

Notice of Amended Agenda
OREGON REAL ESTATE BOARD
Regular Meeting Agenda
Monday, April 7, 2008
Eugene Association of Realtors
2139 Centennial Plaza
Eugene, OR 97401
(map provided in packet)

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

I. BOARD BUSINESS

- A. Call to Order
- B. Roll Call
- C. Approval of the Agenda and Order of Business
- D. Approval of February 4, 2008, regular meeting minutes and March 31, 2008, special meeting minutes
- E. Date of the Next Meeting: June 2, 2008 in Florence

II. PUBLIC COMMENT

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

III. REQUESTS FOR WAIVERS

- A. Waiver request log.
- B. James McNamee requests experience requirement waiver for a sole practitioner license.
- C. Mary Strong requests experience requirement waiver for a sole practitioner license.

IV. BOARD ADVICE/ACTION

- A. Joint Education Task Force recommendations (provided in packet)
- B. Approval of Background check rules for public hearing (draft rules and cover memo provided in packet)
- C. Approval of advertising rule for permanent rulemaking (copy of temp. rule with cover memo provided in packet)

V. NEW BUSINESS

- A. Broker transfers – Byron Hendricks (letter from Mr. Hendricks provided in packet)
- B. Electronic record keeping – Bob LeFeber

VI. COMMUNICATIONS

Administrative Actions Summary

VII. REPORTS

- A. Chair Graeper
 - 1. OREN-J article
 - 2. Locations for future board meetings
- B. Commissioner Gene Bentley
 - 1. Rule review update
 - Proposed Legislative Concept 919/2 – Property Management licensing and authorization to engage in property management (provided in packet)
 - 2. Board members to visit Agency divisions
 - 3. Governor’s Oregon Food Drive
- C. Agency section/division reports/Dean Owens
 - 1. Land Development Division
 - 2. Licensing Division
 - 3. Education Division
 - 4. Regulation Division
 - 5. Administration/Information Systems Division
 - Update on budget timelines/process

VIII. ANNOUNCEMENTS

- A. The June 2, 2008, board meeting will be in Florence

IX. ADJOURNMENT

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

State of Oregon Real Estate Agency

REAL ESTATE BOARD

**Regular Meeting Minutes
February 4, 2008**

MEMBERS PRESENT: Troy Costales, Vice Chair
Warren (Lee) Dunn
Robert LeFeber
Art Kegler
Marianne Wood

MEMBERS ABSENT: Michael Graeper, Chair (Excused)
Kim Medford (Excused)
Byron Hendricks (Excused)
Chris Hermanski (Excused)

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

GUESTS PRESENT: Nick Krautter
Shawn Jillions, Oregon Association of Realtors

I. BOARD BUSINESS

- A. Call to Order.** Vice Chair Costales called meeting to order at 10 a.m. at the Real Estate Agency, 1177 Center Street NE, Salem, Oregon.
- B. Roll Call.** Chair Graeper, Kim Medford, Byron Hendricks, and Chris Hermanski all excused.
- C. Approval of the Agenda and Order of Business.** The Amended Agenda was approved and submitted.
- D. Approval of the 1-14-08 regular meeting minutes.** After discussion, no changes were made and the minutes were approved as submitted.
- E. Date of Next Meeting.** April 7, 2008, at 10 a.m. in Eugene, Oregon at the Eugene Association of Realtors office.

II. PUBLIC COMMENT. None.

III. REQUESTS FOR WAIVER.

A. Waiver request log. The log was included in the board packet.

B. Nick Krautter requests experience waiver for a principal broker license. Vice Chair Costales invited Mr. Krautter to address the Board. Mr. Krautter introduced himself. He indicated that he wants to hire an assistant. He has closed 46 transactions. He indicated that he wants to further his business and be a better broker to his clients. Robert LeFeber indicated that he has had contact with Mr. Krautter on a professional level. Art Kegler asked Mr. Krautter if he intended to create a team. Mr. Krautter indicated that his intention is to create a team rather than open his own business and all transactions would continue to be reviewed by a principal broker. Art Kegler asked about the size of the team and if all team being supervised by principal broker. Mr. Krautter indicated that team is being supervised. Lee Dunn asked about the organization of the teams. Commissioner Bentley asked Mr. Krautter about his obtaining a principal brokers' license. Mr. Krautter gave further information regarding his back ground.

**MOTION TO GRANT WAIVER REQUEST MADE BY ART KEGLER.
SECOND MOTION BY ROBERT LEFEBER
MOTION CARRIED BY UNANIMOUS VOTE**

IV. BOARD ADVICE/ACTION.

A. Proposed structure for Property Managers and Brokers. Commissioner Bentley summarized the issues. There are a number of issues that come up through regulation division that fall short. The work group explored developing a parallel structure. Robert LeFeber asked what the final conclusion was on obtaining two licenses versus one. Lee Dunn commented that having two separate licenses sets up potential conflict of interest. Commissioner Bentley pointed out that this will involve a legislative change. Discussion.

B. Possibility of Special Meeting in March to address legislative concepts. Commissioner Bentley explained the purpose of holding a special meeting in March. Deputy Commissioner Owens explained the Web-Ex availability for the special meeting. Further discussion. Art Kegler asked for more clarification regarding web accessed meetings. Discussion regarding potential date of meeting.

C. Waiver Request Forms. Selina Barnes asked Board for input on the content of the form. Vice Chair Costales indicated that the current form is much better than the older version. Ms. Barnes asked for Board input on the Waiver Request Log Form. Vice Chair Costales offered suggestions and Ms. Barnes will make appropriate changes. Robert LeFeber suggested that findings for denial should be specified.

D. Joint Meeting of OAR Education Task Force & REA Board Work Group recommendations. Lee Dunn summarized the work group's recommendations and conclusions. Discussion. Vice Chair asked when next meeting is scheduled. Lee Dunn indicated that final meeting date to be announced.

V. NEW BUSINESS. None.

VI. COMMUNICATIONS.

Administrative Actions Summary. Provided in board packet. Art Kegler asked about unlicensed activity criteria regarding Deanna Hoover and Jeff McDowell. Discussion.

VII. REPORTS

- A. Vice Chair Costales.** Vice Chair Costales presented a certificate of appreciation to Laurie Skillman on behalf of the Board for her facilitation capabilities. Vice Chair Costales noted that the request for the presentation was initiated and approved by the Board.
- B. Commissioner Gene Bentley.**
- 1. Feedback on Education Sub Groups.** Commissioner Bentley reviewed the status of the rule review process. Art Kegler asked for clarification. Discussion. Deputy Commissioner Owens summarized and explained the Customer Service Survey results. Commissioner Bentley continued to give updates on Rule Review work group meeting schedules.
 - 2. Gifts from brokers to clients.** Commissioner Bentley asked for input from the Board on the issue of gifts from brokers to clients. Discussion. Robert LeFeber asked about federal taxes guidelines in relation to this issue. Discussion. Vice Chair Costales asked for clarification. Marianne Wood suggested that the dollar amount cut off should be \$100. Lee Dunn suggested that definition of what a gift is should be included in the rules/regulations. Discussion.
 - 3. State of Oregon's 150th Birthday.** Commissioner Bentley informed the Board that Oregon will celebrate its' 150th birthday next year and the Governor has asked Agencies to recognize this. Commissioner Bentley asked for the Board's assistance and/or participation.
- C. Deputy Commissioner Dean Owens**
- 1. Update on improved Information Systems.** Deputy Commissioner Owens distributed **EXHIBIT 1** and indicated that internal and external network activity will be tracked with new system. Vice Chair Costales asked about data collections. Deputy Commissioner Owens explained the data collection process. Vice Chair Costales added some clarification. Commissioner Bentley addressed the capabilities of the new phone system regarding tracking. Deputy Commissioner Owens reported that new phone system will mean changes to phone numbers and extensions for the Agency.
- D. Agency Division reports/Deputy Commissioner Dean Owens**
- 1. Land Development Division.** Laurie Skillman distributed **EXHIBIT 2** reflecting statistical summary. Art Kegler asked about the percentage of time Ms. Skillman spends on reviewing the condominium filings. Ms. Skillman responded that the hand out is a work load measure. Ms. Skillman clarified the Agency's role in the review of condominium filings. Discussion.
 - 2. Licensing Division.** Selina Barnes distributed **EXHIBIT 3**. Deputy Commissioner Owens clarified the numbers that media is using regarding decreased percentage of brokers in Oregon. Ms. Barnes explained the background check process and reviewed statistical information.
 - 3. Education Division.** Deputy Commissioner Owens distributed **EXHIBIT 4** on behalf of Mesheal Heyman and reviews statistical information.

4. **Regulation Division.** Becky Osborne distributed **EXHIBIT 5** and reported on Regulations Division statistics and current work load. Art Kegler asked if work groups have had further discussion regarding the limit on the amount of times someone can take the examination. Discussion.
5. **Administration/Information System Technology.**
 - Quarterly Budget Report. Kate Nass distributed **EXHIBIT 6** and reported on the 2007- 2009 budget update. Discussion. Deputy Commissioner Owens pointed out that the Agency will be looking at how we can sustain the services that we have in light of our budget.

VIII. ANNOUNCEMENTS.

Next board 10 a.m., April 7, 2008, in Eugene, Oregon at the Eugene Association of Realtors. Discussion regarding a potential special board meeting in March to address legislative concepts.

IX. ADJOURNMENT

Respectfully submitted:

GENE BENTLEY
COMMISSIONER

Respectfully submitted:

MIKE GRAEPER
BOARD CHAIR

Exhibits distributed:

1. CISCO Data Tracking Summary-Information Technology Division Report, *Agenda Item No. VII. D. 5.*
2. Land Development Division Report, *Agenda Item No. VII. D. 1.*
3. Licensing Division Report, *Agenda Item No. VII. D. 2.*
4. Education Division Report, *Agenda Item No. VII. D. 3.*
5. Statistical Reporting-Regulation Division, *Agenda Item No. VII. D. 4.*
6. Real Estate Agency 2007-2009 Budget-Biennium to Date as of December 2007, *Agenda Item No. VII. D. 5.*

State of Oregon Real Estate Agency

REAL ESTATE BOARD

**Oregon Real Estate Agency
1177 Center St. NE
Salem, Oregon 97301**

**Special Meeting Minutes
March 31, 2008**

**MEMBERS PRESENT: Mike Graeper, Chair
Byron Hendricks**

**MEMBERS PRESENT
BY TELECONFERENCE: Art Kegler
Chris Hermanski
Bob LeFeber
Lee Dunn
Marianne Wood
Kim Medford**

MEMBERS ABSENT: Troy Costales, Vice Chair (Excused)

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

GUESTS PRESENT: None

I. BOARD BUSINESS

- A. Call to Order.** Chair Graeper called meeting to order at 10:01 a.m at the Real Estate Agency, 1177 Center Street NE, Salem, Oregon..
- B. Roll Call.** Troy Costales was excused
- C. Approval of the Agenda and Order of Business.** The Agenda was approved as submitted.
- D. Date of Next Meeting.** April 7, 2008, at 10 a.m., in Eugene, Oregon at the Eugene Association of Realtors Office, 2139 Centennial Plaza, Eugene, OR, 97401.

