



Oregon

Kate Brown, Governor

AGENDA ITEM NO.

I.C.

Real Estate Agency

Equitable Center

530 Center St. NE, Suite 100

Salem, Oregon 97301-2505

Phone: (503) 378-4170

Regulations Fax: (503) 373-7153

Admin. Fax: (503) 378-2491

www.oregon.gov/rea

Notice of Agenda

OREGON REAL ESTATE BOARD

Regular Meeting Agenda - Teleconference

Oregon Real Estate Agency

530 Center St. NE, Suite 100

Salem, OR 97301

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

I. BOARD BUSINESS-Chair Hunter

- A. Call to Order
- B. Chair Hunter comments/Roll Call
- C. Approval of the Agenda and Order of Business
- D. Approval of 2.3.20, regular meeting minutes
- E. Date of the Next Meeting: 6.1.20 in McMinnville, OR to begin at 10am and venue to be determined.

II. PUBLIC COMMENT-Chair Hunter

- 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-Chair Hunter. None.

IV. PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER-Chair Hunter – None.

V. NEW BUSINESS-Commissioner Strode. 2020 Governor’s State Employees Food Drive

VI. REPORTS-Chair Hunter

- A. Commissioner Strode
 1. Advertising rule survey and workgroup
 2. COVID-19 actions
 3. Investigations
 4. OREN-J articles
- B. Agency division reports-Deputy Commissioner Higley
 1. Regulations and Administration, Deputy Commissioner Higley
 2. Land Development, Michael Hanifin
 3. Licensing and Education, Maddy Alvarado

VII. ANNOUNCEMENTS-Chair Hunter. Next board meeting: 6.1.20 in McMinnville, OR to begin at 10am and venue to be determined.

VIII. ADJOURNMENT-Chair Hunter

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



Oregon

Kate Brown, Governor

OREGON REAL ESTATE BOARD

**Regular Meeting Minutes
The Valley River Inn
1000 Valley River Way
Eugene, OR 97401**

Monday, February 3, 2020

**Agenda Item No.
I.D.**

Real Estate Agency

530 Center St. NE, Suite 100

Salem, Oregon 97301-2505

Phone: (503) 378-4170

Regulations Fax: (503) 373-7153

Admin. Fax: (503) 378-2491

www.oregon.gov/rea

BOARD MEMBERS PRESENT: Lawnae Hunter, Chair
Alex MacLean, Vice-Chair
Marie Due
Susan Glen
Jose Gonzalez
Dave Hamilton
Kim Hedding
Pat Ihnat

BOARD MEMBERS ABSENT: Debra Gisriel, excused

OREA STAFF PRESENT: Steve Strode, Commissioner
Anna Higley, Deputy Commissioner
Selina Barnes, Regulations Manager
Maddy Alvarado, Customer Service Manager

GUESTS PRESENT: Donna Charko, Berkshire Hathaway Home Services

I. BOARD BUSINESS – Chair Hunter

- A. Call to Order. Chair Hunter called the meeting to order at 10am.
- B. Chair Hunter comments/Roll Call. Chair Hunter asked the board liaison to take roll call, board members/REA staff to introduce themselves, and explained the role/function of the board.
- C. Approval of the Agenda and Order of Business.

MOTION TO APPROVE THE AGENDA AND ORDER OF BUSINESS BY PAT IHNAT

SECOND BY DAVE HAMILTON

MOTION CARRIED BY UNANIMOUS VOTE

- D. Approval of 12.2.19 regular meeting minutes.

MOTION TO APPROVE THE 12.2.19 REGULAR MEETING MINUTES BY KIM REDDINGER

SECOND BY DAVE HAMILTON

MOTION CARRIED BY UNANIMOUS VOTE (PAT IHNAT ABSTAINED AS SHE WAS NOT PRESENT AT THE 12.2.19 BOARD MEETING)

- E. Date of the Next Meeting: 4.6.20, in Florence, OR, to begin at 10am and venue to be determined.

II. PUBLIC COMMENT – Chair Hunter. None.

- 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. REQUEST FOR WAIVERS – Chair Hunter. Waiver request log

- A. Christopher Ambrose, Mr. Ambrose explained that he had been practicing attorney with Ambrose Law Group and an active attorney for approximately 30 years. He also stated that he was one of three owners of Total Real Estate Group LLC, which is a residential brokerage based out of Bend and his waiver request is based on his hands on experience as well as working very closely with the principal broker employed at Total Real Estate Group. Mr. Ambrose reported his company closed approximately 70 transactions last year, bringing in 55 million in sales and that he had worked with and assisted in the selection of software. Alex MacLean asked Mr. Ambrose how his becoming a principal broker would affect the current principal broker at the company. Mr. Ambrose explained that he would continue to work closely with the principal broker but focus on managing the office and allocating duties while principal broker would continue to produce. Dave Hamilton asked Mr. Ambrose is the current principal broker was a principal in the company and Mr. Ambrose stated current principal broker is not a principal in the company. **Discussion:** Pat Ihnat, Dave Hamilton and Kim Hedding all stated that they advocated the approval of the Mr. Ambrose's waiver request based on his experience in both the legal and real estate industry. Ms. Hedding asked Mr. Ambrose if his intention was to continue to practice law and Mr. Ambrose affirmed.

MOTION TO APPROVE CHRISTOPHER AMBROSE'S WAIVER REQUEST BY ALEX MACLEAN

SECOND BY PAT IHNAT

MOTION CARRIED BY UNANIMOUS VOTE

IV. PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER - Chair Hunter - CEP Log

- A. Bernard Black, B.C.E., will appear in person. Mr. Black explained he had over 35 years of experience in the pest management field, a board certified entomologist, provided education on pest control to Oregon Real Estate Inspection Association, and wishes to offer a course to real estate agents familiarizing them with pest control related to sale of homes. Mr. Black will offer courses covering the following topics: Property management, real estate consumer protection, commercial real estate, and risk management, which are all considered acceptable course topics.

**MOTION TO APPROVE BERNARD BLACK'S PETITION TO QUALIFY A CONTINUING EDUCATION PROVIDER BY DAVE HAMILTON
SECOND BY JOSE GONZALEZ**

MOTION CARRIED BY UNANIMOUS VOTE

V. BOARD ADVICE/ACTION – Commissioner Strode.

- A. 2020 Governor's State Employee Food Drive. Commissioner Strode provided a brief history of implementation of the food drive and encouraged board members to contribute.
- B. CEP board checklist and revised CEP petition. Board consensus was to implement the CEP board checklist and revised CEP petition.

VI. NEW BUSINESS - Commissioner Strode. None.

VII. COMMUNICATIONS - ADMINISTRATIVE ACTIONS SUMMARY - Chair Hunter

VIII. REPORTS – Chair Hunter

- A. Commissioner Strode
1. PSI Broker and Principal Broker Exam Review Work Group. Commissioner Strode summarized the workgroup meetings held on 1.6-8.20 and indicated the workgroup completed the review.
 2. 2019 Oregon Real Estate Agency Report to the Oregon Legislature: SB 688 – Temporary Authorizations for Military Spouses & Partners to Practice Real Estate. Commissioner Strode summarized SB 688

Commissioner Strode provided an update on HB 4003:

- Authorizes Housing and Community Services Department to provide grants and technical assistance to organizations increasing homeownership program access to persons of color. Authorizes expending Home Ownership Assistance Account funds for those purposes. Makes funds available to federally recognized Indian tribes. Amends tax credit provisions for donations supporting individual development accounts. Makes effective for tax years beginning on or after January 1, 2021. Requires Department of Consumer and business Services to require implicit bias training for mortgage loan originators. Requires Real Estate Commissioner to require implicit bias component to real estate licensing exam and continuing education credits by January 1, 2021. Establishes Joint Task Force on Addressing Racial Disparities in Home Ownership. Requires task force to report to interim committee of Legislative Assembly on or before December 1, 2020. Sunsets task force on February 1, 2021. Appropriates moneys to Housing and Community Services Department and Legislative Policy and Research Committee to administer Act. Takes effect on 91st day following adjournment sine die.
- B. Agency Division Reports - Deputy Commissioner Anna Higley
1. Regulations, Selina Barnes. Ms. Barnes reviewed the statistics/information provided in the written division report and explained the process involved with investigating complaints. She also reported that the current recruitment for a Financial Investigator is in process and summarized the Administrative Actions Summary.
 2. Administration and Land Development, Deputy Commissioner Higley reviewed the statistics/information provided in the written Land Development division report and reported that the administrative specialist for Land Development division resigned recently and staff member from Licensing Division will fill in until position is filled permanently. She also reviewed the statistics/information provided in the written Administrative Services division report, specifically regarding the separation of the Licensing and Education from Administrative Services. Ms. Higley explained that she would be initiating a recruitment for an Administrative Services Manager in the near future.
 3. Licensing and Education, Madeline Alvarado. Ms. Alvarado reviewed the statistics/information provided in the written division report as well as division staff update. She also announced that Danette Rozell will be retiring from the Agency effective March 31, 2020.

IX. ANNOUNCEMENTS – Chair Hunter. Next board meeting: 4.6.20 in Florence, OR, to begin at 10am and location to be determined.

X. ADJOURNMENT

Respectfully submitted,

Respectfully submitted,

STEVE STRODE, COMMISSIONER

LAWNAE HUNTER, BOARD CHAIR

Board Articles

- 4/2012 Byron Hendricks, Brokers and Principal Brokers – What’s required for your files?
- 6/2012 Coni Rathbone, Are TIC Workouts Working Out
- 9/2012 Diana Emami, What I Expect from a Licensed Real Estate Agent or a Property Manager
- 10/2014 Byron Hendricks, Give Your Input on the 3-Hour Law and Rule Required Course
- 12/2014 Marcia Edwards, Licensees Must Be Vigilant and Cognizant of Responsibilities
- 2/2015 Lee Dunn, The Real Estate Industry Should Reevaluate Current Practices
- 4/2015 Joann Hansen, Resources to Reduce Risk Management and Deliver to Clients a Quality Real Estate Transaction
- 6/2015 Chris Hermanski, 10 Things that Property Managers (and Brokers) Must Do to Prosper
- 8/2015 Bob LeFeber, Millennials – Is the Real Estate Industry Ready?
- 12/2015 Pat Ihnat – What Real Estate Brokers Need to Know About the New TRID Closing Disclosure Requirements
- 8/2016 Dave Koch, Long-Term Investment
- 12/2016 Dave Koch, Principal Broker: To Be or Not to Be?
- 2/2017 Marcia Edwards, Your Personal Code of Ethics
- 4/2017 Coni Rathbone, Obstacles to Closing Your Real Estate Transaction
- 9/2017 Pat Ihnat, FIRTA: An Overview for Residential Brokers
- 2/2018 Marcia Edwards, Reflections on My Tenure on the Real Estate Board
- 4/2018 Dave Koch, Air Marketing (*Note: This was about compliance with laws when using drones for marketing.*)
- 6/2018 Coni Rathbone, Negotiation Basics: How to Get Started
- 10/2018 Pat Ihnat, Think Before You Click: Real Estate Wire Transfer Fraud Crimes Are on the Rise

**REAL ESTATE BOARD
REGULATION DIVISION REPORT
April 6, 2020**

Regulation Division Manager: Vacant

Compliance Specialists 3 (Compliance Coordinator): Deanna Hewitt, Rob Pierce, Meghan Lewis (WOC)

Financial Investigators (Investigator-Auditor): Jeremy Brooks, Aaron Grimes, Liz Hayes (WOC), Meghan Lewis, Lisa Montellano, Cidia Nañez, Lindsey Nunes, John Moore

Compliance Specialist 2: Carolyn Kalb

Operations and Policy Analyst: Denise Lewis (WOC)

Division Overview

The Regulation Division receives complaints and determines validity and assignment for investigation. Investigators gather facts (from interviews and documents), prepare a detailed written report and submit to the Manager for review. The Manager determines whether the evidence supports charging a person with a violation of Agency statutes or administrative rules, as well the appropriate resolution. The Manager conducts settlement conferences to resolve cases without a contested case hearing. If a hearing is requested, the Investigator works with the Assistant Attorney General in preparing for and presenting the case at hearing.

Personnel

Selina Barnes has resigned from her position as the Regulation Division Manager. This position is currently vacant. Deputy Commissioner Higley is acting as the direct supervisor to Regulation Division staff. Commissioner Strode is granting approval for all cases recommended for administrative action. Meghan Lewis has been put in a work out of class as a Compliance Specialist 3 joining Deanna Hewitt and Rob Pierce in the lead team. This team is exclusively dedicated to conducting Administrative Reviews.

John Moore was offered and accepted the Financial Investigator 1 position. His start date is pending due to the COVID19 pandemic.

Workload and Activity Indicators

The Pending Assignment status was retired in order to eliminate unintended delays in assignment and investigation. All cases initiated are directly assigned to the investigator rather being queued. Prior to eliminating this status, investigators had an average of 6 cases at a time. Now investigators have around 13 cases at a time.

