



Notice of Agenda
OREGON REAL ESTATE BOARD

Regular Meeting Agenda
Monday, June 2, 2008
Florence Events Center
715 Quince St.
Florence, OR 97439
(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 April 7, 2008, regular meeting minutes and March 31, 2008, special meeting minutes with modifications
- E. Date of the Next Meeting: August 4, 2008 in Salem, Oregon

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. Mary Strong requests experience requirement waiver for a sole practitioner license.

IV. BOARD ADVICE/ACTION. Commissioner Bentley

- A. Final approval of the background check rules for filing (report provided in packet)
- B. Final approval of the advertising rule for permanent filing (report provided in packet)

V. NEW BUSINESS

- A. Establishment of Education Division

VI. COMMUNICATIONS

Administrative Actions Summary

VII. REPORTS

- A. Chair Graeper
 - 1. Board of Directors meeting request
- B. Commissioner Gene Bentley
 - 1. Rule review update
 - Education and testing work groups
 - 2. ARELLO Mid Year Conference, April 22-26, 2008 in Pasadena, California
- C. Agency section/division reports (handouts provided in packet)
 - 1. Land Development Division/Dean Owens
 - 2. Licensing Division/Dean Owens
 - 3. Education Division/Dean Owens
 - Distance education requirements for pre-license education
 - 4. Regulation Division/Dean Owens
 - 5. Administration/Information Systems Division/Kate Nass
 - 09-11 Budget Update

VIII. ANNOUNCEMENTS

- A. The August 4, 2008, board meeting will be in Salem, Oregon at the OREA office.

IX. ADJOURNMENT

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

Oregon Real Estate Board
Experience Requirement Waiver Request Log
2008

Date	Name	Time Requested to be Waived	Type of License Sought		Board Decision		Facts & Board Discussion
			PB	SP	Approve	Deny	
2/4/08	Krautter, Nick	1 yr, 1+ mos	X		X		FACTS: Active broker; since licensed: closed 45 transactions totalling 13 million, 21 listings; recommendation of PB and will remain at current company. DISCUSSION: Number of transactions, remaining with current PB.
4/7/08	McNamee, James M	2 yrs, 1+ mos		X	X*		FACTS: Applicant only, 10+ months active in CA; 41 transactions as principal for storage unit company; unofficial transcript for Master of Business Admin; certificates of real estate ed. DISCUSSION: Number of transactions, activity limited to storage units. *Approved, but limited to activity related to storage units. Limitation expires after 3 yrs.

AGENDA ITEM NO.

III. A.

Waiver request log.xls 2007

4/16/07	White, Theresa Diane	Y		X		X	X		<p>Applicant only. Submitted: recommendation letter, including sales history; copy of Washington Certified License History, Letter from Utah managing broker regarding licensed experience in Utah. Reason: Utah experience documented by supervising broker only. Confirm WA and UT experience.</p>
8/20/07	Morrow, Richard Clare		X		X		X		<p>Active, 1 yr 10+mos. Submitted: recommendation letter, copy of WA real estate salesperson license, resume, list of references. Reason: will have continuous contact & monthly meetings with current PB.</p>

Waiver request log.xls 2006

6/12/06	Frazer, Linda Diane	N	X		X			X*	Active, 2 yrs, 1+ mo. Needs to submit original BASS certificate. Submitted: reference letters, resume, copy BASS certificate. *Board requested applicant appear at the next meeting with supplemental experience & transaction information. Reason: unable to determine volume & complexity of transactions.
6/12/06	Kasch, Daniel Lee	Y		X			X	X	Applicant only, not licensed. Needs original pre-licensing education certificate. Submitted: reference letters, copy pre-license education certificate, copy military service discharge, letter from Construction Contractors Board, copy of Bachelor of Science degree, copy City of Gresham business license. *Board requested applicant return after obtaining more experience. Reason: lack of real estate experience.
6/12/06	Kesgard, Patrick Charles	Y	X		X		X		Active, 1 yr, 8 mos. Needs original BASS certificate. Submitted: reference letters, continuing education certificates, copy BASS course certificate. Reason: experience, wants licensed assistant, not going out on own.
6/12/06	Sutton, Rose L C	Y	X		X		X*		Active, 10+ mos. Needs BASS course. Submitted: reference letters. *Approved subsequent to meeting education requirement. Reason: experience, mentor available.
8/21/06	Anderson, Phillip Earl Jr	N	X		X		X		Active, 2 yrs 3+mos. Needs BASS course. Submitted: Corporate business registration, company information, business cards. Reason: previous real estate experience.
8/21/06	Casey, Anna Marie	N	X		X		X		Active, 2 yrs 7+ mos. Needs BASS course. Submitted: reference letters, resume, "Advanced Buyer Specialization" course certificate. Reason: comment company she works for has very good reputation, no other reason given.