II. PUBLIC COMMENT. None

III. BOARD ADVICE/ACTION

Legislative concepts resulting from rule review work groups. Chair Graeper turned the meeting over to Commissioner Bentley. Mr. Bentley indicated that the purpose of the meeting was to allow board members the opportunity to comment on the four Agency legislative concepts that will be advanced. Mr. Bentley indicated that concepts number 919/1, 919/3 and 919/4 are fully developed. However, concept number 919/2, is a place holder and needs further development and will be addressed at the April 7, 2008 Board meeting. Mr. Bentley opened concepts up for questions. Kim Medford addressed legislative concept 919/4 regarding clarification on funds held by escrow agents in trust. Ms. Medford asked where interest is earned on those funds to be paid. Mr. Bentley responded that escrow instructions determine where the money goes. Becky Osborne referred Ms. Medford to administrative rule number 863.0500060 which addresses the issue of interest bearing escrow accounts. Ms. Medford asked about concept number 919/3 on the requirement of a licensee to maintain a legal form of entity specifically if a corporation goes inactive for failure to pay annual fee to Secretary of State, is there a period of time in which the licensee can reactivate the license and if there a loss of license during this period. Laurie Skillman specified that a legal entity needs to exist in order for a license to be appropriate.

Mr. Bentley inquired if members would prefer to address concepts one at a time or as a bundle. Chair Graeper indicated that addressing concepts one at a time would be preferable.

919/1 – Real Estate Streamlining and Minor Program Changes for Licensing and Civil Penalty for Property Managers. Art Kegler indicated that he had no problem with the civil penalties issue as it is written in the legislative concept and stated for the record that he did have a problem with the concept if it was a wedge into a larger program of civil penalties.

919/2-Individuals Authorized to Engage in Property Management; New Principal Property Manager License. Commissioner Bentley restated that this concept is a place holder to establish principal license category along with shifts in the authority and responsibility for those who hold broker, principal broker, and property management licenses. Mr. Bentley explained that once this concept is fully developed it will be presented to the Board.

919/3- Escrow Licensing Housekeeping and Minor Program Changes. Commissioner Bentley summarized this concept. No questions.

919/40 Individuals Authorized to Engage in Property Management, New Principal Property Manager License- No discussion.

**MOTION TO APPROVE LEGISLATIVE CONCEPTS NO. 919/1, 919/2, 919/3
AND 919/4 BY BYRON HENDRICKS
SECOND MOTION BY CHRIS HERMANSKI
MOTION CARRIED BY UNANIMOUS VOTE.**

ANNOUNCEMENTS

Next regular board meeting April 7, 2008, 10 am, at the Eugene Association of Realtors, 2139 Centennial Plaza, Eugene, OR , 97401.

IV. ADJOURNMENT

Respectfully submitted:

GENE BENTLEY
COMMISSIONER

Respectfully submitted:

MIKE GRAEPER
BOARD CHAIR

DRAFT

**Agenda
Item
IV.A.**

State of Oregon

Board Memo

Real Estate Agency

April 7, 2008

To: Real Estate Board

From: Louann Rahmig, Rule Review Coordinator

Subject: Joint Education Work Group Recommendations

HISTORY: In 2006, the board appointed an education work group based on a recommendation in the Department of Administrative Services audit of the agency. The first education work group meeting was held December 4, 2006, at which time three subcommittees were appointed to study pre-licensing, post-licensing and continuing education. At the work group's January 22, 2007 meeting, OAR advised that they had also established an education task force to study the same issues. Joint meetings of these work groups were held May 9, July 12 and December 10, 2007.

DISCUSSION: Joint sub-group recommendations were presented to the joint work group on January 28, 2008. A copy of those recommendations is attached.

The recommendations were shared via e-mail with the board's education work group and the brokerage/licensing and property management rule review work groups. The following comments were received.

Under the Pre-License Category, "Oregon Real Estate Practice & Property Management:" Mike Graeper suggests: (1) Change "Form Offer to Closing" to "Forms – Listing and Sales – Offer to Closing or Sales Forms – Offer Closing" and (2) Change "Listing & Marketing Real Estate" to "Listings – Forms and Marketing."

Dave Hamilton suggests modifying "Landlord Tenant Law" to read "Landlord Tenant Law – Multi-Family" and add "Contract Law – Non-Multi-Family." He indicated we need to be careful not to set a precedent for Landlord Tenant Law to cover all types of property under management.

Under the Continuing Education Category, Mr. Graeper feels a better definition of "orientation courses" is needed under the courses not eligible for continuing education credit. He suggests adding to "Courses held in conjunction with a brokerage firm's sales or promotion meetings," "less than 2 hours in length."

BOARD ACTION: Discuss changes recommended by Mr. Graeper and Mr. Hamilton. Provide the Agency with a final recommendation on proposed changes to the pre-license, post-license and continuing education programs.

EDUCATION JOINT TASK FORCE RECOMMENDATIONS
January 28, 2008

PRE-LICENSE COURSE CATEGORIES

Maintain 150 hours of pre-licensing education and expand categories.

Real Estate Law

- Basic Property Law
- Property Description
- Title Transfer
- Encumbrances (including taxes)
- Title Insurance
- Land Use Laws

Contracts & Agency

- Basic Contract Law
- Real Estate Contracts
- Condo/Subdivision Contracts
- Leases
- Common Law Agency
- ORS 696.800
- Legal Compensation (commissions, advanced fees, retainers, etc.)

Real Estate Finance & Closings

- Lending Laws + Loan Costs
- Mortgage Market
- Finance Documents to include:
 - Foreclosure
 - Alternative Financing
- Conventional & Government Loans
- Appraisal
- Finance Math
- Taxation
- Closing
- RESPA
- Lending Approval Process
- Economics

Oregon Real Estate Practice & Property Management

- Business Relationships & License Law
- Form Offer to Closing
- Listing & Marketing Real Estate
- Civil Rights/ADA
- Oregon Property Management Law
- Duties of a Property Manager (PM)
 - Tenant Relations
 - PM Record Keeping
- Landlord Tenant Law

- Market Data (CMA/BPO)
- Buyer Representation
- Standards of Practice
- Consumer Protection
- Ethics
- Risk Management
- Dispute Resolution

Testing

Develop a pre-license test that includes both multiple choice and critical decision making.

ADVANCED REAL ESTATE PRACTICES

1. Separate course work into two tracks – a core set of courses that all new licensees would be required to complete, and a set of specialty courses from which licensees would choose based on the area of real estate they have chosen to pursue. These specialty areas could include, but are not limited to:

- Residential brokerage
- Commercial brokerage
- Property Management
- Basic Roles

2. Include the following courses in the core course:

- Advanced Agency
- Misrepresentation
- Business Ethics (3 hours)
- Rule & Law Update
- Review of Administrative Actions
- Economics of Business As It Relates to Real Estate

3. Remove 4½ hour Property Management module from the core course and place in the Property Management specialty track.

4. Agency to approve instructors who must meet the same requirements as pre-licensing instructors.

PROPERTY MANAGEMENT

(as approved by the Real Estate Board October 2007)

1. Agency perform compliance review of new property manager with a client trust account within 6-12 months of becoming licensed.

2. Require “apprenticeship” period for new property managers similar to that of brokers, or establish additional education requirement for accounting practices and client trust account reconciliation.

3. Include reconciliation as part of the state exam.

4. Phase out property manager license.

CONTINUING EDUCATION

1. Continue 30 clock hours for each two-year renewal period, including one three-hour Rule and Law Update (developed and certified annually by the Real Estate Board), with the remainder from the following topics:

- Agency Relationships and Responsibilities
- Anti-Trust Issues
- Brokerage Management
- Business Ethics
- Business Management
- Commercial Brokerage and Leasing
- Communication Skills
- Consumer Protection
- Contracts
- Dispute Resolution
- Economics
- Environmental Issues
- Fair Housing
- Finance
- Common Ownership Associations and Issues
- Land Use and Development
- Legislative/Administrative Issues
- Market/Property Evaluation
- Advertising
- Misrepresentation
- Negotiation Skills
- Property Management
- Real Estate Law and Regulation
- Real Estate Taxation: Federal, State and Local
- Risk Management
- Title & Escrow Issues
- Trust Accounts
- Water Rights, Policy and Law

Courses not eligible for continuing education clock-hours

- Orientation courses for licensees, such as those offered by trade associations
- Courses held in conjunction with a brokerage firm's sales or promotion meetings
- Courses in standardized software program such as word processing, e-mail, spreadsheets or data bases
- Personal finance, etiquette, or motivational type courses

Courses shall be a minimum of one clock-hour in length. A clock-hour consists of 50 minutes of continuous teaching and one 10 minute break in each 60 minute period.

Course Content and Learning Objectives

The process of establishing specific content and learning objectives for each of the continuing education topics is no small undertaking. As stated earlier, it will be more appropriate to tackle

this task once the overall restructure plan for continuing education has been approved. However, as with instructors and providers, it is important to have clear and objective guidelines for certification. While our proposed system is different from that of our neighboring states, it is instructive to look at their general programs for course content approval as well as those of ARELLO and Utah. (*Note: Information available from the Agency upon request.*) It is also useful to look at how course content is described in a variety of states, and to identify other objective standards for approval of content.

In general, our program puts the obligation for certification of course content squarely on the shoulders of the course sponsor and instructor. The sponsor certifies that the instructor meets appropriate qualifications, and the instructor provides a standardized form and signs an affidavit stating that the course meets the outlined learning objectives. This entire process is subject to audit by the Agency, and it creates market competition to provide quality education for Oregon licensees.

California has a nice outline of the goals and objectives for each of the five major topic areas, and an outline like theirs would help focus continuing education content without requiring specific approval for each class from the Agency. Idaho has more general course descriptions, but these are also helpful in giving guidance to course providers.

A number of states provide for automatic approval of courses already approved by other entities, such as ARELLO, state GRI programs, and REALTOR® designation programs like ABR, CRS, CCIM, IREM etcetera. Oregon should approve the vast majority of these courses automatically for continuing education, but providers should review the individual course outlines to determine which of the topic categories the course satisfies. For example, the two-day Accredited Buyer Representative course deals primarily with negotiation and agency relationships, so clock-hours could be certified in these areas.