Average # in this Status at the time	2014	2015	2016	2017	2018	2019	2020	Current 3/27/20
Complaint	40	44	33	25	20	26		21
Pending Assignment	3	4	24	16	26	39	34	0
Investigation	47	52	49	50	38	48	55	94
(# of Investigators)	6	7	7	7	7*	6-7**	7	7
Admin Review	27	33	28	40	35	61	50	30

* One investigator on medical leave.

** One investigator on medical leave, then retired. Late 2019 vacancy was filled.

ADMINISTRATIVE ACTIONS

Reported

1/23/2020 through

REVOCATIONS

SUSPENSIONS

REPRIMANDS

Paris, Claire Diane (Portland), Principal Broker, 200309285, Stipulated Order dated February 5, 2020, issuing a reprimand

Shedden, Barbara Jean (Keizer), Principal Broker, 2014109056, Stipulated Order dated March 12, 2020.

CIVIL PENALTIES

Expired — Late Renewal civil penalties are computed using each 30-day period as a single offense. The civil penalty for the first 30-day period can range from \$100-\$500, with each subsequent 30-day period ranging from \$500-\$1,000. ORS 696.990

Unlicensed:

Bauske, Deborah (Seaside), Unlicensed, Stipulated Order dated March 2, 2020, issuing a \$6,600.00 civil penalty.

Bonanno, Paul (Encinitas, CA), Unlicensed, Stipulated Order dated March 12, 2020, issuing a \$250.00 civil penalty.

APPELLATE JUDGEMENT

Berrey, Dan Lee, Effective Date: February 11, 2020, Affirmed

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
3

4 In the Matter of the Real Estate License of)
5)
6 CLAIRE DIANE PARIS) STIPULATED FINAL ORDER
7)
8)
9

10 The Oregon Real Estate Agency (Agency) and Claire Diane Paris (Paris) do hereby
11 agree and stipulate to the following:

12 FINDINGS OF FACT
13 &
14 CONCLUSIONS OF LAW

15 1.

16 1.1 At all times mentioned herein, Paris was licensed as a principal broker with Paris
17 Group Realty LLC.

18 1.2 Paris entered into a listing agreement with Tim and Jan Sharrock (Sharrocks) for
19 their property located at 3510 NE 19th Ave. in Portland, Oregon (subject property). When Paris
20 viewed the property she noticed two white exhaust tubes which she was almost certain were
21 part of a gas furnace.

22 1.3 On the signed listing agreement, "FOR-AIR" was listed as the heat source, and
23 "GAS" was filled in for fuel.

24 1.4 On July 12, 2018, Paris received a copy of the Home Energy Score report. The
25 report noted the subject property had a "Natural Gas Furnace 80% AFUE," and an air
26 conditioner "13 SEER." Paris said the information in the report confirmed her belief that the
27 home had gas heat.

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1 1.5 On July 15, 2018, Paris received the Seller's Property Disclosure from the
2 Sharrocks. The disclosure indicated there was an underground storage tank. After reviewing
3 the report Paris did not seek additional information from the Sharrocks regarding the
4 underground oil tank.

5 (1) **Violation:** By failing to seek additional information after reviewing the Seller's Property
6 Disclosure statement which indicated an underground storage tank, Paris violated ORS
7 696.301(3) as it incorporates ORS 696.805(3)(a) (2017 Edition) which states a seller's agent
8 owes the seller involved in a real estate transaction the following affirmative duties: (a) to
9 exercise reasonable care and diligence.

10 1.6 On July 27, 2018, broker Katie Spurlock (Spurlock) submitted an offer on behalf
11 of her buyers, Caren and John Raisin (Raisins). On July 20, 2018, another offer was
12 submitted by broker Dana Cody (Cody) on behalf of her buyers Tanja Diers and Noel
13 Hendrickson (Diers and Hendrickson).

14 1.7 On July 31, 2018, Sharrocks accepted Raisins' offer.

15 1.8 On the same day as the inspections were scheduled to occur, August 3, 2018,
16 Spurlock emailed Paris requesting a copy of the Seller's Property Disclosure.

17 1.9 During the inspection on August 3, 2018, the inspector pointed out the oil line
18 leading to the furnace, indicating the furnace was oil and not gas. That afternoon Spurlock
19 sent an email to Paris relaying the furnace was oil with a tank buried under the foundation.

20 1.10 According to Paris, she updated RMLS to reflect the furnace was oil.

21 1.11 The Raisins terminated the transaction on August 6, 2018. According to
22 Spurlock, the Raisins would not have looked at the home if they had known it was oil heat.
23 The radon test and sewer scope had already been completed prior to termination. The home
24 inspector offered Raisins a discount because they ended the inspection early and did not
25 require a home inspection report. Spurlock paid for the Raisins' inspections totaling \$700.00.
26 Paris split the costs of the inspections with Spurlock and issued a check for \$350.00

27 1.12 On August 6, 2018, the subject property was under contract with the second
28 buyers, Diers and Hendrickson. Paris notified broker Cody regarding the underground oil tank,
29 but did not mention the oil furnace or the conflicting information regarding it being oil instead of
30 gas.

1 (2) **Violation:** By failing to notify the second buyers, Diers and Hendrickson, or their broker,
2 of the active oil furnace or that there was conflicting information regarding the type of furnace
3 Paris violated ORS 696.301(3) as it incorporates ORS 696.805(2)(c) (2017 Edition) which
4 states a seller's agent owes the seller, other principals and the principals' agents involved in a
5 real estate transaction the following affirmative duties: (c) to disclose material facts known by
6 the seller's agent and not apparent or readily ascertainable to a party. Additionally Paris
7 demonstrated incompetence or untrustworthiness in violation of ORS 696.301(12) (2017
8 Edition) which states a licensee's real estate license may be disciplined if they have
9 demonstrated incompetence or untrustworthiness in performing any act for which the real
10 estate licensee is required to hold a license.

11 1.13 On August 13, 2018, Diers and Hendrickson had their home inspection.
12 According to Cody, Diers and Hendrickson were shocked to learn the home had an oil furnace
13 and that the underground oil tank was active. The buyer's repair addendum, requested that
14 the oil tank be decommissioned and the oil furnace be replaced with gas. Sharrocks agreed to
15 decommission the oil tank and lower the price.

16 2.

17 2.1 The foregoing violations are grounds for discipline pursuant to ORS 696.301.
18 Based on these violations a reprimand is appropriate for violations of ORS 696.301(3) and
19 ORS 696.301(12).

20 2.2 The Agency reserves the right to investigate and pursue additional complaints
21 that may be received in the future regarding this licensee.

22 2.3 In establishing the violations alleged above, OREA may rely on one or more of
23 the definitions contained in ORS 696.010.

24 2.4 According to ORS 696.775, the lapsing, expiration, revocation or suspension of a
25 real estate license, whether by operation of law, order of the Real Estate Commissioner or
26 decision of a court of law, or the inactive status of the license, or voluntary surrender of the
27 license by the real estate licensee does not deprive the commissioner of jurisdiction to: (1)
28 proceed with an investigation of the licensee; (2) conduct disciplinary proceedings relating to
29 the licensee; (3) Take action against a licensee, including assessment of a civil penalty against
30 the licensee for a violation of ORS 696.020(2); or (4) revise or render null and void an order
suspending or revoking a license.

1 STIPULATION & WAIVER

2 I have read and reviewed the above findings of fact and conclusions of law which have
3 been submitted to me by the Agency and further, the order which follows hereafter. I
4 understand that the findings of fact, conclusions of law and this stipulation and waiver embody
5 the full and complete agreement and stipulation between the Agency and me. I further
6 understand that if I do not agree with this stipulation I have the right to request a hearing on
7 this matter and to be represented by legal counsel at such a hearing. Hearings are conducted
8 in accordance with the procedures set forth in ORS Chapter 183 and in accordance with the
9 Rules of Practice and Procedure adopted by the Attorney General of the State of Oregon. I
10 freely and voluntarily waive my rights to a hearing, to representation by legal counsel at such a
11 hearing, and to judicial review of this matter.

12 I hereby agree and stipulate to the above findings of fact and conclusions of law and
13 understand that the order which follows hereafter may be completed and signed by the Real
14 Estate Commissioner or may be rejected by the Real Estate Commissioner. I understand that,
15 in accordance with the provisions of ORS 696.445(3), notice of this order shall be published in
16 the Oregon Real Estate News Journal.

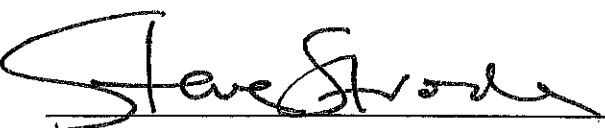
17 ORDER

18 IT IS HEREBY ORDERED that Paris' principal broker license be, and hereby is
19 reprimanded.

20
21 IT IS SO STIPULATED:

IT IS SO ORDERED:

22
23 
24 _____
25 CLAIRE DIANE PARIS



STEVEN STRODE
Real Estate Commissioner

26
27 Date 1/28/20
28 _____

Date FEBRUARY, 2020

29 Date of Service: 2/5/2020
30 _____

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
3

4 In the Matter of the Real Estate License of

5
6 BARBARA JEAN SHEDDEN

7)
8) STIPULATED FINAL ORDER
9

10 The Oregon Real Estate Agency (Agency) and Barbara Jean Shedden (Shedden) do
11 hereby agree and stipulate to the following:

12 FINDINGS OF FACT

13 &

14 CONCLUSIONS OF LAW

15 1.

16 1.1 Shedden was licensed as a real estate broker with American West Real Estate
17 LLC (AWRE). Larry Wright (Wright) was the principal broker associated with AWRE.

18 1.2 At the end of October 2018, AWRE's security deposit account was selected for a
19 Mandatory Clients' Trust Account Mail-in-Review. The requested documents were not
20 submitted to the Agency and an investigation was opened.

21 1.3 On May 9, 2019, Compliance Coordinator Deanna Hewitt (Hewitt) and
22 Compliance Specialist Denise Lewis (Lewis) met with Shedden.

23 1.4 Shedden told Hewitt and Lewis that she had been a broker at Wright's office for a
24 long time and assisted with the property management activity. Shedden said Wright had
25 passed away on January 12, 2019. After Wright passed, Shedden continued to keep the office
26 open, doing property management and real estate activity.

27 1.5 Shedden said Wright had told her she could continue to do property
28 management activity after his death, but that she needed to speak with someone at the
29 Agency. Shedden said she was too scared to contact the Agency.

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1 1.6 Shedden stated Wright had been very sick prior to his passing and they had
2 been concentrating on getting everything in order. Shedden said Wright had told her he was
3 giving her the business after his death. Shedden and Wright's son have been working
4 together to get all of Wright's finances in order and make sure all the bills for his business have
5 been paid prior to Shedden taking over the business.

6 1.7 Prior to the meeting on May 9, 2019, Shedden had already began looking into
7 taking the principal broker course to get her principal broker license. Shedden applied for the
8 principal broker license on May 9, 2019.

9 1.8 On May 20, 2019, Shedden was granted a Temporary Authorization to Supervise
10 AWRE.

11 1.9 On July 11, 2019, Shedden notified the Agency that she had completed her
12 principal broker course and passed the exam and needed a number for the testing provider.

13 1.10 On July 18, 2019, Shedden's principal broker license was associated with
14 AWRE.

15 **Violation:** By continuing to engage in real estate and property management activity
16 without a supervising principal broker from January 12, 2019 through May 20, 2019, Shedden
17 violated ORS 696.301(3) as it incorporates ORS 696.022(2)(a) (2019 Edition). Per ORS
18 696.022(2)(a) A real estate broker may engage in professional real estate activity only if the
19 broker is associated with and supervised by a principal real estate broker.

20 1.11 During the investigation it was discovered that AWRE's business name renewal
21 had been completed by Shedden on February 27, 2019, (after Wright had passed). Shedden
22 indicated on the renewal that Wright was still with the company.

23 **Violation:** By indicating Wright was still with AWRE on the business name renewal
24 application when in fact he had passed away on January 12, 2019, Shedden demonstrated
25 incompetence in violation of ORS 696.301(12) (2019 Edition). Per ORS 696.301(12) a real
26 estate licensee's real estate license may be disciplined if they have demonstrated
27 incompetence or untrustworthiness in performing any act for which the real estate licensee is
28 required to hold a license.

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2.

2.1 The foregoing violations are grounds for discipline pursuant to ORS 696.301. Based on these violations a reprimand is appropriate for violations of ORS 696.301(3) and ORS 696.301(12).

2.2 The Agency reserves the right to investigate and pursue additional complaints that may be received in the future regarding this licensee.

2.3 In establishing the violations alleged above, OREA may rely on one or more of the definitions contained in ORS 696.010.