Waiver request log.xls 2005

Date	Name	Appear?	Time Requested to be Waived		Type of License Sought		Decision		Discussion
			< 3 years	3 whole years	PB	SP	Approve	Deny	
2/22/05	Liston, Keith "Sunny"	X	X		X			X	Active 1 yr. Transcript & letters of reference.
5/2/05	Broughton, Kenneth		X			X	X*		Active 1 yr 1mos. Transcript. *Sole practitioner only.
5/2/05	Hiefield, Preston	X	X		X			X	Active 2 yrs 5 mos. None submitted.
5/2/05	Salinas, Vada	X		X	X		X		No active. Letters reference; OR, WA & TX state bar, transcripts.
5/2/05	Spencer, Michael L		X		X			X	Active 1 yr 7 mos. Transcripts; letters reference.
5/2/05	Sullivan, John	X		X		X	X*		No active. Letters reference; resume; RE transaction list; grade reports. *Sole practitioner only.
5/2/05	Taylor, Charles			X	X			X	No active. Resume; letters reference; WA RE Corp license.
6/27/05	Spencer, Michael L	X	X		X		X		Active 1 yr 8mos. Transcripts & letters reference.
6/27/05	Zumwalt, Jo Ann		X			X	X*		Active 1 yr 11+ mos. Letters of active experience verification. * Sole practitioner only as long as affiliated w/ Quality Real Estate School.

Waiver request log.xls 2004

Date	Name	Appear?	Time Requested to be Waived		Type of License Sought		Decision		Discussion
			< 3 years	3 whole years	PB	SP	Approve	Deny	
2/23/04	Pino, Kevin C	X		X	X		X		4 yrs active Timeshare Agent (Nevada).
4/26/05	Visconsi, John R	X		X			X*		Letters of good standing OR & CA bars; Univeristy law transcript. *Restricted to SP until 3 yrs completed or another waiver.
6/28/05	Wippel, Scott	X	X				X*		Active 9+ mos. Many reference letters. *Restricted to SP.
6/28/05	Sirr-Edwards, Heather	X	X					X	Active 1 yr, 5 mos. Reference letter from employer & letter verifying university studies.
6/28/05	Johnson, Steve		X		X		X		Active 2 yrs, 10 mos. Letter reference from employer.
6/28/05	Gall, John P	X	X		X		X		Active 6 mos. Letter of reference from employer.
6/28/05	Yehia, Elliot	X	X		X	X		X*	Active 1 yr, 6 mos. Letters of reference. *Suggested resubmit when open complaints resolved & include reference letters from current & former PBs.
8/23/04	Boyd, Deborah A	X	X				X		Active 2 yrs, 40 days. Letter of reference from employer; CA state bar membership.
10/25/04	Fanning, Elizabeth	X	X		X		X		Active 2 yrs, 3 mos. Letter of reference.
10/25/04	Hopfer, Laura		X					X	Active 2 yrs, 3 mos. Letters of reference.
12/20/04	Jones III, William	X	X		X		X		Active 1 yr 10 mos (prop mgr), 1 yr 9 mos (aff broker).
12/20/04	Jensen, Donald	X	X		X		X		Transcripts & course certificates. Active 2 yrs, 5+ mos. Letters of reference.

**Agenda
Item
IV.A.**

State of Oregon

Board Memo

Real Estate Agency

May 22, 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, 696.606, 696.790 and repealing ORS 696.793.

DISCUSSION: Sample rules were prepared for the agency 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 applicable to "license applicants." Agency staff held several meetings in 2007 to redraft the rules.

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.

The board approved the rules for hearing at their April 7, 2008 meeting. A notice of rulemaking hearing was filed April 15 and published in the May 1, 2008, *Oregon Bulletin*. A hearing was held May 21, 2008. No one appeared to offer oral testimony and written testimony was received.