The subcommittee's proposal includes requiring all licensees to complete a three-hour Rule and Law Update during each license renewal. We believe that the course should be designed and presented annually by the Real Estate Board, and should be similar to courses provided by Washington and Idaho. The outlines of Washington's 2008 programs for residential and commercial licensees, as well as the Arizona program for Broker Management. (*Note: Information available from the Agency upon request.*) The specific content should focus on what the Board considers the most important changes to statute and administrative rules, and the Board should actually develop the teaching materials and handouts, and provide the instructors all as part of a licensee's renewal fee. Having this become a duty of the Real Estate Board will give greater purpose and direction to the Board and will provide a more positive and pro-active approach to improving competence and providing greater protection for real estate consumers.

Licensees shall report completion of their continuing education hours as part of their license renewal, including date, course topic, clock-hours, instructor and certified provider.

2. Eliminate "required" and "elective" breakdowns and expand list of approved topics.
3. Course provider to provide evidence of attendance and keep records for three years.
4. Agency to certify providers, courses and instructors. Increase "processing" fee to \$100.

Continuing Education Certified Instructor

Any person wishing to teach a real estate continuing education or the advanced practices course shall submit an instructor certification form to an approved provider, which shall demonstrate that the instructor has at least one of the following qualifications:

- A. A bachelor's degree or a more advanced degree, plus at least 2 years of full-time experience in a field applicable to the topic of instruction;
- B. At least 6 years of full-time experience in a field applicable to the topic of instruction;
- C. Any combination of at least 6 years of college-level course work and full-time experience in a field applicable to the topic of instruction;
- D. An award of a generally-recognized professional real estate designation, such as Certified Commercial Investment Member, Graduate Realtor Institute, Certified Residential Specialist, Independent Fee Appraiser, or Member of the Appraisal Institute, and two years of college-level course work;
- E. Possession of the Distinguished Real Estate Instructor (DREI) designation from the Real Estate Educators Association (REEA);
- F. Certification or approval in good standing as a real estate instructor for the same or similar course material in any other state or jurisdiction;
- G. Certification or approval to teach a nationally recognized real estate course which is generally accepted in other states or jurisdictions;
- H. Successful completion of an instructor training course approved by the Real Estate Board and two years full-time experience in real estate or a related field.

An instructor shall not be certified who

- A. Has had a real estate or other professional or occupational license suspended or revoked or limited for disciplinary reasons;
- B. Has been determined in state court or by an administrative law judge to have violated any statute, rule, regulation or order pertaining to real estate in this or any other state within the immediately preceding 5 years.

Any person or organization wishing to sponsor a real estate continuing education course shall submit a request for provider certification every two years for approval by the Oregon Real Estate Agency. A certified provider must be one of the following entities:

- A. A real estate brokerage company or franchisor;
- B. An Oregon title or escrow company;
- C. A real estate or related field trade association;
- D. A real estate multiple listing service;
- E. An OREA-approved real estate school;
- F. An OREA-approved distance learning provider;
- G. An Oregon community college or university

A certified continuing education provider shall have the following responsibilities:

- A. To ensure that instructors meet certification criteria;

- B. To obtain an affidavit from instructors that courses meet the learning objectives identified for each topic by the Real Estate Agency;
- C. To certify attendance and clock hours;
- D. To collect written instructor/course evaluation for every offering;
- E. To provide licensees with a standardized certificate of attendance;
- F. To maintain records of the date, location course title, instructor, delivery method, clock hours, attendance and evaluation for each course for a period of three years after completion;
- G. To cooperate with the Agency in compliance audits to ensure licensee compliance with continuing education requirements

In future, these standards might be modified to require providers to submit attendance records and course information to a database maintained by the agency. The agency should be able to post a list of approved providers on their web site right away, and any process fee for providers should not exceed \$100.

5. Place responsibility on licensees to report completion of hours.

6. Amend ORS 696.174. *Note: Strike-outs delete current verbiage. Bold and underlined language include the subcommittee recommendations:*

696.174 License renewal; continuing education courses; rules. (1) To qualify an active license for renewal, the real estate licensee must present evidence of attendance during the preceding two license years at 30 clock-hours of real estate oriented continuing education courses [~~, of which a minimum of 15 clock hours shall be in required course topics~~].

(2)(a) The Real Estate Commissioner, with advice from real estate professionals, educators and the public, may accept a broad range of topics for real estate oriented continuing education courses. [~~Required~~] Course topics shall be flexible so as to allow for changes in the real estate profession.

(b) The minimum length of each course [~~, required or elective,~~] shall be one hour. A standard form, created by the Real Estate Agency in consultation with real estate professionals, shall be developed to ensure that licensees have completed the required number of hours. Certification of attendance by [~~the principal real estate broker with whom the real estate broker is associated, or self certification if the licensee is a sole practitioner, a principal real estate broker or a real estate property manager~~], **a continuing education course provider** shall be considered evidence of attendance.

(3) The commissioner, with advice from real estate professionals, educators and the public, shall prescribe rules for certifying continuing education courses, **course providers and instructors**. ... (No change to remainder of statute.)

**Agenda
Item No.
IV. B.**

State of Oregon

Board Memo

Real Estate Agency

February 4, 2008

To: Real Estate Board

From: Louann Rahmig, Rule Review Coordinator

Subject: Background Check Rules

HISTORY: The 2005 legislature passed House Bill 2157 relating to criminal records checks amending ORS 696.022, 696.511, 696.066, 696.790 and repealing ORS 696.793.

DISCUSSION: Sample rules were prepared for us late 2006 by the Department of Justice to use as a starting point. However, these rules seemed more appropriate for background check procedures for prospective employees so considerable work was needed to make them work for “license applicants.” Agency staff held several meetings in 2007 and the rules were redrafted.

A work group consisting of Bob LaDu and John Zupan (representing the board), Dave Koch and Jim Whitney (representing the industry), and Rep. Sal Esquivel met twice to review and discuss the rules, which were finalized in November 2007. The final product was submitted to the Oregon State Police early January 2008 for their review. They reported that, in their opinion, the rules meet the requirements of HB 2157. A copy was also sent to our AAG Raul Ramirez for legal review. Mr. Ramirez proposed some changes that were subsequently made to the draft rules, to clarify the notice to deny and appeal processes.

BOARD ACTION: Approve proposed new administrative rules for public hearing.

DRAFT 10

March 10, 2008

OREGON REAL ESTATE AGENCY

DIVISION 5

CRIMINAL RECORDS CHECK AND CRIMINAL BACKGROUND FITNESS DETERMINATION RULES

Note: These are all new rules to implement HB 2157 (2005).

863-005-0000

Purpose

These rules control the agency’s acquisition of information about a subject individual’s criminal history through criminal records checks or other means and its use of that information to determine whether the subject individual is trustworthy and competent to hold a real estate license or registration. The criminal background check is only one portion of the approval process required to obtain a license or registration.

Stat. Auth.: ORS 181.534, 696.022, 696.301 and 696.790
Stats. Implemented: ORS 181.534

863-005-0005

Definitions

As used in OAR chapter 863, division unless the context requires otherwise, the following definitions apply:

- (1) “Agency” means the State of Oregon Real Estate Agency.
- (2) “Authorized Designee” means a person authorized by the commissioner to obtain and review criminal offender information and other criminal records information about a subject individual through criminal records checks and other means, and to conduct a criminal background fitness determination in accordance with these rules.
- (3) “Conviction” means that a court of law has entered a final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of *nolo contendere* (no contest) against a subject individual in a criminal case, unless that judgment has been reversed or set aside by a subsequent court decision.

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Comment [BC1]: Added per workgroup comments 10/30/07

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(4) **“Criminal Background Clearance”** means that, pursuant to a criminal background check, an authorized designee has determined that a subject individual is trustworthy and competent to be a licensee through a criminal background fitness determination.

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(5) **“Criminal Offender Information”** includes:

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(a) Records and related data concerning physical description and vital statistics;

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(b) Fingerprints received and compiled by the Oregon Department of State Police to identify criminal offenders and alleged offenders;

(c) Records of arrests; and

(d) The nature and disposition of criminal charges, including sentencing, confinement, parole and release records.

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(6) **“Crime Relevant to a Criminal Background Fitness Determination”** means a crime listed or described in OAR 863-005-0030.

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(7) **“Criminal Records Check and Criminal Background Fitness Determination Rules”** or **“These Rules”** means OAR chapter 863, division 5.

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(8) **“Criminal Records Check”** means any of the following three processes undertaken by the agency to check the criminal history of a subject individual:

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(a) A check of criminal offender information and motor vehicle registration and driving records conducted through the Law Enforcement Data System (LEDS) maintained by the Oregon Department of State Police, in accordance with the Department’s rules;

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(b) A check of Oregon criminal offender information through fingerprint identification and other means conducted by the Oregon Department of State Police at the agency’s request (Oregon Criminal Records Check); or

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(c) A nationwide check of federal criminal offender information through fingerprint identification and other means conducted by the Oregon Department of State Police through the Federal Bureau of Investigation or otherwise at the agency’s request (Nationwide Criminal Records Check).

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(9) **“Denied”** means that, following a criminal background fitness determination under OAR 863-005-0020, an authorized designee has determined that a subject individual is not trustworthy and competent to hold a license or registration.

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(10) “**False Statement**” means that, in association with an activity governed by these rules, a subject individual either:

(a) Provided the agency with false information about the subject individual’s criminal history, including, but not limited to, false information about the individual’s identity or conviction record; or

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(b) Failed to provide the agency information material to determining the individual’s criminal history.

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(11) “**Fingerprint Card**” means a form prescribed by the Oregon Department of State Police and Federal Bureau of Investigation.

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(12) “**Criminal Background Fitness Determination**” means a determination made by an authorized designee pursuant to the process established in OAR 863-005-0020 whether a subject individual is trustworthy and competent to be a licensee or registrant.

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(13) “**Licensee**” means a principal real estate broker, a real estate broker, a real estate property manager as defined in ORS 696.010, or a real estate marketing organization licensed under ORS 696.606. Licensee shall also mean an escrow agent as defined in ORS 696.505(5).

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(14) “**Other Criminal Records Information**” means any information, in addition to criminal offender information, sought or obtained by the agency about a subject individual and used by the agency to determine the individual’s criminal history.

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(15) “**Registrant**” means a person engaged in real estate marketing activity that is registered by a real estate marketing organization licensed under ORS 696.606.

~~Registrant also means a person~~ registered as a membership camping contract broker or salesperson as provided in ORS 94.980.

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(16) “**Subject Individual**” means an applicant for a license or renewal of a license under ORS 696.020, a real estate marketing organization license under ORS 696.606, an escrow agent license or renewal under ORS 696.511, a membership camping contract broker or sales person registrant under ORS 94.980 as someone from whom the agency may require fingerprints in order for the agency to conduct a criminal records check.

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Stat. Auth.: ORS 181.534, 696.022 and 696.790
Stats. Implemented: ORS 181.534

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863-005-0010

Criminal Records Check Process

(1) A subject individual shall complete and sign an agency background check application and an applicant fingerprint card approved by the agency.