2.4 According to ORS 696.775, the lapsing, expiration, revocation or suspension of a real estate license, whether by operation of law, order of the Real Estate Commissioner or decision of a court of law, or the inactive status of the license, or voluntary surrender of the license by the real estate licensee does not deprive the commissioner of jurisdiction to: (1) proceed with an investigation of the licensee; (2) conduct disciplinary proceedings relating to the licensee; (3) take action against a licensee, including assessment of a civil penalty against the licensee for a violation of ORS 696.020(2); or (4) revise or render null and void an order suspending or revoking a license.

STIPULATION & WAIVER

I have read and reviewed the above findings of fact and conclusions of law which have been submitted to me by the Agency and further, the order which follows hereafter. I understand that the findings of fact, conclusions of law and this stipulation and waiver embody the full and complete agreement and stipulation between the Agency and me. I further understand that if I do not agree with this stipulation I have the right to request a hearing on this matter and to be represented by legal counsel at such a hearing. Hearings are conducted in accordance with the procedures set forth in ORS Chapter 183 and in accordance with the Rules of Practice and Procedure adopted by the Attorney General of the State of Oregon. I freely and voluntarily waive my rights to a hearing, to representation by legal counsel at such a hearing, and to judicial review of this matter.

I hereby agree and stipulate to the above findings of fact and conclusions of law and understand that the order which follows hereafter may be completed and signed by the Real Estate Commissioner or may be rejected by the Real Estate Commissioner. I understand that,

1 in accordance with the provisions of ORS 696.445(3), notice of this order shall be published in
2 the Oregon Real Estate News Journal.

3 ORDER

4 IT IS HEREBY ORDERED that Shedden's real estate principal broker license be, and
5 hereby is reprimanded.

6
7 IT IS SO STIPULATED:

IT IS SO ORDERED:

8
9
10 Barbara Jean Shedden

Steven Strode

11 BARBARA JEAN SHEDDEN

STEVEN STRODE

Real Estate Commissioner

12
13 Date 3/6/2020

Date 3/12/2020

Date of Service: 3/12/2020

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1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
3

4 In the Matter of the Unlicensed Professional
5 Real Estate Activity of
6
7 DEBORAH BAUSKE
8

STIPULATED FINAL ORDER AND ORDER
TO CEASE AND DESIST

9
10 The Oregon Real Estate Agency (Agency) and Deborah Bauske (Bauske) do hereby
11 agree and stipulate to the following:

12 FINDINGS OF FACT

13 &

14 CONCLUSIONS OF LAW

15 1.

16 1.1 At all times mentioned herein, Bauske was not licensed to conduct professional
17 real estate activity in Oregon.

18 1.2 Bauske is the President of Seaside Property Management, Inc. (Seaside PM),
19 Seaside Realty, Inc., and Seaside Rentals.

20 1.3 Bauske through Seaside PM, Seaside Realty, and Seaside Rentals has been
21 engaging in property management activity on behalf of LLCs owned by Bauske, other family
22 members and others. Property management fees were being paid to Seaside PM, Seaside
23 Realty and Seaside Rentals for their services.

24 1.4 Between November 2016 and March 2019, Bauske conducted professional real
25 estate activity on 11 different occasions.

26 1.5 The following evictions were filed by Seaside Realty, Inc:

- 27
- 28 • 870 S. Holladay #3, Seaside, Eviction Date- November 2016
 - 29 • 1159 S. Downing, Seaside, Eviction Date – January 2017
 - 30 • 2124 S. Franklin, Seaside, Eviction Date- January 2017
 - 2481 Hwy 101 N, Seaside, Eviction Date- January 2017

- 1 • 842 12th Avenue, Seaside, Eviction Date- February 2017

2 1.6 None of the above properties were owned by Seaside Realty, Inc.

3 1.7 The following evictions were filed by Seaside PM:

- 4 • 1159 S. Downing, Seaside, Eviction Date- February 2017
5 • 2481 Hwy 101 N, Seaside, Eviction Date- July 2017
6 • 222 3rd Avenue, Seaside, Eviction Date- September 2017
7 • 1020 S. Columbia, Seaside, Eviction Date- February 2018
8 • 981 Beach Drive, Seaside, Eviction Date- April 2018

9 1.8 None of the above properties were owned by Seaside PM.

10 1.9 The following eviction was filed by Seaside Rentals:

- 11 • 222 3rd Ave, Seaside, Eviction Date- March 2019

12 1.10 The above property was not owed by Seaside Rentals.

13 (1) **Violation:** By engaging in the management of rental real estate outlined above,
14 Bauske engaged in professional real estate activity as described in ORS 696.010(14) (2015
15 Edition), and ORS 696.010(17) (2017 Edition), without a license, which is a violation of ORS
16 696.020(2) (2015 and 2017 Editions).

17 1.11 On April 5, 2019, Bauske placed an ad on Craigslist.com offering properties for
18 rent as Seaside Rentals.

19 1.12 On May 1, 2019, Bauske placed an ad on Craglist.com offering properties for
20 rent as Seaside Property Management.

21 1.13 Bauske had a Facebook page for Seaside Rentals advertising properties for rent.
22 The last post on the Facebook page was from March 2011. Screenshots were obtained during
23 the investigation showing the advertising as it was on June 17, 2017, and September 14, 2019.

24 (2) **Violation:** By advertising properties for rent, Bauske engaged in professional real
25 estate activity as described in ORS 696.010(14) (2011, 2013, and 2015 Edition), and ORS
26 696.010(17) (2017 Edition), without a license, which is a violation of ORS 696.020(2) (2011,
27 2013, 2015 and 2017 Editions).

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2.

According to ORS 696.775, the lapsing, expiration, revocation or suspension of a real estate license, whether by operation of law, order of the Real Estate Commissioner or decision of a court of law, or the inactive status of the license, or voluntary surrender of the license by the real estate licensee does not deprive the commissioner of jurisdiction to: (1) proceed with an investigation of the licensee; (2) conduct disciplinary proceedings relating to the licensee; (3) take action against a licensee, including assessment of a civil penalty against the licensee for a violation of ORS 696.020(2); or (4) revise or render null and void an order suspending or revoking a license.

STIPULATION & WAIVER

I have read and reviewed the above findings of fact and conclusions of law which have been submitted to me by the Agency and further, the order which follows hereafter. I understand that the findings of fact, conclusions of law and this stipulation and waiver embody the full and complete agreement and stipulation between the Agency and me. I further understand that if I do not agree with this stipulation I have the right to request a hearing on this matter and to be represented by legal counsel at such a hearing. Hearings are conducted in accordance with the procedures set forth in ORS Chapter 183 and in accordance with the Rules of Practice and Procedure adopted by the Attorney General of the State of Oregon. I freely and voluntarily waive my rights to a hearing, to representation by legal counsel at such a hearing, and to judicial review of this matter.

I hereby agree and stipulate to the above findings of fact and conclusions of law and understand that the order which follows hereafter may be completed and signed by the Real Estate Commissioner or may be rejected by the Real Estate Commissioner.

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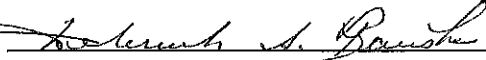
ORDER

IT IS HEREBY ORDERED that, pursuant to ORS 696.397, Bauske immediately cease and desist from engaging in any professional real estate activity as defined in ORS 696.010(17)(a) to (n) (2017 Edition) unless Bauske first obtains a real estate license from the Agency. The Commissioner's authority for this order is under ORS 696.397.

IT IS FURTHER ORDERED that, pursuant to ORS 696.990 and based upon the violation set forth above, Bauske pay a civil penalty in the sum of \$6,600.00, said penalty to be paid to the General Fund of the State Treasury by paying the same to the Agency.

IT IS SO STIPULATED:

IT IS SO ORDERED:



DEBORAH BAUSKE

Date 2/27/2020



STEVEN STRODE

Real Estate Commissioner

Date 2 MARCH, 2020

Date of Service: 3/2/2020

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
3

4 In the Matter of the Unlicensed Professional
5 Real Estate Activity of
6
7 PAUL BONANNO
8

STIPULATED FINAL ORDER AND ORDER
TO CEASE AND DESIST

9
10 The Oregon Real Estate Agency (Agency) and Paul Bonanno (Bonanno) do hereby
11 agree and stipulate to the following:

12 FINDINGS OF FACT
13 &
14 CONCLUSIONS OF LAW

15 1.

16 1.1 At all times mentioned herein, Bonanno was not licensed to conduct professional
17 real estate activity in Oregon.

18 1.2 On March 6, 2019, Dennis Senko (Senko) received an email from Bonanno and
19 his team at Net Lease Realty Partners (NLRP) with a listing for a Jack in the Box located at
20 4175 Main Street, Springfield, Oregon (subject property). This email was forwarded to the
21 Agency and an investigation was opened.

22 1.3 Bonanno holds a broker license in California and is the managing broker at
23 NLRP.

24 1.4 As of October 24, 2019, the NLRP website showed the subject property had
25 been listed for four months and sixteen days. During this time, Bonanno did not have a
26 cooperative agreement in place with an Oregon real estate licensee.

27 1.5 On November 14, 2019, Bonanno provided an Out of State Licensee
28 Acknowledgement and Agreement to the Agency which was signed on November 7, 2019, by
29 Bonanno and signed on November 14, 2019, by Jennifer Stein, who holds a principal broker
30 license in Oregon.

1 **Violation:** By listing and advertising the subject property for sale while not licensed in
2 Oregon to do so, Bonanno engaged in professional real estate activity as described in ORS
3 696.010(17), which is a violation of ORS 696.020(2) (2019 Edition). ORS 696.020(2) states an
4 individual may not engage in, carry on, advertise or purport to engage in or carry on
5 professional real estate activity, or act in the capacity of a real estate licensee, within this state
6 unless the individual holds an active license as provided for in this chapter.

7 2.

8 **STIPULATION & WAIVER**

9 I have read and reviewed the above findings of fact and conclusions of law which have
10 been submitted to me by the Agency and further, the order which follows hereafter. I
11 understand that the findings of fact, conclusions of law and this stipulation and waiver embody
12 the full and complete agreement and stipulation between the Agency and me. I further
13 understand that if I do not agree with this stipulation I have the right to request a hearing on
14 this matter and to be represented by legal counsel at such a hearing. Hearings are conducted
15 in accordance with the procedures set forth in ORS Chapter 183 and in accordance with the
16 Rules of Practice and Procedure adopted by the Attorney General of the State of Oregon. I
17 freely and voluntarily waive my rights to a hearing, to representation by legal counsel at such a
18 hearing, and to judicial review of this matter.

19 I hereby agree and stipulate to the above findings of fact and conclusions of law and
20 understand that the order which follows hereafter may be completed and signed by the Real
21 Estate Commissioner or may be rejected by the Real Estate Commissioner.

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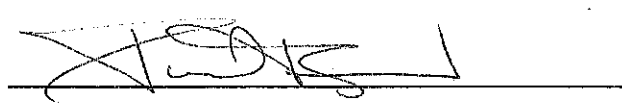
ORDER

IT IS HEREBY ORDERED that, pursuant to ORS 696.397, Bonanno immediately cease and desist from engaging in any professional real estate activity as defined in ORS 696.010(17)(a) to (n) (2019 Edition) unless the following applies: 1) Bonanno first obtains a real estate license from the Agency, or 2) Bonanno has a cooperative agreement in place with an Oregon principal real estate broker and is following and meets all of the requirements found in ORS 696.290(7). The Commissioner's authority for this order is under ORS 696.397.

IT IS FURTHER ORDERED that, pursuant to ORS 696.990 and based upon the violation set forth above, Bonanno pay a civil penalty in the sum of \$250.00, said penalty to be paid to the General Fund of the State Treasury by paying the same to the Agency.

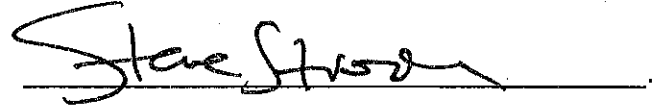
IT IS SO STIPULATED:

IT IS SO ORDERED:



PAUL BONANNO

Date 3/2/20



STEVEN STRODE

Real Estate Commissioner

Date 3/12/2020

Date of Service: 3/12/2020

IN THE COURT OF APPEALS OF THE STATE OF OREGON

DAN LEE BERREY,
Petitioner,

v.

REAL ESTATE AGENCY,
Respondent.

Real Estate Agency
2012246, 2012264, 2012265, 2012266, 2012352, 2012396, 201332

A160102

APPELLATE JUDGMENT

Argued and submitted on January 23, 2018.

Attorney for Petitioner: Jill F. Foster.

Attorney for Respondent: Jonathan N. Schildt.

Before DeHoog, Presiding Judge; Aoyagi, Judge; and Hadlock, Judge *pro tempore*.

AFFIRMED

DESIGNATION OF PREVAILING PARTY AND AWARD OF COST

Prevailing party: Respondent

No costs allowed.

Appellate Judgment
Effective Date: February 11, 2020

COURT OF APPEALS
(seal)

ols

APPELLATE JUDGMENT

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

Dan Lee BERREY,
Petitioner,

v.

REAL ESTATE AGENCY,
Respondent.