BOARD ACTION: Approve proposed new administrative rules for permanent rules.

OREGON REAL ESTATE AGENCY

DIVISION 5

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CRIMINAL RECORDS CHECK AND CRIMINAL BACKGROUND FITNESS DETERMINATION RULES

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

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Purpose

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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

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863-005-0005

Definitions

As used in OAR chapter 863, division 5 unless the context requires otherwise, the following definitions apply:

(1) "Agency" means the State of Oregon Real Estate Agency.

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(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.

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(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.

(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:

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(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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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.

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(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

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.

(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.

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(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:

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(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.

(8) 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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Comment [BC2]: Revised per work group comments 10/30/07

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

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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;
- (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;

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- (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;
- (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;

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(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;
(aaaa) ORS 165.581, Cellular counterfeiting I;
(bbbb) 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;
(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;

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(aaaaaa) 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);

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

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

(lllll) 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;

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

(qqqqq) ORS 475.850, Unlawful delivery of heroin;

(rrrrr) 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;

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

(vvvvv) ORS 475.860, Unlawful delivery of marijuana;

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

(xxxxx) ORS 475.864, Unlawful possession of marijuana;

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

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

(aaaaaa) ORS 475.870, Unlawful delivery of 3,4-methylenedioxymethamphetamine;

(bbbbbb) ORS 475.872, Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;

(ccccc) ORS 475.874, Unlawful possession of 3,4-methylenedioxymethamphetamine;

(ddddd) ORS 475.876, Unlawful manufacture of cocaine;

(eeeeee) ORS 475.878, Unlawful manufacture of cocaine within 1,000 feet of school;

(ffffff) ORS 475.880, Unlawful delivery of cocaine;

(gggggg) ORS 475.882, Unlawful delivery of cocaine within 1,000 feet of school;

(hhhhh) ORS 475.884, Unlawful possession of cocaine;

(iiiiii) ORS 475.886, Unlawful manufacture of methamphetamine;

(jjjjj) ORS 475.888 Unlawful manufacture of methamphetamine within 1,000 feet of school;

(kkkkkk) ORS 475.890, Unlawful delivery of methamphetamine;

(lllll) ORS 475.892, Unlawful delivery of methamphetamine within 1,000 feet of school;

(mmmmm) ORS 475.894, Unlawful possession of methamphetamine;

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(nnnnnnn) ORS 475.904, Penalty for manufacture or delivery of controlled substance within 1,000 feet of school;

(ooooooo) 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;

(fffffft) 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;

(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;

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(vvvvvvvv) 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;

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(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.

(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;
- (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;

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- (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;
- (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;

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(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;

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(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;

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(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;

(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;

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- (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.

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(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
Stats. Implemented: ORS 181.534

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863-005-0040

Incomplete Criminal Background Application

Comment [BC3]: Changes per workgroup comments 10/30/07

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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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

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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 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.

(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
Stats. Implemented: ORS 181.534

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863-005-0080

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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

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Oregon Department of State Police or the Federal Bureau of Investigation, are confidential pursuant to ORS 181.534.

(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.

(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.

(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.

(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.

(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

863-005-0090

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

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the fee(s) charged the agency by the Oregon Department of State Police and the Federal Bureau of Investigation.

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

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**Agenda
Item
IV.B.**

State of Oregon

Board Memo

Real Estate Agency

May 22, 2008

To: Real Estate Board

From: Louann Rahmig, Rule Review Coordinator

Subject: Advertising Rule OAR 863-015-0125

HISTORY: The brokerage/licensing rule review work group spent considerable time last fall discussing advertising issues. As a result of their input, a temporary rule was prepared and filed to be in effect January 18 to July 15, 2008.

DISCUSSION: The advertising rule was included in the survey requesting rule review advisory committee input on all the licensing rules (OAR chapter 863, division 15).

The board approved this rule for hearing at their April 7, 2008 meeting. A notice of rulemaking hearing was filed April 15 and published in the *Oregon Bulletin* on May 1, 2008. A hearing was held May 21. No one appeared to offer oral testimony and no written testimony was submitted.

Attached is a copy of the rule for board approval for permanent rule, which must be effective prior to the July 15, 2008, expiration of the temporary rule.

BOARD ACTION: Approve OAR 863-015-0125 for permanent rule.