(2) Within a reasonable period of time, a subject individual shall provide additional information as requested by the agency to resolve any issue hindering the completion of a criminal records check.

(3) An authorized designee shall request that the Oregon Department of State Police conduct a criminal records check for all new licensee and registrant applications.

(4) An authorized designee may request that the Oregon Department of State Police conduct a criminal background records check for licensee and registrant renewal applications when there is reason to believe that:

(a) A subject individual committed a crime listed in OAR 863-005-0030; or

(b) A factor relevant to a criminal background fitness determination listed in OAR 863-005-0020 was not previously identified.

(5) When an authorized designee requires a criminal record check to be performed under section (3) or (4) of this rule, an authorized designee shall request that the Oregon Department of State Police conduct Oregon and nationwide criminal records checks through fingerprint identification. The authorized designee may also perform a Law Enforcement Data System (LEDS) criminal records check as part of any criminal background fitness determination conducted in regard to a subject individual.

Stat. Auth.: ORS 181.534, 696.022 and 696.790
Stats. Implemented: ORS 181.534

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863-005-0020

Criminal Background Fitness Determination

(1) An authorized designee shall make a criminal background fitness determination about a subject individual based on:

- (a) Background check application and fingerprint card;
- (b) Any criminal records check(s) conducted; and
- (c) Any false statements made by the subject individual.

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(2) In addition to the information in section (1) of this rule, an authorized designee may obtain any other criminal records information about the subject individual from any source, including law enforcement agencies or courts within or outside of Oregon.

(3) A criminal background fitness determination shall be based on the factors described in section (5) of this rule in relation to information provided by the subject individual under OAR 863-005-0010.

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(4) An authorized designee may request to meet with the subject individual to obtain additional criminal offender information necessary to complete a criminal background fitness determination.

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(5) An authorized designee shall consider all collected information in determining:

(a) Whether the subject individual has been convicted of, found guilty except for insanity (or a comparable disposition) of, or has a pending indictment for a crime listed in OAR 863-005-0030;

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(b) The nature of any crime identified under subsection (a) of this section of the rule;

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(c) The facts that support the conviction, a finding of guilty except for insanity, or that a pending indictment or uncompleted diversion exists;

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(d) The facts that indicate the subject individual made a false statement;

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(e) The relevance, if any, of a crime identified under subsection (a) of this section of the rule or of a false statement made by the subject individual to the specific requirements of the subject individual's license or registration; and

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(f) The following intervening circumstances, to the extent that they are relevant to the responsibilities and circumstances of the license or registration for which the criminal background fitness determination is being made:

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(A) The passage of time since the commission or alleged commission of a crime identified under subsection (a) of this section of the rule;

(B) The age of the subject individual at the time of the commission or alleged commission of a crime identified under subsection (a) of this section of the rule;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

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(D) The subsequent commission of another crime listed in OAR 863-005-0030;

(E) Whether a conviction identified under subsection (a) of this section of the rule has been set aside or pardoned, and the legal effect of setting aside the conviction or pardon;

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(F) The disposition of a pending indictment identified under subsection (a) of this section of the rule;

(G) Whether the subject individual:

(i) Has been arrested for or charged with a crime listed under OAR 863-005-0030 within the last five years;

(ii) Is being investigated, or has an outstanding warrant, for a crime listed under OAR 863-005-0030;

(iii) Is currently on probation, parole or another form of post-prison supervision for a crime listed under OAR 863-005-0030;

(iv) Has a deferred sentence or conditional discharge or is participating in a diversion program in connection with a crime listed under OAR 863-005-0030;

(v) Has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed in OAR 863-005-0030 if committed by an adult;

(vi) Has been incarcerated and length of incarceration; and

(vii) Has a history of drug or alcohol abuse which relates to the criminal activity and the history of treatment or rehabilitation for such abuse.

(6) Approval. An authorized designee shall approve a criminal background clearance application if the information described in sections (1) and (2) of this rule shows no credible evidence that the subject individual:

(a) Has been convicted of, has a pending indictment or has been found guilty except for insanity (or comparable disposition) of a crime listed in OAR 863-005-0030;

(b) Has an uncompleted diversion; or

(c) Has made a false or incomplete statement or omitted information; and

(d) No discrepancies exist between the criminal offender information, other criminal records information and information obtained from the subject individual.

(7) Denial. An authorized designee shall not approve a criminal background clearance application if a criminal background fitness determination based on the factors described in section (5) of this rule demonstrates that the subject person is not trustworthy and competent to hold a professional real estate license or registration in a manner that protects the public.

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(9) A denial of a criminal background clearance shall become a final order of the agency unless the subject individual appeals the authorized designee's criminal background fitness determination by requesting a contested case hearing as provided by OAR 863-005-0070.

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Stat. Auth.: ORS 181.534, 696.022 and 696.790
Stats. Implemented: ORS 181.534

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863-005-0030

Crimes Relevant to a Criminal Background Fitness Determination

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(1) Permanent Review Crimes:

- (a) ORS 162.015, Bribe giving;
- (b) ORS 162.025, Bribe receiving;
- (c) ORS 162.065, Perjury;
- (d) ORS 162.085, Unsworn falsification;
- (e) ORS 162.117, Public Investment Fraud
- (f) ORS 162.155, Escape II;
- (g) ORS 162.165, Escape I;
- (h) ORS 162.235, Obstructing governmental or judicial administration;
- (i) ORS 162.265, Bribing a witness;
- (j) ORS 162.275, Bribe receiving by a witness;
- (k) ORS 162.305, Tampering with public records;
- (l) ORS 162.325, Hindering prosecution;
- (m) ORS 162.355, Simulating legal process;
- (n) ORS 162.367, Criminal impersonation of peace officer;
- (o) ORS 162.405, Official misconduct II;
- (p) ORS 162.415, Official misconduct I;
- (q) ORS 162.425, Misuse of confidential information;
- (r) ORS 163.005, Criminal homicide;
- (s) ORS 163.095, Aggravated murder;
- (t) ORS 163.115, Murder;
- (u) ORS 163.118, Manslaughter I;
- (v) ORS 163.125, Manslaughter II;
- (w) ORS 163.145, Criminally negligent homicide;
- (x) ORS 163.160, Assault IV;
- (y) ORS 163.165, Assault III;
- (z) ORS 163.175, Assault II;
- (aa) ORS 163.185, Assault I;
- (bb) ORS 163.187, Strangulation;
- (cc) ORS 163.190, Menacing;

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- (dd) ORS 163.205, Criminal mistreatment I;
- (ee) ORS 163.207, Female genital mutilation;
- (ff) ORS 163.208, Assault of Public Safety Officer;
- (gg) ORS 163.213, Unlawful use of an electrical stun gun, tear gas, or mace I;
- (hh) ORS 163.225, Kidnapping II;
- (ii) ORS 163.235, Kidnapping I;
- (jj) ORS 163.257, Custodial interference I;
- (kk) ORS 163.275, Coercion;
- (ll) ORS 163.355, Rape III;
- (mm) ORS 163.365, Rape II;
- (nn) ORS 163.375, Rape I;
- (oo) ORS 163.385, Sodomy III;
- (pp) ORS 163.395, Sodomy II;
- (qq) ORS 163.405, Sodomy I;
- (rr) ORS 163.408, Unlawful Sexual penetration II;
- (ss) ORS 163.411, Unlawful Sexual penetration I;
- (tt) ORS 163.415, Sexual abuse III;
- (uu) ORS 163.425, Sexual abuse II;
- (vv) ORS 163.427, Sexual abuse I;
- (ww) ORS 163.452, Custodial sexual misconduct I;
- (xx) ORS 163.454, Custodial sexual misconduct II;
- (yy) ORS 163.465, Public indecency;
- (zz) ORS 163.476, Unlawfully being in a location where children regularly

congregate;

- (aaa) ORS 163.479, Unlawful contact with a child;
- (bbb) ORS 163.525, Incest;
- (ccc) ORS 163.535, Abandonment of a child;
- (ddd) ORS 163.537, Buying or selling a person under 18 years of age;
- (eee) ORS 163.547, Child neglect I;
- (fff) ORS 163.555, Criminal nonsupport;
- (ggg) ORS 163.575, Endangering the welfare of a minor;
- (hhh) ORS 163.670, Using child in display of sexually explicit conduct;
- (iii) ORS 163.684, Encouraging child sexual abuse I;
- (jjj) ORS 163.686, Encouraging child sexual abuse II;
- (kkk) ORS 163.687, Encouraging child sexual abuse III;
- (lll) ORS 163.688, Possession of materials depicting sexually explicit conduct of a

child;

- (mmm) ORS 163.689, Possession of materials depicting sexually explicit conduct of a
- child;

- (nnn) ORS 163.732, Stalking;
- (ooo) ORS 163.750, Violating court's stalking order;
- (ppp) ORS 164.045, Theft II;
- (qqq) ORS 164.055, Theft I;
- (rrr) ORS 164.057, Aggravated theft I;
- (sss) ORS 164.075, Theft by extortion;
- (ttt) ORS 164.085, Theft by deception;

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(uuu) ORS 164.095, Theft by receiving;
 (vvv) ORS 164.125, Theft of services;
 (www) ORS 164.135, Unauthorized use of a vehicle;
 (xxx) ORS 164.162, Mail theft or receipt of stolen mail;
 (yyy) ORS 164.170, Laundering a monetary instrument;
 (zzz) ORS 164.172, Engaging in a financial transaction in property derived from
 unlawful activity;
 (aaaa) ORS 164.215, Burglary II;
 (bbbb) ORS 164.225, Burglary I;
 (cccc) ORS 164.235, Possession of burglar's tools or theft device;
 (dddd) ORS 164.255, Criminal trespass I;
 (eeee) ORS 164.265, Criminal trespass while in possession of firearm;
 (ffff) ORS 164.315, Arson II;
 (gggg) ORS 164.325, Arson I;
 (hhhh) ORS 164.365, Criminal Mischief I;
 (iiii) ORS 164.377, Computer crime;
 (jjjj) ORS 164.395, Robbery III;
 (kkkk) ORS 164.405, Robbery II;
 (llll) ORS 164.415, Robbery I;
 (mmmm) ORS 164.885, Endangering aircraft;
 (nnnn) ORS 165.007, Forgery II;
 (oooo) ORS 165.013, Forgery I;
 (pppp) ORS 165.017, Criminal possession of a forged instrument II;
 (qqqq) ORS 165.022, Criminal possession of a forged instrument I;
 (rrrr) ORS 165.032, Criminal possession of a forgery device;
 (ssss) ORS 165.042, Fraudulently obtaining a signature;
 (tttt) ORS 165.055, Fraudulent use of a credit card;
 (uuuu) ORS 165.065, Negotiating a bad check;
 (vvvv) ORS 165.074, Unlawful factoring of payment card transaction;
 (wwww) ORS 165.080, Falsifying business records;
 (xxxx) ORS 165.095, Misapplication of entrusted property;
 (yyyy) ORS 165.100, Issuing a false financial statement;
 (zzzz) ORS 165.102, Obtaining execution of documents by deception;
 (aaaaa) ORS 165.581, Cellular counterfeiting I;
 (bbbbb) ORS 165.800, Identity theft;
 (cccc) ORS 165.810, Unlawful possession of a personal identification device;
 (dddd) ORS 165.813, Unlawful possession of fictitious identification;
 (eeee) ORS 166.005, Treason;
 (ffff) ORS 166.015, Riot;
 (ggggg) ORS 166.085, Abuse of corpse II;
 (hhhhh) ORS 166.087, Abuse of corpse I;
 (iiii) ORS 166.155, Intimidation II;
 (jjjj) ORS 166.165, Intimidation I;
 (kkkkk) ORS 166.220, Unlawful use of weapon;
 (lllll) ORS 166.270, Possession of weapons by certain felons;