Real Estate Agency
2012246, 2012264, 2012265,
2012266, 2012352, 2012396, 201332;
A160102

Argued and submitted January 23, 2018.

Jill F. Foster argued the cause for petitioner. Also on the briefs was Churchill Leonard Lawyers.

Jonathan N. Schildt, Assistant Attorney General, argued the cause for respondent. Also on the brief were Ellen F. Rosenblum, Attorney General, and Benjamin Gutman, Solicitor General.

Before DeHoog, Presiding Judge, and Aoyagi, Judge, and Hadlock, Judge pro tempore.

HADLOCK, J. pro tempore.

Affirmed.

HADLOCK, J. pro tempore

Petitioner has invested in and developed real property for many years. To further that work, petitioner obtained various types of licenses issued by the Oregon Real Estate Agency (REA), starting with a sales license in 1977 and culminating with a principal real estate broker license. In 2015, the REA commissioner issued a final order revoking petitioner's principal broker license and imposing a \$1,500 civil penalty. In that order, which adopted a proposed order issued by an administrative law judge (ALJ), the commissioner determined that petitioner had engaged in professional real estate activity during a period in which his license had lapsed, that petitioner had falsely represented otherwise on a license-renewal application, and that, at other times, petitioner had violated various statutory and regulatory provisions that govern professional real estate and property-management activities. On judicial review, petitioner asserts that, because of certain ownership interests he has in the properties he manages, he was not required to be licensed to engage in professional real estate activity involving those properties. Accordingly, he contends, the lapse of his license was immaterial. Petitioner also challenges the other violations found by the commissioner and, ultimately, he contends that revocation of his license is too harsh a penalty even if he committed some violations of the statutes and regulations governing real estate activity. For the reasons set out below, we conclude that petitioner has not established that the commissioner erred in any of the ways that petitioner contends. Accordingly, we affirm.

With a few exceptions, noted below, petitioner has not challenged the factual findings on which the commissioner's order is premised. Accordingly, we "describe the facts consistently with those found by the board and the record that supports the board's findings." *McDowell v. Employment Dept.*, 348 Or 605, 608, 236 P3d 722 (2010). See also *Meltebeke v. Bureau of Labor and Industries*, 322 Or 132, 134, 903 P2d 351 (1995) (the agency's unchallenged factual findings are the facts for purposes of judicial review).¹

¹ We observe that some of the historical "facts" described in petitioner's brief on judicial review are not based on the commissioner's factual findings. Rather,

Here, we set out the facts that relate to the “big picture” question in this case: whether petitioner was required to be licensed to engage in the property-management activities at issue. We describe some additional facts later in the opinion, in conjunction with analyzing petitioner’s challenges to other aspects of the commissioner’s order. To give context to the discussion that follows, we also outline some of the pertinent statutory provisions, although we discuss the law in more detail later.

CPM AND THE FIVE PROPERTIES; PETITIONER’S LICENSE

Under ORS 696.020(2), a person may not engage in or carry on “professional real estate activity” in Oregon “unless the individual holds an active license.”² The term “professional real estate activity” is defined to include certain actions, including the management of rental real estate, “when engaged in for another and for compensation” or the intention or expectation of receiving compensation. ORS 696.010(14)(h). Moreover, licensees are bound by certain provisions of ORS chapter 696 while “[e]ngaging in professional real estate activity.” ORS 696.020(3)(a). Thus, unlicensed individuals generally may not engage in the management of rental real estate, when that management is “engaged in for another” and for compensation, ORS 696.010(14)(h), and licensed individuals must follow certain requirements of ORS chapter 696 when doing so. However, some individuals are exempt from certain ORS chapter 696 provisions, including the ORS 696.020(2) requirement that individuals engaging in professional real estate activity be licensed. *See*

petitioner’s description of the facts relies on evidence in the record that supports one perspective on the historical events and their significance, whether or not that perspective is consistent with the commissioner’s factual findings. Such a description of the facts implicitly urges us to reweigh the evidence, which is not our role on judicial review. *Tri-County Center Trust v. Dept. of State Lands*, 298 Or App 835, 836, 445 P3d 953 (2019).

² Some provisions of ORS chapter 696 have been amended frequently and, in 2013, certain provisions were renumbered, although the substance was not materially altered. For ease of reference, all statutory citations in this opinion are to the 2015 versions of the statutes, which (as cited here) include the substantive provisions that were in effect when petitioner engaged in most of the conduct at issue here and the commissioner issued his final order. Some of the statutes have since been amended, but those amendments do not apply to this case.

generally ORS 696.030 (creating exemptions). As pertinent here, ORS 696.030(27) creates such an exemption for an individual “who is the sole member or a managing member of [an LLC] and who is engaging in *** management of the real estate of the [LLC].” A fundamental question in this case is how those ORS chapter 696 statutes apply to petitioner’s management of five rental properties in which he had ownership interests.

In 2003, petitioner formed C.P. Management Co., a corporation that provided property-management services under the name “Certified Property Management” (CPM). Petitioner registered CPM with the REA as a property-management company in which he was the principal broker; he was also the company’s designated property manager.³ As relevant here, CPM provided property-management services for each of five properties in which petitioner held some sort of ownership interest: 340 Vista Ave. (Vista Ave), McKenna Estates (McKenna), Lakepointe Apartments (Lakepointe), Westec South Business Park (Westec), and the Candalaria properties, including Candalaria South/Candalaria Crossing (Candalaria). As part of those services, CPM collected security deposits and rents from tenants; it also paid all taxes and expenses on the properties, subject to approval of the property owners.

Vista Ave is a commercial property located in Salem that, at pertinent times, was leased by a state agency. It was owned by 340 Vista, LLC. 340 Vista, LLC, in turn, had several members, one of which was the Berrey Family, LLC, which had a 14.48 percent voting interest in 340 Vista, LLC. Petitioner claimed an ownership interest in Vista Ave through his membership interest in Berrey Family, LLC (of which he was the managing member). In 2009, CPM and 340 Vista, LLC, entered into a property-management

³ The REA is required to promulgate rules establishing “a system for the registration of business names.” ORS 696.026(1). The business name itself “has no license standing.” ORS 696.026(5). Rather, “[o]nly a principal real estate broker or licensed real estate property manager may control and supervise the professional real estate activity conducted under the registered business name.” ORS 696.026(4). Moreover, “[i]f a principal real estate broker or licensed real estate property manager has a registered business name[, a]ll professional real estate activity conducted by the principal broker or property manager must be conducted under the registered business name.” ORS 696.026(7)(a).

agreement under which CPM would receive monthly property-management fees, as a percentage of gross revenues and commissions on new leases. That agreement terminated in January 2013.

McKenna is a residential apartment complex in Eugene. Through a tenancy-in-common agreement with other owners, 340 Vista, LLC, held a 74.841 percent interest in that property. Petitioner claimed an ownership interest in McKenna through his interest in Berrey Family, LLC, and that entity's interest in 340 Vista, LLC. CPM and the McKenna owners entered into a property-management agreement in 2007; CPM was compensated through a percentage of revenues. Management of McKenna was transferred to another company in April 2012.

In 2006, the Lakepointe residential apartment complex was acquired by several owners, who held the property through a tenancy-in-common agreement. Among those owners was "Dan L. and Fran H. Berrey, Trustees," who had a 2.5 percent interest in the property. In 2011, the Lakepointe owners and CPM entered into a property-management agreement that specified monthly management fees equal to a percentage of revenues.

Westec, a commercial development in Eugene, was held by several owners through a 2003 tenancy-in-common agreement. "Dan & Fran Berrey, Trustees," had a 22.281 percent ownership interest in Westec. CPM started managing Westec in 2003 according to a property-management agreement specifying that CPM would be compensated through a combination of a percentage of revenues and commissions for new or renewed leases.

Candalaria South, LLC, had several members, including "Dan L. and Fran H. Berrey, Trustees," who had a 54.55 percent interest. Petitioner was the LLC's managing member. The LLC owned the Candalaria commercial properties in Salem. In 2009, Candalaria South, LLC, and CPM entered into a property-management agreement that provided for fees based on a percentage of revenues and commissions.

Petitioner first obtained a principal broker license from the REA in or about the mid-1980s. In January 2012,

he attempted to renew that license using the REA's online renewal system. Petitioner entered all required information, but, unbeknownst to him, the application did not process. Petitioner's license therefore expired on February 1, 2012. On about April 17, 2012, someone (not from the REA) informed petitioner that his license was no longer valid, and petitioner discovered that his renewal application had not processed properly. Petitioner then renewed his license. In completing the renewal application, petitioner was required to answer the question, "During any period of time when your license has been inactive or expired, have you conducted professional real estate activity?" Petitioner answered "no" to that question. However, the commissioner later determined that petitioner had, during the period when his license was expired, advertised commercial real-estate leasing opportunities and continued to operate CPM, his property management company.

THE REA'S INVESTIGATION AND THE COMMISSIONER'S ORDER

In 2012 and 2013, the REA received complaints related to petitioner's property-management activities. It initiated an investigation and issued a notice in 2014, which the REA amended a few months later, of intent to revoke petitioner's principal broker license. The REA alleged in the amended notice that petitioner had answered falsely when he stated, in his 2012 license-renewal application, that he had not engaged in professional real estate activity during the February through mid-April period when his license was expired but CPM continued to actively manage properties under petitioner's direction and control. The REA also alleged other statutory and regulatory violations.

Petitioner moved to dismiss the notice, asserting, among other things, that he "was exempt from having a license for his management activities" because he "has an ownership interest in the properties which he managed as well as being the managing member of the projects (limited liability companies) for which he managed properties." An ALJ denied petitioner's dismissal motion, and the case went to hearing in late 2014. The ALJ issued a proposed order in

March 2015, which the commissioner adopted as his final order in June of that year.

In the final order, the commissioner rejected petitioner's assertion that his property-management activities were exempt from regulation under ORS chapter 696 because of his interests in the five companies that CPM managed. The commissioner acknowledged that petitioner, "either directly or indirectly, held partial ownership in each of the subject properties." Nonetheless, the commissioner reasoned that those ownership interests did not exempt petitioner's property-management activities from regulation under ORS chapter 696 for the following reasons.

First, the commissioner determined that petitioner had engaged in "professional real estate activity," that is, property management performed "for another and for compensation." ORS 696.010(14). Thus, the commissioner considered whether petitioner's property-management activities were nonetheless exempt under ORS 696.030(27), which applies to an individual who is a managing member of an LLC who manages that LLC's real estate. With respect to the Lakepointe and Westec properties, the commissioner found, appellant's interest was as "a trustee or co-trustee of a family trust, rather than an LLC." Accordingly, the commissioner concluded, the ORS 696.030(27) exemption did not apply. With respect to both Vista Ave and McKenna, the commissioner noted that petitioner himself was not a member of the LLC that owned the properties (340 Vista, LLC) but, instead, had an interest only as a member of the Berrey Family, LLC, which itself was a member of 340 Vista, LLC. The commissioner concluded that the ORS 696.030(27) exemption does not apply to "a managing member of a third party LLC holding membership in an LLC which then owns the subject real estate to be managed."

The commissioner engaged in a different analysis with respect to the Candalaria properties, which are owned by Candalaria South, LLC, of which petitioner is the managing member. Recognizing that the exception in ORS 696.030(27) otherwise "would appear to" apply to petitioner's activities in managing those properties because of petitioner's status as managing member of the LLC,

the commissioner considered in what capacity petitioner was serving when he managed the Candalaria properties. The commissioner concluded that petitioner “was acting as an employee of CPM, rather than as a managing member of the LLC(s), when he engaged in property management activities.” Accordingly, the commissioner ruled, petitioner was “not entitled to the exemption provided by ORS 696.030(27).”

Having determined that petitioner’s property-management activities were not exempt from regulation, the commissioner proceeded to assess whether petitioner had committed any of the violations alleged in the 2014 notice. Although he rejected a few of the REA’s allegations, he ultimately concluded that petitioner had committed many of the alleged violations. The commissioner summarized his conclusions as follows:

“[Petitioner]: (1) engaged in incompetence and untrustworthiness in performing property management activities, (2) committed one or more acts of dishonest conduct related to his fitness to conduct property management, (3) violated one or more affirmative duties owed to his clients, and (4) engaged in unlicensed property management activity. In addition, *** [petitioner] engaged in numerous violations of OAR Chapter 863 Division 25 through his professional real estate activities.”

Because of what he described as “the extensive number and egregious nature of the violations,” the commissioner revoked petitioner’s license rather than suspending it. The commissioner also imposed a \$1,500 penalty under ORS 696.990 for the February through mid-April 2012 period during which petitioner “engaged in unlicensed professional real estate activities.”

WERE PETITIONER’S ACTIVITIES SUBJECT TO REGULATION?