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 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; REA 1-2008, f. & cert. eff. 1-18-08 thru 7-16-08

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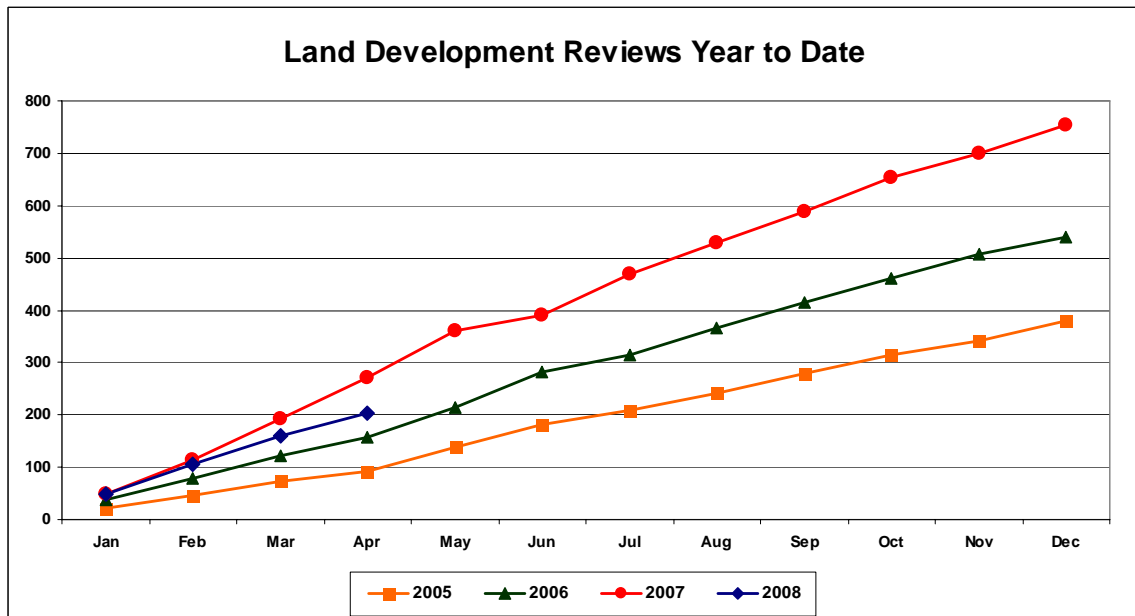
**REAL ESTATE BOARD
LAND DEVELOPMENT DIVISION REPORT
June 2, 2008**

Manager: Laurie Skillman
Administrative Specialist: Kathy Forstrom
Vacancies: None

Section Overview

This Division reviews land development filings, including condominiums,

Workload and Activity Indicators



Condominium reviews per month for 2008 are down slightly from 2008. This decrease is due to the current condominium and financing markets. The majority of condominium developments are in the Portland metropolitan area, however, the Agency has seen an increase in filings for the coast and southern Oregon.

Program Changes, Future Projects, Streamlining

We have been working on a database that will update the current method for tracking filings and reviews. This will streamline the processes for managing filings, tracking workloads and providing information to the public. The section is also working on updating all filing forms, which is a significant undertaking.

**REAL ESTATE BOARD
LICENSING DIVISION REPORT
June 2, 2008**

Manager: Selina Barnes

Compliance Specialist: Laurie Hall

Public Service Representatives: Kris Nordquist, Christy Davis, Tami Schemmel,
Carol Dolan

Vacancies: None

Section Overview

This section processes all license/registration transactions, including records maintenance. The staff is also responsible for providing information to the public and licensees, reception, phones and mail processing.

Workload and Activity Indicators

<u>Individuals (Persons)</u>	2007	2008				
	<u>Nov</u>	<u>Dec</u>	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>
ALL BROKERS Total	23806	23752	23739	23725	23636	23338
Active	20948	20724	20481	20387	20361	20210
Inactive	2858	3028	3258	3338	3275	3178

A gradual decline in the number of overall licensees continues. Of those individuals who continue to be licensed, there have been an increasing number changing their license to an "inactive" status over the past few months.

All escrow licenses will be going through the yearly renewal process within the next month.

Program Changes, Future Projects, Streamlining

The process of importing and exporting exam applicant data to PSI (exam service provider) will be moving to the licensing section in an effort to streamline the process, as well as reducing workload for the education section.