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(mmmmm) ORS 166.272, Unlawful possession of machine guns, certain short-barreled firearms and firearm silencers;

(nnnnn) ORS 166.275, Possession of weapons by inmates of institutions;

(ooooo) ORS 166.385, Possession of hoax destructive device;

(ppppp) ORS 166.429, Firearms used in felony;

(rrrrr) ORS 166.720, Racketeering activity unlawful;

(sssss) ORS 167.012, Promoting prostitution;

(ttttt) ORS 167.017, Compelling prostitution;

(uuuuu) ORS 167.062, Sadomasochistic abuse or sexual conduct in live show;

(vvvvv) ORS 167.065, Furnishing obscene materials to minors;

(wwwww) ORS 167.070, Sending obscene materials to minors;

(xxxxx) ORS 167.075, Exhibiting an obscene performance to a minor;

(yyyyy) ORS 167.080, Displaying obscene materials to minors;

(zzzzz) ORS 167.212, Tampering with drug records;

(aaaaa) ORS 167.262, Adult using minor in commission of controlled substance offense;

(bbbbbb) ORS 167.315, Animal abuse II;

(ccccc) ORS 167.320, Animal abuse I;

(ddddd) ORS 167.322, Aggravated animal abuse I;

(eeeeee) ORS 167.333, Sexual assault of animal;

(ffffff) ORS 181.599, Failure to report as sex offender;

(gggggg) ORS 192.852/865, Prohibited obtaining or disclosing of protected information;

(hhhhh) ORS 411.630, Unlawfully obtaining public assistance;

(iiiiii) ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance);

(jjjjjj) ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits;

(kkkkkk) ORS 471.410, Providing liquor to person under 21 or to intoxicated

(llllll) ORS 475.525, Sale of drug paraphernalia prohibited;

(mmmmm) ORS 475.805, Providing hypodermic device to minor prohibited;

(nnnnn) ORS 475.840, Prohibited acts generally (regarding drug crimes);

(ooooo) ORS 475.846, Unlawful manufacture of heroin;

(pppppp) ORS 475.848, Unlawful manufacture of heroin within 1,000 feet of school;

(qqqqqq) ORS 475.850, Unlawful delivery of heroin;

(rrrrrr) ORS 475.852, Unlawful delivery of heroin within 1,000 feet of school;

(sssss) ORS 475.854, Unlawful possession of heroin;

(ttttt) ORS 475.856, Unlawful manufacture of marijuana;

(uuuuuu) ORS 475.858, Unlawful manufacture of marijuana within 1,000 feet of school;

(vvvvvv) ORS 475.860, Unlawful delivery of marijuana;

(wwwww) ORS 475.862, Unlawful delivery of marijuana within 1,000 feet of school;

(xxxxxx) ORS 475.864, Unlawful possession of marijuana;

(yyyyyy) ORS 475.866, Unlawful manufacture of 3,4-methylenedioxymethamphetamine;

(zzzzzz) ORS 475.868, Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;

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(aaaaaaa) ORS 475.870, Unlawful delivery of 3,4-methylenedioxymethamphetamine;
 (bbbbbbb) ORS 475.872, Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;
 (ccccccc) ORS 475.874, Unlawful possession of 3,4-methylenedioxymethamphetamine;
 (ddddddd) ORS 475.876, Unlawful manufacture of cocaine;
 (eeeeeee) ORS 475.878, Unlawful manufacture of cocaine within 1,000 feet of school;
 (ffffff) ORS 475.880, Unlawful delivery of cocaine;
 (ggggggg) ORS 475.882, Unlawful delivery of cocaine within 1,000 feet of school;
 (hhhhhhh) ORS 475.884, Unlawful possession of cocaine;
 (iiiiiii) ORS 475.886, Unlawful manufacture of methamphetamine;
 (jjjjjjj) ORS 475.888 Unlawful manufacture of methamphetamine within 1,000 feet of school;
 (kkkkkkk) ORS 475.890, Unlawful delivery of methamphetamine;
 (lllllll) ORS 475.892, Unlawful delivery of methamphetamine within 1,000 feet of school;
 (mmmmmmm) ORS 475.894, Unlawful possession of methamphetamine;
 (nnnnnnn) ORS 475.904, Penalty for manufacture or delivery of controlled substance within 1,000 feet of school;
 (oooooooo) ORS 475.906, Penalties for distribution to minors;
 (ppppppp) ORS 475.908, Causing another person to ingest a controlled substance;
 (qqqqqqq) ORS 475.910, Application of controlled substance to the body of another person;
 (rrrrrrr) ORS 475.914, Prohibited acts for registrants (with the State Board of Pharmacy; regarding felony crimes);
 (sssssss) ORS 475.916, Prohibited acts involving records and fraud;
 (ttttttt) ORS 475.918, Falsifying drug test results;
 (uuuuuuu) ORS 475.920, Providing drug test falsification equipment
 (vvvvvvv) ORS 475.967, Possession of precursor substance with intent to manufacture controlled substance;
 (wwwwwww) ORS 475.975, Unlawful possession and distribution of iodine in its elemental form;
 (xxxxxxx) ORS 475.976, Unlawful possession and distribution of iodine matrix;
 (yyyyyyy) ORS 475.977, Possessing or disposing of methamphetamine manufacturing waste;
 (zzzzzzz) ORS 677.080, Prohibited acts (regarding the practice of medicine);
 (aaaaaaaa) ORS 803.080, Unlawfully publishing certificate of title forms prohibited;
 (bbbbbbb) ORS 803.230, Forging, altering or unlawfully producing or using title or registration;
 (ccccccc) ORS 807.500, Unlawful production of certain documents; affirmative defense;
 (ddddddd) ORS 807.520, False swearing to receive license;
 (eeeeeee) ORS 807.530, False application for license;
 (ffffff) ORS 807.620, Giving false information to police officer;
 (ggggggg) ORS 811.182, Criminal driving while suspended or revoked;
 (hhhhhhh) ORS 811.540, Fleeing or attempting to elude police officer;

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- (iiiiiii) ORS 811.700, Failure to perform duties of driver when property is damaged;
- (jjjjjjj) ORS 811.705, Failure to perform duties of driver to injured persons;
- (kkkkkkk) ORS 811.740, False accident report;
- (lllllll) ORS 813.010, Driving under the influence of intoxicants (DUII);
- (mmmmmmm) ORS 819.300, Possession of a stolen vehicle;
- (nnnnnnn) ORS 819.310, Trafficking in stolen vehicles;
- (oooooooo) ORS 822.605, False swearing relating to regulation of vehicle related businesses;
- (ppppppp) ORS 830.035/990, Fleeing or attempting to elude a peace officer (small watercraft);
- (qqqqqqq) ORS 830.053/990, Fraudulent report of theft of boat;
- (rrrrrrr) ORS 830.325, Operating boat while under the influence of intoxicating liquor or controlled substance;
- (sssssss) ORS 830.475, Duties of operators and witnesses at accidents;
- (ttttttt) Any federal crime;
- (uuuuuuu) Any unclassified felony defined in Oregon Revised Statutes not listed elsewhere in this rule;
- (vvvvvvv) Any other felony under the statutes of Oregon or any other jurisdiction not listed elsewhere in this rule that an authorized designee determines is relevant to performance under the subject individual's license or registration;
- (wwwwwww) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section of the rule pursuant to ORS 161.405, 161.435, or 161.450;
- (xxxxxxx) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this section of the rule;
- (yyyyyyy) Any crime in any other jurisdiction that is the substantial equivalent of any of the Oregon crimes listed in this section of the rule as determined by an authorized designee; or
- (zzzzzzz) Any offense that no longer constitutes a crime under Oregon law or the laws of any other jurisdiction, but is the substantial equivalent of any of the crimes listed in this section of the rule as determined by an authorized designee.

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(2) Ten-Year Review Crimes.

- (a) ORS 133.076, Failure to appear on criminal citation;
- (b) ORS 162.075, False swearing;
- (d) ORS 162.145, Escape III;
- (e) ORS 162.175, Unauthorized departure;
- (f) ORS 162.185, Supplying contraband;
- (g) ORS 162.195, Failure to appear II;
- (h) ORS 162.205, Failure to appear I;
- (i) ORS 162.247, Interfering with a peace officer or parole & probation officer;
- (j) ORS 162.285, Tampering with a witness;
- (k) ORS 162.295, Tampering with physical evidence;
- (l) ORS 162.315, Resisting arrest;
- (m) ORS 162.335, Compounding;
- (n) ORS 162.365, Criminal impersonation;