In his first assignment of error on judicial review, petitioner challenges the commissioner’s determination that his property-management activities were subject to regulation under ORS chapter 696 and the REA rules found in OAR chapter 863. Petitioner describes “the paradigm issue” in this proceeding as whether his activity “related to the

management of his co-owned properties is subject to regulation by the REA as a licensure issue.” Petitioner contends that his “ownership interest” and status “as managing member under the TIC/LLC (Tenancy in Common/Limited Liability Company) structure” exempts him from such regulation. Specifically, petitioner contends that he “was an owner of the projects for which he was also a property manager, and therefore is exempt from holding a license to manage property in Oregon.” Petitioner relies on three statutes to support that argument. First, he points to the definition of “professional real estate activity,” which applies only to services that an individual performs “for another.” ORS 696.010(14)(h). Second, he cites ORS 696.030(1), which creates an exemption from certain regulation and provides that—for the purposes of that statute—an “owner of real estate” includes an individual who owns the property together with other individuals through a tenancy in common. ORS 696.030(1)(b)(B).⁴ Third, petitioner relies on the provision in ORS 696.030(27) that exempts from certain regulation an individual who is a managing member of an LLC and who manages the LLC’s property.

We begin by addressing petitioner’s contention that his indirect ownership interests in the properties other than Candalaria allowed him to manage those properties even while his license was inactive. We reject that contention for the following reasons.

The preliminary question is whether, as petitioner contends, his conduct in managing the Vista Ave, McKenna, Lakepointe, and Westec properties did not count as “professional real estate activity” as it is defined in ORS 696.010(14):

“Professional real estate activity’ means any of [specified] actions, when engaged in for another and for compensation or with the intention or in the expectation or upon the promise of receiving or collecting compensation, by any person who:

⁴ ORS 696.030(1)(b)(B) was added to the statute in 2013. Or Laws 2013, ch 145, § 10. However, before the 2013 amendments, ORS 696.030(2) (2011) provided that ownership by “more than one person by *** tenancy in common *** shall be construed as that of a single owner for the purposes of this section.” Neither party has argued that the 2013 change in wording is material to the issues in this case.

“(h) Engages in management of rental real estate[.]”

Petitioner asserts that his management of the properties did not constitute “professional real estate activity” because he was “an owner” of the properties and therefore was not managing them “for another.” We understand petitioner’s fundamental premise to be that an individual who has *any* type of partial ownership interest in property can manage that property without being deemed to be doing so “for another”—that is, for the other persons who also have partial ownership interests in the property.

ORS chapter 696 does not include a definition of what it means for real estate activity to be performed “for another.” However, in this context, the word “another” ordinarily would refer to a person other than the individual engaged in the real estate activity at issue and the word “for” ordinarily would refer to the performance of a service for the benefit of, or on behalf of, that other person. That is, the words of ORS 696.010(14), given their ordinary meaning, appear to contemplate that an individual engages in professional real estate activity if the individual engages in certain activities, including the management of rental properties, on behalf of or for the benefit of somebody other than the individual. Nothing in that definition suggests—as petitioner argues—that an individual who manages property in which he or she has a *partial* ownership interest is not managing the property “for” the other owners in addition to managing it for the individual’s own benefit.

Turning to context, other provisions of ORS chapter 696 generally reflect the legislature’s view that “the activity of persons seeking *to assist others*, for compensation, to deal in real estate in this state [is] a matter of public concern.” ORS 696.015(1) (emphasis added). In keeping with the goal of ensuring “that professional real estate activity is conducted with high fiduciary standards,” *id.*, the legislature has mandated that individuals engaging in such activity—including the management of rental property—have a real estate license. ORS 696.010(14)(h); ORS 696.020(2). Those provisions demonstrate the legislature’s general intention that individuals engaging in real estate activity on behalf

of others be licensed and held to high regulatory standards. Thus, the focus is on whether the real estate activity is conducted for another person who could be harmed or put at risk by an unlicensed individual's misconduct or poor performance. Petitioner's contention that an individual who manages property in which he or she has any type of *partial* ownership interest is not managing that property "for another" (the other owners) is difficult to square with that legislative focus.

Additional context is provided by the list of exemptions in ORS 696.030, which describes specific conduct that is not subject to (among other things) the requirement that an individual be licensed to engage in professional real estate activity. Those exemptions include two related to ownership interests. ORS 696.030(27) exempts an individual who is the sole member or a managing member of an LLC who manages real property owned by the LLC. And ORS 696.030(28) exempts an individual who is a partner in a partnership and who manages the partnership's real estate. Those provisions would not be necessary if, as petitioner suggests, an individual's partial ownership interest in property—in any form—is sufficient to mean that, when the individual manages the property, the individual is not doing so "for another" for purposes of ORS 696.010(14).

In sum, based on the text and context of the definition of "professional real estate activity," we reject petitioner's broad assertion that an individual who has *any* type of partial ownership interest in rental property can manage that property without being deemed to be doing so "for another"—the other people who also have ownership interests in the property.⁵

We turn to petitioner's property-specific arguments. First, petitioner asserts that his partial ownership interest

⁵ To be clear, we mean by this statement to reject only the broad—indeed, global—argument that we understand petitioner to make: that an individual having *any* partial ownership interest in property can manage the property without doing so "for another." We need not, and do not, address types of co-ownership situations other than those expressly addressed in this opinion. That is, we do not address whether individuals holding *specific* types of partial ownership interests in property (other than those discussed here) may lawfully be able to manage that property without a real estate license.

in Vista Ave allowed him to manage that property without being licensed. We disagree. Petitioner's interest in Vista Ave was indirect; petitioner had a membership interest in Berrey Family, LLC, which had a 14.48 percent voting interest in 340 Vista, LLC, which owned Vista Ave. Petitioner has not explained why that indirect ownership interest in Vista Ave, through a chain of LLCs, meant that he was acting solely on his own behalf—and not “for” the other owners—when he managed that property. Petitioner's ownership interest in McKenna likewise ran through the Berrey Family, LLC, and 340 Vista, LLC, and we conclude for the same reasons that he engaged in real estate activity “for another” when he managed that property.

Petitioner's ownership interests in Lakepointe and Westec were structured somewhat differently. Both Lakepointe and Westec were owned by groups of owners through a tenancy-in-common agreement. However, petitioner's interest was not through LLCs (as with Vista Ave and McKenna). Rather, one of the owners of Lakepointe was “Dan L. and Fran H. Berrey, Trustees,” and one of the owners of Westec was “Dan & Fran Berrey, Trustees.” But the commissioner determined that individuals who hold property (along with others, in a tenancy in common) as trustees of a trust are not exempt from licensing requirements if they manage that property, and petitioner has not explained why that conclusion is wrong. In sum, petitioner has not established that the commissioner erred when he determined that petitioner managed the Vista Ave, McKenna, Lakepointe, and Westec properties “for another” and, therefore, petitioner was required to have a real estate license to do so.

Petitioner also argues that, even if he might otherwise be considered to be engaged in professional real estate activity for which a license is required, at least some of his conduct was exempt from regulation. First, he points to ORS 696.030(1)(b)(B), which, in conjunction with ORS 696.030(1)(a), creates an exemption for a “nonlicensed individual who is a full-time employee of an owner of real estate”—“owner of real estate” being defined to include more than one individual who own property through a tenancy in common—and who engages in activity involving only that employer's property. That exemption does not apply here

because petitioner is not a full-time employee of any of the owners of the properties at issue.

We turn to the exemption on which petitioner primarily relies: ORS 696.030(27), which provides that certain ORS chapter 696 provisions do not apply to an individual who is a managing member of an LLC “and who is engaging in the *** management of the real estate of the [LLC].” Petitioner contends that he qualified for that exemption for the Vista Ave and McKenna properties because his ownership interest in those properties was through LLCs. The difficulty for petitioner lies in the chains of ownership for the properties. For both Vista Ave and McKenna, 340 Vista, LLC, was an owner. Even assuming that Vista Ave and McKenna could therefore be considered “the real estate of” 340 Vista, LLC, the ORS 696.030(27) exemption would apply only to an “individual who [was] *** a managing member” of *that* LLC. And petitioner was not a managing member of 340 Vista, LLC (although he was its initial manager); indeed, he could not have been, as he was not a member of the LLC but had an interest in it only because of his membership in the Berrey Family, LLC, which *itself* was a member of 340 Vista, LLC. Accordingly, the commissioner did not err when he concluded that petitioner was not entitled to the ORS 696.030(27) “managing member” exemption for property-management activities related to Vista Ave and McKenna. The commissioner also concluded that the exemption did not apply to Lakepointe and Westec, in which petitioner’s ownership interests were through trusts, not LLCs, and petitioner has not identified any flaw in that conclusion.

To recap so far: Petitioner has not established that the commissioner erred when he determined that petitioner engaged in “professional real estate activity” when he managed the Lakepointe, Westec, Vista Ave, and McKenna properties “for another,” ORS 696.010(14), and that petitioner’s activities with respect to those properties were not exempt under ORS 696.030(27).

We turn to petitioner’s management of the Candalaria properties. As noted, petitioner is the managing member of Candalaria South, LLC, and the ORS 696.030(27) “managing member” exemption therefore could apply to petitioner if

he were “engaging in the *** management of the real estate of” Candalaria South LLC. In his final order, the commissioner determined that the exemption nonetheless did not apply to petitioner because he was acting as an employee of CPM, rather than as managing member of Candalaria South, LLC, when he managed the Candalaria properties. We need not determine whether that rationale is sound. On judicial review, the commissioner observes correctly that the legislature did not enact the “managing member” exemption until 2009, Or Laws 2009, ch 136, § 1, and the specific violations that the commissioner found that involved the Candalaria properties (which petitioner challenges in his second and fourth assignments of error) occurred earlier. Petitioner implicitly acknowledges that, because of the timing, the “managing member” exemption does not apply to the Candalaria violations. Nonetheless, he argues that his activities involving those properties did not constitute “professional real estate activity” for purposes of ORS 696.010(14) because he had an ownership interest in the properties. We are not persuaded. Petitioner’s ownership interest in the Candalaria properties was, as with the Lakepointe and Westec properties, indirect and related to petitioner’s status as a trustee. The Candalaria properties are owned by Candalaria South, LLC, which has several members, one of which is “Dan L. and Fran H. Berrey, Trustees.” As explained above, petitioner has not identified a flaw in the commissioner’s determination that petitioner’s indirect and partial interests in Lakepointe and Westec were insufficient to establish that he was not managing those properties “for another.” Petitioner has not explained why that same reasoning does not apply to the Candalaria properties.

THE OTHER ALLEGED VIOLATIONS

In his remaining assignments of error, petitioner challenges the commissioner’s determination that petitioner violated various statutory and regulatory provisions. We briefly address petitioner’s arguments below, starting with those he makes in conjunction with his third assignment of error.

In that third assignment, petitioner challenges the commissioner’s determination that petitioner “[c]ommitted

an act of fraud or engaged in dishonest conduct substantially related to the fitness of [petitioner] to conduct professional real estate activity”—a type of conduct that can form the basis for sanctions including the revocation or suspension of a real estate license. ORS 696.301(14).⁶ The commissioner based that determination on two events: (1) petitioner’s 2012 indication, on his license renewal application, that he had not engaged in professional real estate activity during the period of time between expiration and renewal of his license; and (2) petitioner having taken \$483,000 in loans from Westec to invest in another project, without first obtaining proper authorization.

With respect to the first of those events, the commissioner found that, during the pertinent time, petitioner had continued to advertise commercial real-estate leasing opportunities.⁷ Petitioner does not challenge that factual finding. Rather, he contends that he advertised only those properties in which he claimed an ownership interest and, therefore, he responded truthfully when he said that he did not engage in “professional real estate activity” “for another” while his license was expired. That argument fails for the reasons set out above; petitioner’s indirect ownership interests did not mean that he could manage those properties without a license.⁸

⁶ The 2003 version of ORS 696.301 included a similar provision, authorizing sanctions for a licensee determined to have “[c]ommitted an act or conduct substantially related to the *** licensee’s fitness to conduct professional real estate activity *** that constitutes or demonstrates bad faith or dishonest or fraudulent dealings.” ORS 696.301(31) (2003). That statutory provision was in place at the time that petitioner took loans from Westec, as described below. Neither party has contended that the differences in wording between ORS 696.301(14) (2015) and ORS 696.301(31) (2003) affect the analysis of whether petitioner engaged in fraudulent or dishonest conduct for which he could be sanctioned, and we do not perceive any distinction between the statutes that is material to the issue presented here.

⁷ As noted, “professional real estate activity” includes “management of rental real estate.” ORS 696.010(14)(h). Such management includes representing the property’s owner by advertising the property for rent or lease. ORS 696.010(11)(a)(A).

⁸ With respect to that violation, the commissioner did not distinguish among the properties advertised, and the final order does not specify whether the properties advertised may have included Candalaria. Petitioner does not assert that the properties advertised in 2012 included Candalaria; nor does he argue that any such advertisement would have been exempt from regulation under ORS 696.030(27).

