the board meetings are like compared to today. He wants to share those differences at his last meeting and could also submit it for the March issue of the *OREN-J*.

VIII. REPORTS

A. Chair Kegler

1. **Byron Hendrick's report on "Vision of Future" Committee.** Mr. Hendricks distributed a brief report (**Exhibit B**). The key issue on the vision of the future appears to be in place. Now how do we apply this to what it means to licensees and the Agency, and what might the Agency be able to put in the *OREN-J* or e-mail information directly to licensees to point out things to be aware of? No one has a crystal ball, but we are all facing changes in technology. The movement to electronic storage of documents, full electronic document processing, and the fact that some organizations only accept a fax record rather than an e-mail record because of confidentiality issues are the things that probably should be addressed from the Agency's standpoint to be more helpful. Mr. Hendricks went on that he would be glad to have a discussion but would not be supportive of creating a blog or doing activity from an Agency-based standpoint because it is already there. Mr. Graeper concurred and added it would be best to put in the *OREN-J* the resources that are currently available for trends in the future, and this is certainly one of them as well.

Commissioner Bentley's perspective is that a lot of it deals with communication and forms of communication. He wonders if watching any of the programs that are looking into the future and seeing things like Craig's List, how would brokerage be performed in the future where people can interact with one another? You see various kinds of devices to come to economic agreement on how to do things, if that is going to impact the way brokerage is conducted now. There will come a point in time when an individual wanting to buy a house "googles" for a house from 3,000 to 4,000 square feet, etc. and gets all sorts of information about people who have entered their particular property. Is that hard to get around the process of brokerage as we know it? And is that possible or is that a dream? Mr. Hendricks responded that it is there right now. If you did that right now you would be inundated. I think the key issue for brokerage is how we create value. I am not talking about this from a regulatory issue but it does affect regulation because you have seen that in tough economic times, licensees losing their homes and cars. It will create more work for the Agency as people come out of a more structured or regulated environment where you have people with substantial licenses on the line, substantial investments on the line, going to this "wild, wild west" mentality. The commissioner reported that we are currently seeing a number of people doing things like that. His concern is how to protect the public. If a person who is not knowledgeable about the process of selling or buying a piece of real estate, there are all sorts of predatory people out there who will help them in fashions that they do not want or need. Mr. Bentley is trying to get a vision whether there's a high degree of probability that this is where everything is going and we need to figure out how to adjust things regulatorily.

Ms. Medford commented that she thinks it is a brilliant point and thinks it is happening in every professional industry. Why should people hire you and pay you to do something? She has the same problem in her industry. If she wants to create a will or trust she can go to legal.com, print the forms, and sign them up, but when a family member is deceased and it has to be dealt with, maybe it is right and maybe it is not. It is the same challenge and we are being affected many ways by our consumer regarding rate structure, certainty, how much transactions are going to cost, not based on selling price percentage, or it is not going to be the rate structure for brokers just like the hourly rate for an attorney is no longer what anybody wants to pay. She did not know if the Agency is the right place to deal with it. She thinks it is an industry issue.

Commissioner Bentley wanted feedback from people who are very knowledgeable (the nine of you) on where you see things going, recognizing that it may be "fuzzy" the further in the future. Mr.

Hendricks thinks that looking at the "big picture" roughly 13 to 14 percent of the population currently deals with sales by owners. He felt that the reason the other 86 percent are with brokers is big transactions that they do not understand. They are at a level of conscious incompetence, needing a professional to help. Mr. Slape agreed. For example, electronic commerce started out as "green sand" and has built to where it is now. The public is being trained to use electronic commerce as their way of doing business. Mr. Owens expanded on Mr. Slape's comments. Will there ever be an expedia.com for real estate? We have Craig's List and Google and many other things but they still connect you with a person to do a transaction. Does the industry see, in the future, some way that those products will become more available and more sound? Mr. LeFerber commented that the residential and commercial pieces have some differences in that regard. Investment properties are sold all over the world through electronic commerce. One does not approach buying a home from an investment standpoint but more people should. That is where everything is going from investment sales. We want to be local eyes and ears for people in Oregon but other states are looking to Oregon, not specifically our market so I can represent them here in Oregon, but I am not going to be an expert on looking at investment properties elsewhere outside of my jurisdiction and I do not feel comfortable. Chair Kegler added that the client is probably a little more educated than the average home buyer or average residential person out there. The service that the realtor really does is to help them through all of the ramifications of buying a home and the legal aspect of it. How that is going to evolve and how it is going to involve the buyer or seller to become more educated, he does not know. Buyers start on the internet, but when they get ready to do things then they usually engage a realtor. How that is going to evolve is what Gene is looking for. Mr. Dunn commented that we do not want to over-regulate and stifle the changes that are going to come in this industry. As a board we need to take a look at the changes that are occurring and rather than react to them, at least be prepared as there are going to be some major transitions in the not too distant future.