**REAL ESTATE BOARD
EDUCATION DIVISION REPORT
June 2, 2008**

Manager: Mesheal Heyman
Vacancies: None

Section Overview

This section approves pre-license and post-license real estate education courses and coordinates the development and administration of real estate license examinations. The staff is responsible for creating Agency publications, managing website content, and providing information to the public and licensees.

Workload and Activity Indicators

<u>Exams Administered</u>	<u>2007</u>		<u>2008</u>			
	<u>Nov</u>	<u>Dec</u>	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>
ALL LICENSING EXAMS Total	179	209	200	193	204	248
Broker	152	195	195	174	187	230
Property Manager	27	14	5	19	17	18

Year-to-date exam numbers for April show a 35.7% decrease in the number of exams from last year: April 2007 YTD = 1315, April 2008 YTD = 845

<u>Website Statistics</u>	<u>Visits</u>	<u>Avg. Visits/Day</u>	<u>Hits</u>	<u>Avg. Hits/Day</u>	<u># of Hits on Most Active Day</u>	<u>OREN-J Visits</u>
March 2008	20,721	668	96,197	3,103	6,435	477
April 2008	28,124	937	108,361	3,612	5,742	601

The Agency switched to the new format for state websites on April 4, 2008.

Publications

The first 2008 edition of the *Oregon Real Estate News-Journal* was mailed the end of May. A change in desktop publishing software caused a delay in publication. Initial comments regarding the new two-color format have been favorable.

Program Changes, Future Projects, Streamlining

The Agency is in the planning stage for creating a new Education Division. The functions will include current responsibilities, compliance reviews, and phone room duties. A full report will be provided to the Board at its next meeting.

**REAL ESTATE BOARD
REGULATION DIVISION REPORT
June 2, 2008**

Manager: Vacant (in process of recruiting)

Compliance Manager: Kris Ebelmesser

Administrative Specialist: Denise Lewis

Financial Investigators: GaeLynn Cooper, Aaron Grimes, Virginia Grosso, Ralph Harding, Deanna Hewitt, Shari Ohmer, Judy Parker, Joyce Pierce, Rob Pierce

Public Service Representative: Danette Rozell

Vacancies: Regulation Division Manager – recruiting, offer by June 1, 2008
Financial Investigator – 2 vacancies, new Manager to recruit

Section Overview

This division receives complaints and determines validity and assignment to investigation. Investigators gather facts, complete report and submit to Manager for review. Division is also responsible for compliance, mail in audits and public inquiries.

Workload and Activity Indicators

Statistics	2007							2008			
	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
Complaints Received	82	64	57	79	72	62	70	34	31	45	72
Investigations Opened	57	63	30	51	47	33	68	10	5	34	55
Inv Open at Month-End	207	224	196	219	189	171	190	174	164	178	202
Complaints & Inv Closed	47	31	56	34	49	52	46	25	17	15	28
Final Orders Issued	9	10	7	6	15	12	5	8	2	9	3
Hearings Held	4	1	0	0	1	1	0	0	0	1	0

Complaints received and investigations opened increased in April. Vacancies in the Investigator positions have created a workload issue for existing staff. The new manager will need to work with management team to determine best method for filling vacant positions and distributing investigations to reduce the backlog.

Program Changes, Future Projects, Streamlining

We are currently in the process of hiring new manager. With creation of Education Division, Regulations will be focused on investigations only. The Regulations Manager will need to determine what, if any, program changes are needed to create efficiencies.

**REAL ESTATE BOARD
ADMINISTRATIVE SERVICES DIVISION REPORT
June 2, 2008**

Manager: Kate Nass

Administrative Specialists: Leandra Cooley and Linda MacPherson

Public Service Representative: Kathie Forstrom and Rae McFarland (part-time)

Information Systems Specialist: Greg DeMaderios

Student Workers: Vitaly Putinsev and Katie Archumbault (both part-time)

Vacancies: Information Systems Specialist 7

Section Overview

The Administrative Services Section acts as support to the agency. This section manages budget/allotment preparation, accounting, information technology, purchasing and contracting, inventory control, facilities, payroll and personnel contacts, and special projects.