Petitioner also argues that he believed that his activities were exempt from regulation because of his ownership interests in the properties. Even if that “belief was in error,” petitioner argues, his statement on the renewal form “cannot be determined to be ‘fraudulent’ or ‘dishonest’ conduct based upon his good-faith belief that a license was not required” for his activities. That argument fails in light of the commissioner’s finding (which the record supports) that petitioner did not have such a good-faith belief. Finally, petitioner suggests that no evidence links his claimed “misunderstanding” of licensing requirements “and his ability to appropriately conduct real estate activities for others”; he also suggests—based on statutes related to a different profession—that conduct qualifies as “dishonest” or “fraudulent” only if it results in injury or damage to another person, which was not caused by his inaccurate representation on the license renewal application. We reject those arguments without discussion.

The second act by petitioner that the commissioner found to constitute fraudulent or dishonest conduct was taking unauthorized loans from Westec. The commissioner determined that, because petitioner engaged in that conduct “in his capacity as a professional property manager” in a manner that “relate[d] directly to his honesty and integrity in dealing with client funds,” the conduct was “substantially related to his fitness to conduct professional real estate activity.”

On judicial review, petitioner contends that the commissioner’s finding that he took those loans “without authorization” is not supported by substantial evidence. Petitioner asserts, citing statements of some Westec investors, “that he did, in fact, have the approval of the majority of the owners” of Westec. We reject petitioner’s argument without extended discussion, as it essentially asks us to reweigh the evidence and substitute our assessment for the commissioner’s, which we will not do. *Tri-County Center Trust*, 298 Or App at 836.

In his fourth assignment of error, petitioner contends that the commissioner erred when he concluded that petitioner had violated certain provisions of OAR chapter 863. In his fifth assignment of error, petitioner argues that

the commissioner erred when he concluded that petitioner had violated certain provisions of ORS chapter 696. We reject each of the arguments that petitioner makes in conjunction with those two assignments of error without discussion, noting only that petitioner's arguments are largely premised on his own view of the evidence and do not grapple either with the commissioner's pertinent factual findings or with the commissioner's expressed rationale for concluding that petitioner had violated the rules and statutes.

Petitioner's second assignment of error challenges the commissioner's determination that petitioner demonstrated incompetence and untrustworthiness in performing property management activities, which constitutes a ground for discipline under ORS 696.301(12). The commissioner's incompetence/untrustworthiness assessment was partly based on his conclusion that petitioner had committed the regulatory and statutory violations that are the subjects of petitioner's third, fourth, and fifth assignments of error. With respect to each of those violations, the commissioner separately assessed whether the improper conduct "also constitute[d] incompetence or untrustworthiness." The commissioner answered that question affirmatively, determining that petitioner's regulatory violations "demonstrate[d] a lack of basic competence and knowledge of the rules and regulations relating to professional real estate activity, specifically those applicable to property managers." In addition, the commissioner determined, petitioner's "lack of candor" about certain security deposits, loan authorizations, and "potential self-dealings" established "a lack of trustworthiness in dealing with clients (the property owners) and the [REA]."

In challenging the commissioner's incompetence/untrustworthiness determination, petitioner first argues that he did not commit the specific violations that are also the subjects of his third, fourth, and fifth assignments of error. We reject those arguments in this context for the same reasons we rejected them, largely without discussion, in association with those other assignments. Petitioner also challenges the commissioner's determination that he committed two additional violations: (1) by failing to maintain records of loans taken from Westec, and (2) by failing to

maintain a contractually required minimum balance in a client trust account. We reject those challenges, too, without discussion.

Finally, in his sixth assignment of error, petitioner contends that the commissioner erred when he revoked petitioner's license and assessed a civil penalty. Petitioner asserts that the record does not include a sufficient factual basis for the commissioner's determination that revocation was warranted under ORS 696.301 (identifying grounds for discipline, including license revocation) and ORS 696.396 (2)(c) (authorizing revocation only where a violation has resulted in "significant damage or injury," exhibits incompetence, dishonesty or fraudulent conduct, or involves conduct substantially similar to that for which the licensee was previously disciplined) because petitioner's conduct demonstrated dishonesty, untrustworthiness, and incompetence. We disagree. The record supports the commissioner's determination that petitioner repeatedly violated the statutes and rules that govern professional real estate activity; it also supports his determination that those violations were not merely the result of inadvertence or good-faith mistake. We reject petitioner's challenge to the revocation and imposition of civil penalty without further discussion.

Affirmed.

**BEFORE THE
REAL ESTATE AGENCY
STATE OF OREGON**

IN THE MATTER OF: DAN LEE BERREY , Licensee) FINAL ORDER)) OAH Case No. 1403688) Agency Case Nos. 2012-246; 2012-264, 2012-265, 2012-266; 2012-352; 2012-396; 2013-32
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This matter came before the Real Estate Agency to consider the Proposed Order issued by Administrative Law Judge (ALJ) Joe Allen on March 23, 2015. Licensee filed exceptions to the Proposed Order through his attorney, Jill Foster on April 24, 2015, following an extension to the filing deadline.

Licensee's exceptions raised primarily arguments that were raised and considered at the hearing. The Commissioner has reviewed Licensee's exceptions but does not find them to be persuasive.


For the foregoing reasons, the Commissioner adopts the Proposed Order as the Final order.

ORDER

IT IS HEREBY ORDERED that the principal real estate broker license of Dan Lee Berrey is revoked, with said revocation to be effective the date of this order.

IT IS FURTHER ORDERED, that Dan Lee Berrey shall pay a civil penalty of \$1,500.00. The civil penalty is due and payable as provided under ORS 183.745.

Dated this 17th day of June 2015.



Gene Bentley
Real Estate Commissioner

Date of Service: 6-18-2015

NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days of the service of this order. Judicial review is pursuant to the provisions of ORS 183.482 to the Oregon Court of Appeals.

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
REAL ESTATE AGENCY**

IN THE MATTER OF:

DAN LEE BERREY,
Appellant

) **PROPOSED ORDER**
)
) OAH Case No.: 1403688
) Agency Case Nos.: 2012-246; 2012-264,
) 265, 266; 2012-352; 2012-396; 2013-32
)

HISTORY OF THE CASE

On March 25, 2014, the Real Estate Agency (REA or Agency) issued a Notice of Intent to Revoke (Notice) to Dan Lee Berrey (Appellant) alleging violations of statute and rule for professional real estate activity engaged in between 2003 and 2012 (the period in issue). On April 8, 2014, Appellant requested a hearing.

On May 13, 2014, the Agency referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) Joe L. Allen to preside at hearing. ALJ Allen convened a prehearing conference on June 10, 2014. Appellant appeared through counsel, David Leonard. Senior Assistant Attorney General (AAG) Raul Ramirez appeared on behalf of the Agency. The purpose of the prehearing conference was to establish issues for hearing as set a schedule for all prehearing procedures.

On July 30, 2014, REA issued an Amended Notice of Intent to Revoke (Amended Notice) to Appellant.

Pursuant to the scheduled established at the prehearing conference, REA filed a motion for partial summary determination on September 2, 2014. On September 23, 2014, Appellant filed a response to the motion. On October 22, 2014, the ALJ denied the motion in its entirety.

On November 10, 2014, Appellant filed a motion to dismiss. REA filed a response to that motion on November 24, 2014. The ALJ denied the motion on the record at the beginning of the in-person hearing.

A hearing was held on December 1 and 2, 2014, in Salem, Oregon. Appellant appeared with counsel, David Leonard and Jill Foster, and testified on his own behalf. Senior AAG Raul Ramirez represented REA. Testifying on behalf of REA were Steven Westfall, William MacHugh, Douglas Reed, J. Spencer Taylor, and Peter Bale. The evidentiary record closed at the conclusion of the proceedings on December 2, 2014. The parties filed simultaneous written closing briefs on January 9, 2015. The record closed upon receipt of the parties closing briefs.

ISSUES

1. Whether Appellant demonstrated incompetence or untrustworthiness in performing any act for which he was required to hold a real estate license. ORS 696.301(12).
2. Whether Appellant committed one or more acts of fraud or engaged in dishonest conduct substantially related to his fitness to conduct professional real estate activity in violation of ORS 696.301(14).¹
3. Whether Appellant disbursed funds from a client trust account (CTA) or security deposit account (SDA) without sufficient funds in the ledger account to cover the disbursement. *Former* OAR 863-025-0025(3)(a) (4-15-2006 ed.) and *former* OAR 863-025-025(11) (8-15-2007).
4. Whether Appellant failed to sign on or more property management agreements (PMA) on behalf of the property management company. OAR 863-025-0020(6).²
5. Whether Appellant transferred funds between different owners' ledgers without proper authorization. OAR 863-025-0025(13).³
6. Whether Appellant failed to register a business name with the Agency prior to conducting professional real estate activity under a name other than his legal name. *Former* OAR 863-015-0095(1).⁴

¹ The Amended Notice also asserts violation of *former* ORS 696.301(31) (2003) based on the same factual allegations. *Former* ORS 696.301 provided, in relevant part:

The Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

(31) Committed an act or conduct substantially related to the applicant or licensee's fitness to conduct professional real estate activity, whether of the same or of a different character and whether or not in the course of professional real estate activity, that constitutes or demonstrates bad faith or dishonest or fraudulent dealings.

While the numbered sections differ, there are no material differences in the effective language between the current and former versions of the rule or the factual showing necessary to prove violation of either.

² The Amended Notice cites to former versions of this rule, including the 2009 and 2011 editions. Nonetheless, it does not appear either of these revisions contains alterations to the language of the cited section of the rule. Additionally, the Amended Notice cites to *former* OAR 863-0025-0020(6) (4-1-2007). This earlier edition of the rule contains some variance in language but no material differences in the operative language. This order addresses both the current and former sections of the applicable rule in the opinion below.

³ Again, the Amended Notice cites to a former version of the rule (1-1-2009) for this allegation. Nonetheless, the current version of OAR 863-025-0025(13) is identical in all respects to the cited version of the rule.

7. Whether Appellant consistently failed to complete required account reconciliations for one or more SDAs. OAR 863-025-0025(21).⁵

8. Whether Appellant failed to provide property owners with notice that he may destroy records of property management activity performed after six years as required by OAR 863-025-0070(2)(b)(F).

9. Whether Appellant failed to disburse all obligated funds to an entitled party within 60 days of termination of a PMA. OAR 863-025-0070(2)(a).

10. Whether Appellant failed to disburse earned management fees from a CTA at least once each month. OAR 863-025-0025(15).⁶

11. Whether Appellant violated one or more of the affirmative duties owed to a property owner. *Former* ORS 696.890(3)(a),(c),(e), and (f).⁷

12. Whether Appellant failed to notify the Agency within 10 business days of closing a CTA in violation of *former* ORS 696.241(5).⁸

13. Whether Appellant engaged in professional real estate activity without an active license in violation of ORS 696.020(2).

14. Whether REA may revoke Appellant's real estate license. ORS 696.301(3),(12), and (14); ORS 696.396(2)(c)(B) and (C).⁹

⁴ The Amended Notice cites to two former versions of this rule, both of which contain identical language. Due to recent renumbering of certain administrative rules, the requirements of *former* OAR 863-015-0095(1) currently appear in OAR 863-014-0095(1). Because there is no allegation that Appellant violated the current version of the rule, only the former version is relevant and therefore cited by this order.

⁵ The Amended Notice cites to three former versions of the applicable rule (4-15-2011, 9-1-2011, and 9-14-2012.) for this allegation. Nonetheless, the current version of OAR 863-025-0025(21) is identical in all respects to the cited versions of the rule. Therefore, this order makes no distinction between the current and former versions of this subsection of the administrative rule.

⁶ The Amended Notice cites to *former* OAR 863-0025-0025(14) (11-15-2007). The applicable subsection of the rule has been renumbered in the present version to subsection (15). The earlier version of the applicable rule contains no material differences in the operative language from the present version.

⁷ *Former* ORS 696.890(3) has been renumbered to ORS 696.890(4). Otherwise, there are no material differences between the former and current versions of this subsection of the statute.

⁸ *Former* ORS 696.241(5) has been renumbered and now appears at ORS 696.241(6). The operative language of the relevant subsection was unchanged by this revision.

⁹ The progressive discipline requirements of ORS 696.396 apply only to conduct occurring on or after January 1, 2006.

15. Whether REA may impose a civil penalty up to \$1,500 against Appellant. ORS 696.990(4) and (9).

EVIDENTIARY RULING

Exhibits A1 through A67, offered by the Real Estate Agency, and Exhibits R1 through R50, offered by Appellant, were admitted into the record without objection.