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- (o) ORS 162.369, Possession of false law enforcement identification card;
- (p) ORS 162.375, Initiating a false report;
- (q) ORS 162.385, Giving false information to police officer for a citation or arrest warrant;
- (r) ORS 163.195, Recklessly endangering another person;
- (s) ORS 163.200, Criminal mistreatment II;
- (t) ORS 163.212, Unlawful use of an electrical stun gun, tear gas, or mace II;
- (u) ORS 163.245, Custodial interference II;
- (v) ORS 163.435, Contributing to the sexual delinquency of a minor;
- (w) ORS 163.445, Sexual misconduct;
- (x) ORS 163.467, Private indecency;
- (y) ORS 163.700, Invasion of personal privacy;
- (z) ORS 164.043, Theft III;
- (aa) ORS 164.140, Criminal possession of rented or leased personal property;
- (bb) ORS 164.272, Unlawful entry into motor vehicle;
- (cc) ORS 164.335, Reckless burning;
- (dd) ORS 164.354, Criminal Mischief II;
- (ee) ORS 165.037, Criminal simulation;
- (ff) ORS 165.070, Possessing fraudulent communications device;
- (gg) ORS 165.540, Obtaining contents of communication;
- (hh) ORS 165.543, Interception of communications;
- (ii) ORS 165.570, Improper use of emergency reporting system;
- (jj) ORS 165.572, Interference with making a report;
- (kk) ORS 165.577, Cellular counterfeiting III;
- (ll) ORS 165.579, Cellular counterfeiting II;
- (mm) ORS 165.692, Making false claim for health care payment;
- (nn) ORS 166.023, Disorderly conduct I;
- (oo) ORS 166.025, Disorderly conduct II;
- (pp) ORS 166.065, Harassment;
- (qq) ORS 166.076, Abuse of a memorial to the dead;
- (rr) ORS 166.116, Interfering with public transportation;
- (ss) ORS 166.180, Negligently wounding another;
- (tt) ORS 166.190, Pointing firearm at another;
- (uu) ORS 166.240, Carrying of concealed weapon;
- (vv) ORS 166.250, Unlawful possession of firearms;
- (ww) ORS 166.370, Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school;
- (xx) ORS 166.382, Possession of destructive device prohibited;
- (yy) ORS 166.384, Unlawful manufacture of destructive device;
- (zz) ORS 166.470, Limitations and conditions for sales of firearms;
- (aaa) ORS 166.480, Sale or gift of explosives to children;
- (bbb) ORS 166.649, Throwing an object off an overpass II;
- (ccc) ORS 166.651, Throwing an object off an overpass I;
- (ddd) ORS 166.660, Unlawful paramilitary activity;
- (eee) ORS 167.007, Prostitution;
- (fff) ORS 167.090, Publicly displaying nudity or sex for advertising purposes;

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(ggg) ORS 167.222, Frequenting a place where controlled substances are used;
 (hhh) ORS 167.337, Interfering with law enforcement animal;
 (iii) ORS 433.010, Spreading disease (willfully) prohibited;
 (jjj) ORS 475.900, Commercial drug offense;
 (kkk) ORS 475.912, Unlawful delivery of imitation controlled substance;
 (lll) ORS 475.914, Prohibited acts for registrants (with the State Board of Pharmacy;
 regarding misdemeanor crimes);
 (mmm) ORS 475.950, Failure to report precursor substance;
 (nnn) ORS 475.955, Failure to report missing precursor substances;
 (ooo) ORS 475.960, Illegally selling drug equipment;
 (ppp) ORS 475.962, Distribution of equipment, solvent, etc., with intent to
 manufacture controlled substance;
 (qqq) ORS 475.965, Providing false information on precursor substances report;
 (rrr) ORS 475.979 Unlawful possession of lithium or sodium metal;
 (sss) ORS 807.580, Using invalid license;
 (ttt) ORS 811.140, Reckless driving;
 (uuu) ORS 819.420, Failure to obtain vehicle identification number for vehicle with
 altered or removed number;
 (vvv) ORS 819.430, Trafficking in vehicles with destroyed or altered identification
 numbers;
 (www) ORS 830.730/990, False information to peace officer or State Marine Board;
 (xxx) Any unclassified misdemeanor defined in Oregon's or any other jurisdiction's
 statutes and not listed elsewhere in this rule;
 (yyy) Any other misdemeanor under the statutes of Oregon or any other jurisdiction
 and not listed elsewhere in this rule that an authorized designee determines is relevant to
 performance of the subject individual's license or registration;
 (zzz) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this
 section of the rule pursuant to ORS 161.405, 161.435, or 161.450;
 (aaaa) Any crime based on criminal liability for conduct of another pursuant to ORS
 161.155, when the underlying crime is listed in this section of the rule;
 (bbbb) Any crime in any other jurisdiction which is the substantial equivalent of any
 of the Oregon crimes listed in this section of the rule as determined by an authorized
 designee; or
 (cccc) Any offense that no longer constitutes a crime under Oregon law or the laws of
 another jurisdiction, but is the substantial equivalent of any of the crimes listed in this
 section of the rule as determined by an authorized designee.

(3) Five-Year Review Crimes.

(a) ORS 164.245, Criminal trespass II;
 (b) ORS 164.345, Criminal mischief III;
 (c) ORS 165.805, Misrepresentation of age by a minor;
 (d) ORS 166.090, Telephonic harassment;
 (e) ORS 166.416, Providing false information in connection with a transfer of a
 firearm;
 (f) ORS 166.425, Unlawful purchase of firearm;

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- (g) ORS 418.630, Operating uncertified foster home;
- (h) ORS 685.990, Violations pertaining to naturopathic medicine;
- (i) ORS 803.070, False statement in application or assignment;
- (j) ORS 803.075, False swearing prohibited;
- (k) ORS 803.375, False application prohibited;
- (l) ORS 803.385, False swearing relating to registration;
- (m) ORS 807.430, Misuse of identification card;
- (n) ORS 807.510, Transfer of documents for purposes of misrepresentation;
- (o) ORS 807.590, Permitting misuse of license;
- (p) ORS 807.600, Using another's license;
- (q) ORS 822.005, Acting as vehicle dealer without certificate;
- (r) ORS 822.045, Crimes relating to conducting a vehicle dealer business;

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(s) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section of the rule pursuant to ORS 161.405, 161.435 or 161.450;

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(t) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this section of the rule;

(u) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section of the rule as determined by an authorized designee; or

(v) Any offense that no longer constitutes a crime under Oregon law or the law of another jurisdiction, but is the substantial equivalent of any of the crimes listed in this section of the rule as determined by an authorized designee.

(4) An authorized designee shall evaluate a crime on the basis of Oregon laws and, if applicable, federal laws or the laws of any other jurisdiction in which a criminal records check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the criminal background fitness determination.

(5) A subject individual's criminal background fitness determination shall not be denied under these rules based on the existence or contents of a record that has been expunged pursuant to ORS 419A.260 and 419A.262 or other similar process under the laws of this state or another jurisdiction.

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Stat. Auth.: ORS 181.534, 696.022 and 696.790

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Incomplete Criminal Background Application

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The agency will close an incomplete criminal background application and terminate a criminal background fitness determination without issuing a decision when:

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(1) The subject individual submits a written request to withdraw a criminal background application for a new license or registration, or license or registration renewal, or otherwise requests the agency to terminate a criminal records check;

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(2) The subject individual does not provide the agency all of the materials and information required under OAR 863-005-0010 within a reasonable period of time;

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(3) A subject individual does not respond to an authorized designee's request for additional information within a reasonable period of time; or

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(4) The subject individual fails or refuses to cooperate with an authorized designee's attempts to acquire other criminal records information under OAR 863-005-0020.

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863-005-0050

Notice to Subject Individual of Incomplete Criminal Background Application

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(1) -When an authorized designee proposes to close an incomplete criminal background application and terminate a criminal background fitness determination without issuing a decision the authorized designee shall:

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(a) Provide written notice via first class mail to the subject individual within 14 calendar days of a decision to terminate the subject individual's criminal background fitness determination due to incompleteness;

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(b) State the reason the subject individual's criminal background fitness determination application was found to be incomplete; and

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(c) Record on the notice the date the criminal background fitness determination application was terminated and closed due to incompleteness.

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(2)-A subject individual that receives notice that the agency intends to terminate a criminal background fitness determination due to incompleteness may submit a written request to the agency requesting the agency to continue the fitness determination process. A subject individual's written request to continue the criminal background fitness determination process must be received by the agency within 30 days of the date of the

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original notice of termination. The request must include all information previously requested by the agency but not provided by the subject individual. If a subject individual fails to submit a written request to continue a fitness determination process within 30 days of receiving the notice described in section (1) of this rule, the subject individual shall be required to submit a new background check application, fingerprint card and fee.

Stat. Auth.: ORS [181.534, 696.022 & 696.790](#)
Stats. Implemented: ORS [181.534](#)

863-005-0060

Notice to Subject Individual of Criminal Background Fitness Determination

(1) An authorized designee shall provide written notice to a subject individual that the agency has completed a requested criminal background fitness determination. The notice shall state the date the agency completed the criminal background fitness determination and the agency's decision to approve or deny a criminal background fitness determination application. If the agency denies a criminal background fitness determination, the notice shall state the reason for the denial based on the factors described in OAR 863-005-0020(5).

(2) The agency shall mail notice of a criminal background fitness determination via first class mail to the address provided by the subject individual on the agency background check application, or to an updated address as provided in writing by the subject individual no later than 14 calendar days after the date the agency has completed a criminal background fitness determination.

Stat. Auth.: ORS 181.534, 696.022 and 696.790
Stats. Implemented: ORS 181.534

863-005-0070

Appeals

(1) A subject individual may not appeal a criminal background fitness determination or a decision to close a criminal background fitness determination for reason of incompleteness.

(2) If a licensing or registration applicant wishes to, they may complete any additional pre-licensing/registration requirements and submit a completed license/registration

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application together with the required fees. -Upon review of a completed license/registration application, the agency shall issue a “notice of intent to deny” that describes the reason for the denial. -The notice shall also include information required by OAR 137-003-0505 that describes the subject individual’s right to request a contested case hearing to appeal the agency’s decision.

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(3) Contested case hearings on criminal background fitness determinations shall be closed to non-participants.

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(4) A subject individual may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or any other agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation.

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(5) Any challenge to any information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or any other agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation must follow the appeal process prescribed by the reporting agency.

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(6) If the subject individual successfully challenges the accuracy or completeness of any information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or an agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation that the agency relied on to support a decision to deny a criminal background fitness determination, the subject individual may request the agency to conduct a new criminal records check and re-evaluate the original criminal background fitness determination made under OAR 863-005-0020. The subject individual shall submit a new background check application to the agency within 30 days of the date the Oregon Department of State Police, the Federal Bureau of Investigation, or an agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation issues a corrected criminal background report.

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Stat. Auth.: ORS 181.534, 696.022 and 696.790
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Recordkeeping and Confidentiality

(1) An authorized designee shall maintain all documents on a criminal background fitness determination or the closing of a criminal background fitness determination due to incompleteness in accordance with applicable archive retention requirements.

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(2) Records the agency receives from the Oregon Department of State Police resulting from a criminal records check, including but not limited to Law Enforcement Data System (LEDS) reports and state or federal criminal offender information originating with the Oregon Department of State Police or the Federal Bureau of Investigation, are confidential pursuant to ORS 181.534.

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(3) Within the agency, only an authorized designee shall have access to records the agency receives from the Oregon Department of State Police resulting from a criminal records check.

(4) An authorized designee shall maintain and disclose any records received from the Oregon Department of State Police resulting from a criminal records check in accordance with applicable requirements and restrictions in ORS chapter 181 and other applicable federal and state laws, rules adopted by the Oregon Department of State Police in OAR chapter 257, division 15, these rules, and any written agreement between the agency and the Oregon Department of State Police.

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(5) If a fingerprint-based criminal records check was conducted on a subject individual, the agency shall permit that subject individual to inspect the state and federal criminal offender information, unless prohibited by state or federal law.