Mr. Hendricks commented that the Agency is set to regulate people that are doing this for others for a fee. "For sale by owner" has been going on and will continue. Mr. Kegler did not think there is a simple answer. The commissioner expressed hope that we would end up with perhaps four to six bullet points in five years, in 10 years, etc. He recognizes that the further into the future one tries to predict, the more difficult it is, but at least it gives one a sense of where we are going. This dialog has been beneficial.

- B. Commissioner Gene Bentley.** Commissioner Bentley introduced Tamara Brickman, Budget and Management Analyst and Kim To, Legislative Fiscal Office analyst.

1. **PSI.** The board asked us to explore with PSI (our testing service) the prospect taking over the responsibility of administering our pool of test questions. We met with a representative and they are prepared to do so. PSI currently administers several real estate agencies throughout the country and they are one of the two major players in the marketplace. Basically they do a job analysis by experts in brokerage or in property management, and identify the knowledge needed to be initially in the business, or if they're moving from broker to principal broker to provide the basis for developing the test. It is the responsibility of the board to maintain that pool of test questions and we would move from using our pool of questions, which have not been reviewed in a couple of years, to using PSI's pool of questions. It would be an ARELLO certified test.
2. **SB 140, SB 141, HB 2910.** A public hearing was held and rules are planned to be in effect January 1, 2010.
3. **January/February rule review.** Three board members are going to participate and if there are other issues to put on the agenda, let the commissioner know.
4. **ARELLO Timeshare Registry Agreement.** This is a centralized database (**Exhibit C**) for people who are in the timeshare industry where they can submit to a single entity of various regulatory agencies that oversee timeshares.

C. Agency Division reports/Deputy Commissioner Dean Owens (reports included in packet)

1. **Regulation Division-Selina Barnes.** Ms. Barnes reported the Investigator 2 position was filled by Michael Thornicroft. We have made some minor changes to how we handle a complaint when it is received. In the past, we have sent out a letter requesting a response. Now specifically requesting that response includes a written response from the licensee involved. In most cases we receive that and it helps us as we are hearing directly what occurred rather than hearing it second hand or from a principal broker. Once a complaint merits further investigation, it is assigned to an investigator. They investigate the complaint issues and write a report. We have added into that report a reference to the statute or rule that applies to the action being investigated. Therefore, any reader picking up the report can see what applies. Currently, we are testing a time tracking system called "HARVEST." This will not only act as a management tool but will track our statistics, the number of days from the time we receive a complaint until we have completed an investigation.
2. **Licensing Division-Laurie Hall.** The division is focusing on phone calls about the sole practitioner change. Online renewals are holding steady, right around 45-46 percent. The number of licensees is down a little.
3. **Education Division-Stacey Harrison.** The year-to-date totals for October 2009 showed a 35 percent decrease in the number of exams administered for the same period in 2008. We have taken about 500

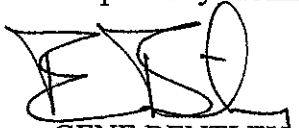
public inquiries per month, mostly in the form of e-mails and phone calls. Our client trust account audits for the third quarter were mailed October 1 and all the 100 were accounted for. We hired a compliance specialist, Claressa Kayman. The addition of Claressa will allow us to double the client trust account audits we will be conducting.

4. **Land Development Division-Laurie Skillman.** Land development filings are lower than they were in 2005. For the condominiums that have been created recently, the developers still hold 95 percent of the units.
5. **Administration/Information Systems-Dean Owens.** Erica Kleiner was hired as the Administrative Services Division Manager. We are finalizing the request for proposal to be issued from DAS procurement for a new database and move ahead in mid-January.

IX. **ANNOUNCEMENTS.** Date of Next Meeting: February 1, 2010 at 10:00am (location to be announced). Meeting will be held in Springfield, Oregon.

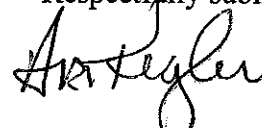
X. **ADJOURNMENT**

Respectfully submitted:



GENE BENTLEY
COMMISSIONER

Respectfully submitted:



ART KEGLER
BOARD CHAIR

Exhibits distributed:

- A. Issues for Rules Work Group Review, *Agenda Item No. IV.C.*
- B. Vision of the Future, *Agenda Item No. III.A.1*
- C. ARELLO Timeshare Registry, *Agenda Item No. III. B. 4.*