FINDINGS OF FACT

1. REA has continuously licensed Appellant to engage in professional real estate activity from approximately 1977 until January 31, 2014. Beginning in or about 1977, Appellant obtained a sales license from REA. In 1981, REA issued an associate broker license to Appellant. Thereafter, in or about the mid-1980s, Appellant obtained a principal broker license from REA. Most recently, Appellant's license expired January 31, 2014. (Test. of Berrey.)
2. Appellant has been engaged in property investing and development for more than 25 years. Appellant obtained a real estate license because he believed it would assist in the acquisition and leasing of commercial properties in which he invested. (Test. of Berrey.)
3. Sometime in 2003, Appellant formed C.P. Management Co., a domestic corporation, which provided property management services under the dba, Certified Property Management (CPM). Thereafter, Appellant registered CPM with REA as a property management company in which he was the principal broker. Between 2003 and 2012, CPM operated with a staff of between as few as five and as many as eight employees. Appellant was the designated property manager at CPM. At one point, CPM employed another REA licensee, Becca Reel (Reel). (Test. of Berrey.)
4. During the period in issue, CPM provided property management services for the following properties, all located in Oregon: McKenna Estates (McKenna), Lakepointe Apartments (Lakepointe), Westec South Business Park (Westec), Candalaria South/Candalaria Crossing (Candalaria), and 340 Vista Ave. (Vista) (collectively, the properties in issue). Appellant held ownership interest in each of the properties in issue, either directly or through interest in other entities. (Test. of Berrey and Bale; Exs. A7 at 1, A10 at 1, A13 at 1, A20 at 1, and A23 at 1.)
5. During the period in issue, CPM charged property management fees for services rendered, on behalf of the owners of the properties in issue, from which it paid expenses and wages for its employees including Appellant. As part of the property management services provided, CPM collected security deposits and rents from tenants. CPM was responsible for paying all taxes and expenses on the properties in issue, subject to approval of the property owners. (Test. of Bale and Berrey.)
6. In January 2012, Appellant attempted to renew his principal broker license using the Agency's online renewal application. Appellant entered all necessary information, including

his credit card information for payment of the renewal fee. Unbeknownst to Appellant, the payment did not process. (Test. of Berrey.) On February 1, 2012, Appellant's license expired. On or about April 17, 2012, a third-party vendor advertising certain properties Appellant managed through CPM informed Appellant that his license was no longer valid. Appellant then realized his renewal application had not processed properly. That date, Appellant renewed his license via the Agency's website and paid the \$230 renewal fee as well as a \$30 late fee. (*Id.*; Ex. A32 at 2.)

7. On the Agency's renewal application, Question 14 reads, "During any period of time when your license has been inactive or expired, have you conducted professional real estate activity?" (Ex. A32 at 4.) Appellant answered "no" to this question. (*Id.*; test of Berrey and Bale.)

8. Between February 1 and April 17, 2012, Appellant maintained multiple property advertisements for commercial lease opportunities on the multiple listing services (MLS), a services used by real estate professionals to advertise and locate commercial and residential properties for clients. (Test. of Bale and Berrey.)

9. Between July 5, 2012, and February 21, 2013, REA received multiple complaints related to Appellant's professional property management activities associated with the properties in issue.¹⁰ REA initiated an investigation into the complaints and, upon completion of the investigation, issued the Notice in this matter. (Test. of Bale; Ex A1 at 1.)

Westec South Business Park

10. Appellant and others purchased Westec as a tenancy in common (TIC) on or about September 25, 2003. (Ex. A12; test. of Berrey.) Westec is a multi-unit commercial development project located in Eugene, Oregon. (Ex. A1 at 7.) The Westec TIC Agreement identifies the ownership interest of the respective interests of the cotenants as follows:

• Dan & Fran Berrey, Trustees*	22.2809%
• Keith Flicker, Trustee	5.7311%
• Arthur & Roseann Bobrowitz ¹¹	2.4884%
• George W. & Annette Courter Boyce	3.6458%
• James R. & Diane Duda ¹²	11.8149%
• Steven H. & Kathleen S. Westfall	3.2729%
• Fernwood Investments, LLC	26.0254%
• Jeffery D. & Cynthia J. Raines, Trustees	4.0936%

¹⁰ In addition to the properties in issue, the complaints contained allegations related to two additional properties (the Meridian and West Gate commercial investment projects). (Ex. A1 at 2.) However, the Amended Notice does not contain any allegations related to these properties. As such, they are not addressed in this order.

¹¹ Arthur Bobrowitz is Appellant's brother-in-law. (Test. of Berrey)

¹² James Duda is a cousin of Appellant's wife. (Test. of Berrey.)

- Douglas Reed 5.1171%
- Howard E. & Judith M. Pope, Trustees 4.0936%
- Burton L. & Carolyn K. Thompson 11.4363%

(Ex. A12 at 2; *denotes Appellant's ownership interest, directly or indirectly through other entities.)

11. The Westec TIC Agreement provided that each owner obtained voting interest commensurate to each owner's ownership interest. The agreement also provided that, unless otherwise specified, any decision related to the property required 51 percent of the cotenants to vote in favor. Additionally, the agreement specified certain action requiring the unanimous vote of the cotenants. Among these was the decision to hire or fire a property manager. (Ex. A12 at 10.) The agreement named the initial property manager as "Certified Property Management, Inc." (Ex. A12 at 4.)

12. On September 25, 2003, CPM and the Westec owners entered into a property management agreement (PMA) for the management of Westec. The Westec PMA specified the property management entity as "Certified Property Management Company." (Ex. A13 at 1.) Appellant signed the Westec PMA on behalf of the Westec owners. Reel signed on behalf of CPM. (Ex. A13 at 3.)

13. As of September 25, 2003, Appellant had not registered the name Certified Property Management Company with the Agency. (Test. of Bale.)

14. The Westec PMA required the property manager to keep all client funds in a client trust account separate from the funds of the property manager. The Westec PMA also required the property manager to maintain a minimum balance of \$25,000 in the client trust account (CTA) to cover regular expenses of the property. (Test. of Bale; Ex. A13 at 1.)

15. After acquiring Westec, the escrow reserves available for tenant improvements and operating expenses were approximately \$500,000. (Test. of Reed; Ex. R29 at 1.) In November 2003, Appellant sent an email the other owners stating, in part:

* * * * *

Currently, we are receiving 1.2% on these funds while sitting in the checking account. (Not Insured)

I would like to suggest that we place a portion of these funds into one of the following options:

(Option A)

Money Market Account at 1.8% (Not Insured)

CD's * * * are currently not fixed and are paying around 1.5%

3 month: \$96,250

6 month: \$96,250

9 month: \$96,250

1 Year: \$96,250
Total: \$385,000

This would leave \$125,000 in the operating account.
Should be (sic) need to withdraw these funds, in order to complete the Tenant Improvements, we would pay a penalty.

(Option B)

Another option to consider[] is placing \$100,000 into one of the investment projects I'm overseeing.

I would personally guarantee the funds and would pay an interest rate of 5%, with the note due in 12-months. It would be possible to have the note payable in 6-months at an interest rate of 4%.

This option would leave \$125,000 in [the] operating account and \$285,000 in CD's with the \$100,000 in the form of a personally guaranteed note.

I would like to get these funds into either Option (A) or (B) sometime next week. Please let me know which option you would vote for.

* * * * *

Regards,
Dan Berrey, CCIM
Commercial Concepts, Inc.
541.549.6323

(Ex. R29 at 1 and 2.) Commercial Concepts, Inc. (CCI) is an entity Appellant used to organize and promote commercial investment projects. (Test. of Berrey.) Appellant also performed property management through CCI. (See, Ex A21 at 19.)¹³

16. Steven Westfall (Westfall) objected to extending loans to Appellant because he believed the funds should remain available for tenant improvements. Westfall was concerned about having sufficient funds on hand to develop the approximately 40 percent of the project that was vacant at the time. (Test. of Westfall.)

17. At least one owner, Doug Reed (Reed), advised Appellant that, if Option (B) were selected, he would like to see the \$100,000 loan secured by Appellant's interest in Westec. (Test. of Reed; Ex. A54 at 2.) Appellant responded in an email indicating, "[e]veryone but Mr. Westfall voted for 'B'. You are the only one who requested that I secure my interest with a note." (Ex. A54 at 2.) Appellant went on to point out that, his net worth was in excess of \$10 million and, therefore, Reed "should be well covered for the \$100,000." (*Id.*) Appellant also

¹³ Although the record is not clear on the extent of Appellant's professional real estate activity performed through CCI, a lease between The French Press and Candalaria identifies CCI as the broker entitled to commission upon execution of the lease. (Ex. A21.)

indicated that, because he had a conflict of interest in the vote, he was abstaining from voting on the proposed loan. (Ex. A54 at 2.)

18. Reed responded to Appellant's email and expressed, *inter alia*, his concerns about the need to have the escrow reserves available for future obligations of Westec, rather than using those funds to grant loans. (Test. of Reed; Ex. A54 at 1 and 2.) Appellant responded by assuring Reed that the recommendation was to grant a one-year loan limited to \$100,000 and "leave \$410,000 in a more liquid position" to address the obligations of Westec. (Ex. A54 at 1.)

19. The Westec owners eventually voted to extend a one-year loan to Appellant of \$100,000. (Test. of Reed, Westfall, and Berrey.) Between November 2003 and April 2004, Appellant took two loans, of \$200,000 and \$283,000 respectively, from the Westec escrow reserves without express authorization from a majority of the owners.¹⁴ (Test. of Reed and Westfall; *see also*, Ex. A60 generally.)

20. As part of the Agency's investigation in 2013, Peter Bale (Bale), an Agency Auditor-Investigator, reviewed ledgers of accounts for Westec. Bale found several instances where Appellant, as the property manager, made disbursements from Westec's CTA that resulted in a negative ledger balance. (Test. of Bale.) Specifically, Bale discovered 12 separate entries, dated December 2 and 23, 2009, showing disbursements from the Westec CTA resulting in a negative ledger balance. (Ex. A1 at 8 and 9; *see also*, Ex. A17, generally.)

21. In addition, during the investigation, Bale found that, in 2009, Appellant allowed the Westec CTA to fall below the \$25,000 minimum balance required by the Westec PMA in at least 76 separate instances. (Test. of Bale; *see also*, Exs. A14 through A16 generally.)

22. Bale also reviewed the Westec General Ledger and found multiple instances where Appellant made payments, indicated as temporary loans, to CPM or CCI. Specifically, the ledger reflects the following credit entries and corresponding reference entries:¹⁵

- August 5, 2009, CCI: \$6,400- Temp loan from Westec to []
- August 12, 2009, CPM: \$17,000- Temp loan to SOU¹⁶ to cover []
- September 24, 2009, CCI: \$5,000- Temp loan to Bakery D'Amo¹⁷
- September 25, 2009, CCI: \$3,200- Temporary loan to cover per[]

¹⁴ At hearing, Appellant argued he had majority approval. Nonetheless, he was only able to produce vague evidence of approval from owners Duda (11.82%) and Bobrowitz (2.49%). Together with Appellant's interest (22.28%), these interests (36.59%) do not equal a majority ownership. Based on the evidence in the record, I am not persuaded Appellant had approval from any other owner.

¹⁵ Each ledger entry contains only a portion of the actual reference line. Missing text is denoted by [].

¹⁶ SOU is an abbreviation for Candalaria South. (Test. of Berrey.)

¹⁷ This entry refers to Bakery D'Amour, a business owned in part by Appellant. (Test. of Reed and Berrey.)

(Exs. A1 at 9 and A18 at 9, 10 and 12.)

23. Bale inquired about the payments made to CPM and CCI during August and September 2009. Appellant could not provide written authorization for these general ledger entries. (Ex. A1 at 9.)

The McKenna Estates

24. On or about July 25, 2006, Appellant and others acquired the McKenna Estates, a 144-unit residential apartment complex located at 3450 McKenna Dr., Eugene, Oregon, and entered into a TIC Agreement to hold the property as cotenants. (Test. of Berrey; Ex. A3 at 1.) The TIC Agreement identified the interests of the cotenants as follows:

• 340 Vista, LLC*	74.841%
• Richard H. and Barbara L. Whitt, Trustees	7.898%
• Steven H. and Kathleen S. Westfall	5.769%
• Clifton Raymond and Helen Hammer Chesbrough	3.508%
• Robert F. and Ingrid M. Cooley	4.615%
• William H. and Nancy M. MacHugh	3.369%

(Exs. A3 at 1 and A7 at 1; * denotes Appellant's ownership interest, directly or indirectly through other entities.)

25. The McKenna TIC Agreement provides that initial property management services would be provided by CPM for at least one year. The agreement required a unanimous vote of the cotenants to remove a property manager. (Ex. A3 at 5 and 6.)

26. On August 1, 2007, the McKenna owners and CPM entered into a PMA for the management of McKenna. The McKenna PMA required the property manager to avoid comingling receipts and revenues from McKenna with CPM's own funds. Instead, the property manager was required to place all McKenna funds in a CTA to be held in trust for the owners. (Ex. A7 at 1.)