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(6) If a subject individual with a right to inspect criminal offender information under section (5) of this rule requests, the agency shall provide the subject individual with a copy of the individual's own state and federal criminal offender information, unless prohibited by state or federal law.

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(7) In addition to the records described in section (2) of this rule, the agency shall treat all records received or created under these rules that concern a subject individual's criminal history as confidential pursuant to ORS 181.534.

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(8) Within the agency, only an authorized designee shall have access to the records identified under section (7) of this rule.

Stat. Auth.: ORS 181.534, 696.022 and 696.790
Stats. Implemented: ORS 181.534

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Fees

The agency shall charge a fee for acquiring criminal offender information to make a criminal background fitness determination, including re-evaluations of criminal background determinations made pursuant to OAR 863-005-0070. The fee shall not exceed the fee(s) charged the agency by the Oregon Department of State Police and the Federal Bureau of Investigation.

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**TEMPORARY ADVERTISING RULE
EFFECTIVE IN JANUARY 16, 2008 TO JULY 14, 2008**

863-015-0125

Advertising

(1) As used in this rule, "advertising" and "advertisement" include all forms of representation, promotion and solicitation disseminated in any manner and by any means for any purpose related to professional real estate activity, including, without limitation, advertising by mail; telephone, cellular telephone, and telephonic advertising; the Internet, E-mail, electronic bulletin board and other similar electronic systems; and business cards, signs, lawn signs, and billboards.

(2) Advertising by a licensee, in process and in substance, must:

- (a) Be identifiable as advertising of a real estate licensee;
- (b) Be truthful and not deceptive or misleading;
- (c) Not state or imply that the real estate broker or property manager associated with a principal real estate broker is the person responsible for operating the real estate brokerage or is a sole practitioner or principal broker;
- (d) Not state or imply that the licensee is qualified or has a level of expertise other than as currently maintained by the licensee; and
- (e) Be done only with the written permission of the property owner(s) or owner(s)' authorized agent.

(3) Advertising that includes the licensee's name must:

- (a) Use the licensee's licensed name; or
- (b) Use a common derivative of the licensee's first name and the licensee's licensed last name.

(4) The licensed name or registered business name of the principal real estate broker, sole practitioner real estate broker, or property manager must be prominently displayed, immediately noticeable, and conspicuous in all advertising.

(5) Except as provided in section (8) of this rule, a real estate broker must:

- (a) Submit proposed advertising to the licensee's principal broker for review and receive the principal broker's approval before publicly releasing any advertisement; and
- (b) Keep a record of the principal broker's approval and make it available to the Agency upon request.

(6) Except as provided in section (8) of this rule, a principal real estate broker:

- (a) Is responsible for all advertising approved by the principal broker that states the principal real estate broker's licensed name or registered business name; and
- (b) Must review all advertising of a real estate broker or a property manager who is associated with the principal real estate broker.

(7) A principal real estate broker may delegate direct supervisory authority and responsibility for advertising originating in a branch office to the principal broker who manages the branch office if such delegation is in writing.

- (8) A licensee associated with a principal real estate broker may advertise property owned by the licensee for sale, exchange, or lease option without approval of the principal real estate broker, if:
- (a) The property is not listed for sale, exchange, or lease option with the principal broker;
 - (b) The advertising states that the property owner is a real estate licensee; and
 - (c) The advertising complies with all applicable other applicable provisions of ORS chapter 696 and its implementing rules.
- (9) Advertising in electronic media and by electronic communication, including but not limited to the Internet, web pages, e-mail, e-mail discussion groups, blogs, and bulletin boards is subject to the following requirements:
- (a) Advertising must comply with all other requirements of this rule;
 - (b) Advertising by a licensee must include on its first page:
 - (i) The licensee's licensed name as required in section (3) of this rule;
 - (ii) The licensed name or registered business name of the principal real estate broker, sole practitioner real estate broker, or property manager; and
 - (iii) A statement that the licensee is licensed in the State of Oregon.
 - (c) Sponsored links, which are paid advertisements located on a search engine results page, are exempt from the requirements contained in subsection (b) if the first page following the link complies with subsection (b).
 - (d) E-mail from a licensee is exempt from the requirements of subsection (b) if the licensee's initial communication contained the information required by subsection (a).
- (10) No advertising may guarantee future profits from any real estate activity.
- (11) A licensee may use the term "team" or "group" to advertise if:
- (a) The use of the term does not constitute the unlawful use of a trade name and is not deceptively similar to a name under which any other person is lawfully doing business;
 - (b) The team or group includes at least one real estate licensee;
 - (c) The licensee members of the team or group are associated with the same principal broker or property manager;
 - (d) The licensee members of the team or group use each licensee's licensed name as required under section (3) of this rule;
 - (e) If any non-licensed individuals are named in the advertising, the advertising must clearly state which individuals are real estate licensees and which ones are not; and
 - (f) The advertising complies with all other applicable provisions of ORS chapter 696 and its implementing rules.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.301(1), (4)

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 3-2006(Temp), f. 12-28-06, cert. ef. 1-1-07 thru 6-29-07; REA 3-2007, f. & cert. ef. 6-29-07

Agenda Item No. V. A.

March 18, 2008

Oregon Real Estate Board
1177 Center Street NE
Salem, OR 97301

Re: Professional real estate activity when a broker moves to another principal broker

Greetings:

At our last board meeting, I commented on the procedure we followed when a broker was either joining our company from another principal broker or leaving our principal broker to join another principal broker (assuming the new principal broker is not affiliated with the broker's current principal broker, allowed with a division and control of supervision arrangement) rm).

I was informed at that time by agency staff that I may not be complying with law or rule with this practice. I responded that it needed further review as the process had been recommended to us by previous agency staff and that I believed it was widely followed in the industry.

The nature of this problem is rooted in consumer protection. In most cases, consumers don't fully understand that listings and transactions are with the principal broker instead of the broker. The relationship they have established is with the broker and they assume the broker will be with them for the entire transaction.

When a broker chooses to transfer his/her license to another principal broker the consumer is left without the representation he/she felt he/she was getting when the contract was made. This is particularly true with offers to purchase.

In the past, we met the consumer's needs with something very similar to a "division and control of supervision" agreement. We authorized the departing/joining broker to work on an existing transaction that was in our control/was in the other principal broker's control and the other principal broker did the same.

I feel it is important for consumer protection and straightforward business practices that we have an approved method for dealing with the reality of broker transfers and I respectfully request the Agency to provide this.

Sincerely,

Byron Hendricks

**REA Board
Administrative Actions
January 24, 2008 through March 27, 2008**

REVOCATIONS

Name	Violations	Facts	Order Date & Type Sanction
Casarez, Jerry G.	ORS 696.301	Stipulated order dated January 30, 2008, effective January 30, 2008, resulting in a revocation.	1-30-08 Stipulated Revocation
Lund, Maria Gonzales	ORS 696.301(12)(14); 696.815(2)(a)(b); OAR 863-015- 0125(1)(e); 015-0135(4)(5); 015- 0215(1); 015-0255;	Lund failed to properly complete a listing agreement by leaving blank the section specifying how forfeited earnest money would be disbursed; Lund advertised property on RMLS at a sale price lower than the listing price to which the sellers had agreed, and advertised a seller credit of \$2,000 to be offered to a buyer without first obtaining the sellers' written consent to do so; Lund failed to promptly transmit the listing agreement to her principal broker for review until 6 weeks after it was signed; Lund failed to promptly transmit a repair addendum to her principal broker for review for approximately 2 months; Lund recommended an unlicensed contractor to the sellers in order to facilitate repairs even though the repairs in question required performance by a licensed contractor; Lund executed an addendum stating that the seller would credit the buyer \$2,000 for a carpet allowance, when the signature on the addendum purporting to be the buyer's signature was not the buyer's signature, and submitted the addendum to her principal broker for review; Lund executed an addendum extending the closing date, when the signature on the addendum purporting to be the buyer's signature was not the buyer's signature, and submitted the addendum to her principal broker; Lund submitted a broker demand instruction to escrow representing that the seller had agreed to pay a commission higher than the listing agreement stated; Lund represented to her principal broker that a licensed contractor had completed a roof inspection prior to closing, had verbally told Lund that the roof was okay, had mailed a copy of a roof inspection report to the buyer, and had told Lund that the inspector could not comply with a request for an additional	1-24-08 Stipulated Revocation

		<p>copy because his father was dying, when in fact none were true; Lund executed a promissory note for earnest money without making the note payable within a stated time subsequent to the sellers' acceptance; Lund failed to transmit a copy of the entire inspection report, which included photographs, to the buyer, when Lund received it from the inspector prior to closing; Lund failed to give the buyer a copy of the executed sale agreement; Lund failed to give the buyer an initial agency disclosure pamphlet at first contact with the buyer; Lund failed to include the buyer's request for a carpet allowance in the initial offer to purchase; and Lund temporarily transmitted to the sellers the original copy of the sale agreement so the sellers could review and sign the document, without keeping a copy for herself or the brokerage records.</p>	
Sasaki, S. Alan	ORS 696.301(11)	Sasaki plead guilty to a charge of Aggravated Theft in the First Degree, a Class B Felony.	3-27-08 Stipulated Revocation

SUSPENSIONS

Name	Violations	Facts	Order Date & Type Sanction
Daugherty, Sheila Lynne	ORS 696.815(2)(a), 696.820(2), 696.845, 696.870(1)(a)(b), OAR 863-015-0205(1), 863-015-0255(2)	Daugherty failed to inform sellers, whom she represented through her course of conduct, of the sellers' duty under ORS 105.462 to 105.490, regarding the sellers' property disclosure; Daugherty failed to inform the buyer, whom she represented through her course of conduct, of the buyer's rights under ORS 105.462 to 105.490, pertaining to the seller's property disclosure; Daugherty failed to provide the sellers with an initial agency disclosure pamphlet at the first contact; Daugherty failed to obtain the signature of the buyer or sellers on a final agency acknowledgement form when executing the offer to purchase; Daugherty failed to obtain signed disclosed limited agency agreements from the sellers and buyer, when, through her course of conduct, she represented both sellers and buyer; Daugherty failed in a timely manner to account to the sellers for the \$65 she received from the sellers for the purpose of recording the deed; Daugherty failed to transmit to her principal broker the \$65 she received from the sellers for the purpose of recording the deed; Daugherty failed to transmit to her principal broker the real estate contract that she executed on behalf of the sellers and buyer; and Daugherty failed to disclose to the sellers in a timely manner a conflict of interest, that the buyer was her son.	3-10-08 Stipulated 30 day suspension

SUSPENSIONS (CONT)