Budget Update

Personal Services: Savings of approximately \$58,000 due to;

- Vacancy Savings: The Agency currently has four vacancies, the Regulations Manager, an Information Systems Specialist 7, and two Financial Investigators. The Regulations Manager and Info Systems Specialist were budgeted at top step of salary ranges 33 and 31 respectively. Due to these two vacancies alone, there is significant savings to the agency. The budget is based on assumptions that the Regulations Manager position will be filled in July and the other three vacancies will be filled by September.
- PERS Rate Adjustment: For previous budget reports, the PERS projection had been calculated at 3% higher than actual rate.

Services & Supplies: Savings of approximately \$481,000;

- Professional Services: Criminal Background Checks are down approximately 45% from last year and the estimated expenditures are projected at this lower volume. If the market takes an upward turn, there may be more brokers applying for background checks.
- Agency Program Related S&S: Exams administered are down approximately 35% from last year and the estimated expenditures are projected to continue at this lower volume. Similar to background checks, if the market takes an upward turn we may see more exams administered.

Agency Budget – projected savings of approximately \$540,000 of our limitation.

Cash Flow: The agency is projected to spend approximately \$550,000 more than the projected revenue.

See budget spreadsheets for more information.

Program Changes

There is currently one vacancy in IT since Rick Leventhal accepted a promotion at the Employment Department. Greg DeMaderios is currently working out of class to fill the vacancy. The agency is looking into options for the IT department, which include filling the vacancy or possibly contracting out some of the functions. The agency hopes to make a decision in the next couple of months.

REAL ESTATE BOARD 2009-2011 AGENCY REQUEST BUDGET

Essential Budget Level:

The EBL was due to DAS on May 30. The EBL basically included our Legislatively Adopted Budget (LAB) from the 2007-2009 biennium with a couple of adjustments:

- Personal Services:
 - PICS Freeze: There are a couple of adjustments to the Personal Services limitation for inflation, PERS rate, Pension Bond Contributions, and Mass Transit that are all outside of the agency's control, these figures are given to us through our Position Information Control System (PICS) freeze that took place in April. The PICS freeze takes a snapshot of what positions the agency had filled and approved as of a particular date, then calculates a dollar figure based on assumptions for 2009-2011 biennium,
 - The PICS Freeze dropped our three Limited Duration Positions (1 – Licensing Public Service Rep 4, 1 – Administrative Specialist 1, and 1 – Admin Student Worker) which had been approved through the end of the 2007-2009 biennium;
 - Vacancy Savings: There is an adjustment for expected vacancy savings for the 2009-2011 biennium – the agency does not see that we will have significant savings from vacancies. We foresee that we will fill the positions and keep them filled throughout;
- Services & Supplies:
 - Standard Inflation: Most budget line items are calculated at the standard inflation rate of 2.8% for 2009-2011;
 - State Government Service Charge: This budget item limitation is calculated with estimates from DAS, Secretary of State, Oregon State Library and others to allow for limitation of what the agency will be charged in 2009-2011;
 - Facilities Rent: DAS Uniform Rent is calculated at 6.06% inflation to cover the cost of renting our building;
 - Attorney General: The AG's inflation is calculated at 23% due to increase in costs by the AG's Office;
- Revenues:
 - Agency to report estimated revenues for the 2009-2011 biennium, the revenues will continue to be estimated at current market situation and trends.

Agency Request Budget:

The ARB is due to DAS by June 31. The ARB includes the EBL plus any policy option packages that the agency is requesting funding for:

- Agency plans on presenting two Policy Option Packages:
 - IT Expenditures: At this point, the agency is planning to ask for approximately \$147,000 to keep the agency's IT equipment and software up to date. This includes:
 - Implementing SharePoint – A Smart Intranet to better share documents, track document changes, and share calendars and tasks. This will possibly replace the agency's common folders and is expected to reduce work for IT staff;
 - Updating our exchange server to allow for mobile access and purchasing PDAs;
 - Purchasing 20 new staff workstations and 4 new admin workstations; the agency is replacing the other 20 of the agency's workstations in the 2007-2009 biennium;
 - Upgrading our 2003 windows servers to Windows Server 2008;
 - Purchasing a new tape back-up unit, our current one is three years old and not covered under warranty anymore;
 - IT Staff Training to implement the new programs and upgrades; and
 - Maintenance and yearly licenses.
 - One permanent full-time FTE: This is to move the one limited duration administrative specialist 1 position to permanent. The administrative specialist is assigned Board support and coordination and assists the Land Development section with their deadlines.
 - This package will include the personal services for the FTE as well as the Services and Supply expenses of having another position on staff.