<p>Mitzel, Debra K.</p>	<p>ORS 696.241(2), 696.301(1)(28); OAR 863-025- 0020(2)(4)(5)(6); 025-0025(1)(3)(a)(e)(f)(5)(6); 025-0030(1); 025-0035(3); 025-00402(5); 025-0055(2); 025-0065(1); 015-0255(4) (2003 Edition); 863-025-0025(3)(a)(7)(10); 025-0035(3); 025-0070(3) (2005 Edition)</p>	<p>Mitzel allowed checks to be drawn which resulted in a negative balance; Mitzel allowed an employee to issue a second check to a vendor without recording the invoice number; Mitzel failed to authorize, in writing, an employee to review and approve the reconciliations of the CTA; Mitzel misrepresented the nature of a payment to a property owner; Mitzel took a management commission before the end of the rent cycle; Mitzel failed to notify OREA of a new CTA; Mitzel failed to maintain active and inactive records as required; Mitzel failed to reconcile the February through April 2006 CTA at least once a month; Mitzel issued checks from an owner's ledger account in excess of the actual credit balance of the account; Mitzel failed to deposit into a CTA funds received in the course of her property management business; Mitzel allowed outstanding adjustments to remain on the accounting records for extended periods of time; Mitzel conducted property management for an owner without a valid property management agreement; Mitzel allowed an employee to enter into a property management agreement; Mitzel failed to initial and date a property management agreement memorializing her approval and acceptance; Mitzel failed to assure that the label included the language "clients' trust account" on more than one CTA; Mitzel failed to provide an owner with a final accounting and the unobligated funds timely; Mitzel allowed an employee to make a telephone transfer without prior written authorization; Mitzel issued a CTA check prior to the existence of a sufficient credit balance in the owner's ledger to cover the check on more than one occasion; Mitzel failed to note a check number issued and date paid for a vendor invoice and thereby failed to retain all paid bills and receipts explaining the amount of and purpose for the disbursement; Mitzel maintained ledgers that contained erroneous and incomplete information; Mitzel used checks that were not numbered consecutively as they were issued; Mitzel failed to transfer existing client operating funds into a newly opened CTA in a timely manner; Mitzel charged an owner the rate of \$40 per hour for repairs and maintenance work when the management agreement called for the rate of \$35 per hour; Mitzel charged owners for maintenance and repairs without any supporting documentation or explanation of the charges; and Mitzel allowed a check to be drawn which resulted in a negative balance.</p>	<p>3-10-08 Stipulated 2 year suspension</p>
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REPRIMANDS

Name	Violations	Facts	Order Date & Type Sanction
Brown, Earlene S.	ORS 696.301(6), 696.815(5)(b) (2003 Edition)	Brown advertised a lot as being "ready to build or put a manufactured home on" when in fact it was not; and Brown allowed the transaction to close without obtaining a final elevation report, which was a written contingency to the transaction.	2-11-08 Stipulated
Denton, Patricia M.	ORS 696.301(6), 696.815(5)(b) (2003 Edition)	Denton advertised a lot as being "ready to build or put a manufactured home on" when in fact it was not; and Brown allowed the transaction to close without obtaining a final elevation report, which was a written contingency to the transaction.	2-11-08 Stipulated
Strutz, Larry C.	ORS 696.810(3)(e)	Strutz failed to advise a seller to seek legal advice regarding a quitclaim deed.	1-31-08 Stipulated

LEGISLATIVE CONCEPT

Agency No./Concept No. 919/2

Date April 3, 2008

- ◆ Attach a Fiscal Impact Estimate.
 - ◆ Attach detailed explanation of problem and solution, and draft language.
 - ◆ Deliver *original and six copies* including draft language and attachments to the Department of Administrative Services, 155 Cottage Street NE, Salem OR 97301-3965 *on or before April 4, 2008*.
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Agency Real Estate

Division/Program N/A

Concept Subject/Title Individuals Authorized to Engage in Property Management; New Principal Property Manager License

Contact Person _____

Phone No. _____

◆ BRIEF DESCRIPTION OF THIS CONCEPT:

The concept is to: 1) create a new license of "principal property manager" who is authorized to establish property management clients' trust accounts and supervise the activities of a property manager; 2) require the agency to adopt rules about the supervision of a property manager by a principal property manager; 3) create a new licensing track for property managers where only a principal property manager could establish clients' trust accounts and enter in to property management agreements and where a property manager must be supervised by a principal property manager before qualifying for a license as a principal property manager; 4) establish greater requirements for licensing of property managers; 5) eliminate the authority of a principal real estate broker to engage in the management of rental real estate or to supervise an individual in the management of rental real estate; and 6) allow an individual to hold a license as a property manager or principal property manager and also hold a license as a real estate broker or principal real estate broker.

◆ PURPOSE OF THIS CONCEPT (DESCRIBE PROBLEM YOU ARE TRYING TO SOLVE AND SUGGESTED SOLUTION):

NOTE: This concept is a placeholder. The Agency initiated two collaborative working groups to consider legislative concepts; one for real estate brokers and one for property managers. This concept is still under review by both groups of stakeholders due to the complexity of the concept and unresolved issues including specific requirements for licensing, effective dates, transitioning from the existing licensing structure, and potential "grandfathering" of existing licensees.

The Agency currently issues three real estate licenses: real estate property manager, principal real estate broker and real estate broker. A real estate broker may not employ, engage or supervise another real estate licensee. A real estate broker must be supervised by a principal real estate broker unless the real estate broker is a "sole practitioner" with three years of experience licensed under a principal real estate broker. A property manager does not

The "management of rental real estate" is defined in ORS 696.010(12) and includes representing an owner and representing a tenant. A property manager licensee may only engage in the management of rental real estate and may not engage in any other "professional real estate activity" (i.e. representing a person in the sale or purchase of real estate) as defined in ORS 696.010(15). Currently, principal real estate brokers and real estate brokers under the supervision of a principal real estate broker are authorized to engage in the management of rental real estate. A principal real estate broker may also supervise a property manager.

A licensee who engages in the management of rental real estate must establish and maintain clients' trust accounts for all funds received by the property manager. One type of account is for the collections of rents and disbursement of expenses ("operations") and a second type of account is for security deposits. Substantial amounts of money flow in and out of operations accounts and are held in security deposit accounts. For example, if 100 rental units were managed and the rent on each unit was \$750 and the security deposit on each unit was \$1,000, then the "operating

account” would collect \$75,000 in rents each month and the security deposit average monthly balance would be \$100,000. The management and recordkeeping requirements established to safeguard these funds is complex.

1. One of the purposes of this concept is to create a new license of “principal property manager” who is authorized to establish clients’ trust accounts and supervise the activities of a property manager. A property manager could not establish clients’ trust accounts and would be required to work under the supervision of a principal. This concept would provide experience and training of new licensees in the operation of a business that education and testing alone cannot provide.
2. The concept would require the agency to adopt rules about the supervision of a property manager by a principal property manager. This would provide the agency flexibility to outline the details of the supervision requirement of these new licensees and provide an opportunity for greater input from stakeholders.
3. Establishing a principal property manager license would create a new licensing track for property managers where a property manager could not establish clients’ trust accounts and must be supervised by a principal property manager before qualifying for a license as a principal property manager.
4. Another purpose of the concept is to establish greater requirements in education and testing for licensing of property managers, including testing for the specialized accounting requirements for clients’ trust accounts and testing for a license as a principal property manager.
5. The concept would eliminate the authority of a principal real estate broker to engage in the management of rental real estate or to supervise an individual in the management of rental real estate. This concept reinforces distinguishing the education, training and testing requirements for individuals who engage in real estate transactions from those who engage in the management of rental real estate.
6. The concept would allow an individual to hold a license as a property manager or principal property manager and also hold a license as a real estate broker or principal real estate broker. This concept also reinforces the distinction of two very different professional real estate activities.

◆ **POLICY IMPLICATIONS:**

The purpose of the concept is to increase the protection to consumers who engage property managers in the management of rental real estate. The concept impacts current property managers, real estate brokers, principal real estate brokers and applicants. A property manager could no longer “establish a business” as a property manager, that is, a property manager would need to obtain a principal property manager license, which would require property management experience under the supervision of a principal property manager, passing a test, and completing educational requirements. A property manager could no longer work under the supervision of a principal real estate broker. A principal real estate broker could no longer engage in the management of rental real estate without obtaining a license as a property manager nor could they supervise the activities of a real estate broker or a property manager engaged in the management of rental real estate. Real estate brokers could no longer engage in the management of rental real estate under the supervision of a principal real estate brokers. Applicants for a property manager license would be faced with greater requirements for a license.

◆ **PARTNERS OR OTHER AGENCIES AFFECTED:**

Agency:

Person you talked to about concept:

Phone:

None

◆ **KNOWN SUPPORT**

The concept impacts real estate brokers, principal real estate brokers, property managers and applicants. The concept is the result of a significant collaborative effort by the agency and industry, including two separate working groups composed of real estate brokers and property managers and one joint group. The working groups agreed on the fundamental concept of separating the license and authority of property managers from real estate brokers and principal real estate brokers. The groups agreed on increasing the requirements for licensing of property managers

and to create a new license of principal property manager. The groups still need to work on a significant number of details about this concept and, therefore, it is being submitted as a placeholder at this time. In addition, the Real Estate Board must review a final concept.

◆ KNOWN OPPOSITION:

As the concept is further developed, a determination will be made. At this time, there is no known opposition.

◆ THIS CONCEPT: (Do not skip answers. Enter *none* or *N/A* as needed.)

Revises or repeals ORS 696

Adds new sections to ORS Chapter 696

Check one: **XX** Major program change Minor program change Technical correction/housekeeping only

Was previously proposed in: Year _____ as Bill No. _____

Why are you proposing it again (what changed)? _____

Is a PLACEHOLDER? No Yes **XX** Expected date of completion: **June 10, 2008**

Reason not completed: The Agency initiated two collaborative working groups to consider legislative concepts; one for real estate brokers and one for property managers. This concept is still under review by both groups of stakeholders due to the complexity of the concept and unresolved issues including specific requirements for licensing, authorized activities, effective dates, transitioning from the existing licensing structure, and potential “grandfathering” of existing licensees.

Is due to legal decision: **N/A** Case cite: _____ or AGO No./date _____ (attach copy)

Raises fees or assessments? No **XX** Yes (attach Fiscal Impact Estimate and form 107BF22)

Imposes or adds to unfunded mandate on local governments? No **XX** Yes (attach Fiscal Impact Estimate)

Has other fiscal, revenue, or position impacts? No Yes **XX** (attach Fiscal Impact Estimate)

Note: the creation of a new license of “principal property manger” will have a fiscal impact on the collection of fees and a workload for the Agency. When a more complete legislative concept is submitted, a fiscal impact statement will be provided.

Have you discussed this Concept with your Attorney General liaison? No Yes **XX, to some degree, and discussions will continue as the concept is developed**

APPROVED FOR DRAFTING

Department of Administrative Services

Date

Governor’s Office

Date