27. The McKenna PMA required CPM to pay, out of the CTA, "all expenses connected with the management, operation and maintenance of the premises, as authorized herein, including the [property manager's] commission and compensation as provided * * * in this agreement[.]" (Ex. A7 at 2 and 3.) The McKenna PMA also specified CPM's compensation as "(10%) Ten Percent of Gross Revenues." (*Id* at 3.) The McKenna PMA also designated Appellant as the owners' representative in dealings with the property manager, also Appellant. Appellant signed the McKenna PMA on behalf of the owners. Pamela Lovegren (Lovegren), an employee of CPM signed on behalf of the property manager. (Ex. A7 at 3 and 4.) Lovegren was not licensed by the Agency to conduct professional real estate activities. (Test. of Berrey; Ex. A1 at 4.)

28. In purchasing McKenna, the cotenants used approximately \$82,700, in tenant security deposits held in trust by the former owners, as partial financing. (Test. of Bale and

Berrey; *see also*, Ex. A1 at 2.) Approximately \$51,000 of these funds represented refundable security deposits subject to claims by tenants upon move. The remaining \$31,000 was non-refundable security deposits. (Test. of Bale.) Refundable deposits should be reflected on financial statements as liabilities of the owners. Non-refundable deposits are not considered liabilities. (Test. of Berrey.)

29. CPM used an SDA designated as the Housing Fund to hold tenant security deposits for multiple properties including McKenna and Lakepointe. (Test. of Bale and Berrey; *See*, Ex. A5.) CPM deposited new tenant security deposit funds into the Housing Fund and the McKenna general ledger account. Prior tenants' security deposits were never placed into either of those accounts. (Test. of Bale.)

30. Due to dissatisfaction among certain cotenants with CPM's management of McKenna, management of the property was transferred to Spencer Taylor (Taylor) with Taylor Real Estate and Management, LLC (Taylor Management), on or about April 12, 2012. (Test. of Westfall and Taylor; Ex. A1 at 4.) 340 Vista, LLC voted against replacing CPM.¹⁸ Nonetheless, CPM conceded to the transfer of property management functions, at least temporarily, to prevent disruption to McKenna's operations. (Test. of Berrey.)

31. Taylor reviewed the McKenna ledgers and notified the owners of a deficit of \$51,150 in tenant security deposits transferred CPM. Appellant advised Taylor that the shortfall was due to use, by the owners, of \$82,700 in tenant security deposits to finance the purchase of McKenna. Appellant also claimed that owner draws had been reduced since acquisition to make up for the initial \$82,700 and that the \$51,150 shortage represented the outstanding balance of the \$82,700. (Test. of Taylor; Ex. A53 at 6 and 7.)

32. As part of the Agency's investigation, Bale reviewed the records of all accounts for McKenna and found that, when a pre-acquisition tenant moved out, CPM transferred the amount of that tenant's security deposit from the Housing Fund to the McKenna owners' CTA. Thereafter, any refundable portion of the security deposit was paid to the tenant and the residual remained in the owners' CTA. (Test. of Bale; Ex. A4.)

33. Bale found no instances of deposits from owners' accounts to replenish the funds used from the tenant security deposits to finance the purchase of McKenna. (Test. of Bale; Ex. A5 1 through 18.)

34. In reviewing McKenna's general ledger for the Housing Fund, Bale discovered several instances where CPM recorded disbursements that resulted in a negative balance on the ledger. Specifically, the Housing Fund general ledger for McKenna showed approximately 117 entries between September 29, 2006 and April 25, 2008 where CPM recorded funds transfers for move outs resulting in a negative ledger balance. (Test. of Bale; Ex. A5 at 2 through 8.)

¹⁸ The record contains limited evidence indicating Appellant may have been divested of his voting rights in 340 Vista, LLC by other members. (Ex. A36 at 5 and 6.) However, this event, if valid, did not occur until at least January 16, 2013. (*Id.*)

35. During the investigation, Appellant asserted that the Housing Fund general ledger did not reflect a credit of \$7,500 from overages after closing escrow on McKenna. Appellant claimed CPM placed those funds into the Housing Fund SDA but erroneously recorded the credit as a debit on the general ledger, on December 31, 2006. (Test. of Bale and Berrey; Ex. A5 at2.)

36. Bale reviewed the Housing Fund records and found no deposit for \$7,500 after close of escrow.¹⁹ (Test. of Bale.) Nonetheless, Bale pulled out the block of entries resulting in a negative balance between January 1, 2006 and April 25, 2008, reversed the asserted erroneous \$7,500 debit, and found that the Housing Fund general ledger still reflected a negative balance after each entry for the stated period. (Test. of Bale; Exs. A1 at 3 and 4 and A6.)

37. REA's investigation also revealed that, on several occasions, CPM failed to pay management fees in accordance with the McKenna PMA. On at least 11 separate occasions between May 29, 2008 and January 30, 2012, CPM paid made disbursements, from one or more McKenna accounts, which did not comply with the PMA. (Ex. A1 at 5 and 6; test. of Bale.) Appellant, through CPM, paid management fees sporadically and often several months after the fees were earned. (Test. of Bale.)

38. Bale also discovered that, upon transferring management Taylor, CPM disbursed \$65,695, from the Housing Fund to Taylor, for the balance of McKenna tenants' security deposits. However, the Housing Fund general ledger reflected a balance of \$56,500 resulting in a negative balance of \$9,195. Bale reversed the \$7,500 debit and found the ledger still had a negative balance of \$1,695.²⁰ (Ex. A5 at 18; test. of Bale.)

*Candalaria South/Candalaria Crossing*²¹

39. Candalaria South, LLC is a limited liability company registered in the state of Oregon. Candalaria South, LLC was organized on or about September 3, 2004. At the time of organization, Appellant was the sole member of Candalaria South, LLC. (Exs. R35 at 1 and R36.) On or about January 24, 2008, Appellant transferred a portion of his membership interest in Candalaria South, LLC to others. The new membership distributions thereafter are as follows:

• Douglas S. and Synova J. Reed	27.27%
• Kevin and Tracy Reed	18.18%
• Dan L. and Fran H. Berrey, Trustees*	54.55%

¹⁹ It is unclear, from the record, where these funds ended up or if they were in fact dispersed from escrow. Nonetheless, it is sufficient to note that there is no evidence supporting Appellant's claim that \$7,500 was ever placed into the Housing Fund during the period in issue.

²⁰ The record is unclear as to whether the \$7,500 debit was actually entered in error. Nonetheless, REA permitted the assumption that it was in calculating the Housing Fund ledger balances in issue. This order does not challenge that assumption because the determination is irrelevant to a resolution of the issues.

²¹ For simplicity, this order refers to the property in issue owned by Candalaria South, LLC as "Candalaria" unless a distinction is relevant to a particular finding or analysis. Otherwise, Candalaria is meant to include all property identified in Finding of Fact 40.

(Ex. R35 at 1, 2, and 14; * denotes Appellant's membership interest directly or through other entities.)

40. Candalaria South, LLC owns real property located at 2715-2735, 2725-2785, and 2795 Commercial Street SE, Salem Oregon 97302. (Ex. R34 at 1.) On or about May 16, 2008, Candalaria South, LLC registered the name Candalaria Crossing as an assumed business name with the Secretary of State. (Ex. R37 at 1.) Candalaria Crossing occupies all or part of the Commercial Street SE property owned by Candalaria South, LLC.²² (Test. of Berrey; see also, Ex. R38.)

41. In 2008, Appellant, on behalf of Candalaria South, LLC,²³ negotiated a commercial lease with The French Press coffee house. On December 1, 2008, a 10-year lease was executed in favor of The French Press (the lease). Page one of the lease identified the "landlord" as "Candalaria Crossing, LLC." (Ex. A21 at 1; test. of Bale.) Candalaria Crossing, LLC is not registered with the Secretary of State. (Test. of Bale.)

42. The lease required all payments for rent were to be made to, "Certified Property Management, Inc." (Ex. A21 at 4.) In addition, Provision 14.10 provides all notices and communications should be delivered to, "Landlord: Certified Property Management, Inc." (Ex. A21 at 16.) Provision 14.35 states, "Commercial Concepts, Inc., represents the Landlord in this lease." (Ex. A21 at 19.) That provision also provides for commissions to be paid to CCI. (*Id.*) Lovegren, an employee of CPM, signed the lease on behalf of the landlord. Mike Taylor signed on behalf of The French Press. (Ex. A21 at 20.)

43. Provision 14.2 of the lease is titled, Relationship of the Parties, and provides:

The relationship of the parties to this Lease is that of landlord and tenant. Landlord is not a partner or joint venturer (sic) with Tenant in any respect or for any purpose in the conduct of Tenant's business or otherwise.

(Ex. A21 at 17.)

44. The French Press is an entity owned and operated by Mojo's House of Java, Inc., (Mojo's). Mojo's registered the assumed business name "The French Press" with the Secretary of State on August 14, 2008. (Ex. A22 at 6.)

45. Mojo's is a duly registered corporation authorized to conduct business in the State of Oregon. Mojo's has been registered with the Oregon Secretary of State since September 7, 2005. (Ex. R40 at 1.) Appellant and his wife, Fran Berrey, are the primary shareholders in

²² The record is unclear as to how much of real property located at 2715-2735, 2725-2785, and 2795 Commercial Street SE, Salem Oregon 97302 Candalaria Crossing occupies. Nonetheless, that determination is unnecessary for purposes of this order.

²³ The record is unclear whether Appellant negotiated this lease through CCI, CPM, or as a member of Candalaria South, LLC.

Mojo's. (Test. of Berrey.) Appellant is the secretary of the corporation and Fran Berrey is the president. (Ex. R40 at 1 and 2; test. of Berrey.)

46. On February 20, 2009, Candalaria South, LLC and CPM entered into a three-year PMA for the management of Candalaria. The Candalaria PMA stated CPM would be paid monthly property management fees equal to "(4%) Four Percent of Gross Revenues." (Ex. A20 at 1 through 3.) In addition, the Candalaria PMA provided for a commission to CPM equal to seven percent of the lease term for new leases and five percent of the lease term for renewed leases. The Candalaria PMA designated Appellant as the owner's representative in all dealings with CPM. (*Id.* at 3.)

47. Appellant signed the Candalaria PMA on behalf of the Candalaria South, LLC. Lovegren signed on behalf of CPM. (Ex. A20 at 4; test. of Bale.)

48. During the Agency's investigation, Appellant admitted to Bale that he did not disclose to the other members of Candalaria South, LLC that he and his spouse owned and operated The French Press through their interest in Mojo's. (Ex. A1 at 11; test. of Reed and Berrey.)

340 Vista

49. 340 Vista, LLC is a limited liability company registered in the state of Oregon. 340 Vista, LLC was organized on or about September 20, 1999. (Ex. R41 at 2.) The Class A voting interest of the individual members of 340 Vista, LLC are identified as follows:

• Berrey Family, LLC*	14.48%
• Van A. and Shu Ping Louie	24.25%
• Jack E. Noyes	24.25%
• Doug Reed	7.06%
• Kevin and Tracy Reed	5.22%
• Leon Clifford and Susan Grace Reed, Trustees	9.20%
• Earl C. and Carol M. Schroeder, Trustees	7.67%
• Richard H. and Barbara L. Whitt, Trustees	7.87%

(Ex. R41 at 4 and 5; * denotes Appellant's membership interest, directly or indirectly through other entities.)

50. 340 Vista, LLC owns certain real property located at 340 Vista Ave. SE, Salem, Oregon. (Test. of Berrey; Ex. R41 at 1.) Sometime after formation of 340 Vista, LLC, Appellant and others formed a tenancy in common to hold the 340 Vista property. Through the 340 Vista TIC Agreement, Appellant held 49.94 percent of the interest in 340 Vista. William MacHugh held 10.58 percent of the interest.²⁴ Merilee F Stavem, Larry and Jan Pfennig were also cotenant in 340 Vista. (Test. of MacHugh; see also Ex. A50 at 4.)

²⁴ Although certain evidence in the record alludes to the existence of a TIC Agreement related to 340 Vista, that agreement is not in evidence. Accordingly, the ownership interests for 340 Vista, LLC shown

51. On July 1, 2009, 340 Vista, LLC²⁵ and CPM entered into a PMA for management of 340 Vista. (Ex. A23; test. of Bale.) The 340 Vista PMA provides CPM shall be paid monthly property management fees equal to “(5%) Five Percent of Gross Revenue.” (Ex. A23 at 3.) In addition, the 340 Vista PMA states CPM shall be entitled to a commission of “(7%) of the lease term” for new leases and “for procuring a renewal to any lease now or hereafter existing (5%) of the renewal option.” (*Id.*)

52. The 340 Vista PMA granted the property manager certain enumerated authority and powers including, “[t]o pay out of the clients trust account * * * all expenses connected with the management and maintenance of the premises, as authorized herein * * * [.]” (Ex. A23 at 2.)

53. Lovegren signed the 340 Vista PMA on behalf of CPM. Appellant signed on behalf of 340 Vista, LLC. (Ex. A23 at 4.)

54. As to all times relevant to this order, the Oregon Department of Justice (DOJ) leased the entirety of 340 Vista. (Test. of Berrey.)

55. For tax years 2006 through 2008, CPM paid the property taxes for 340 Vista after the due date. CPM paid the 2006 property taxes for 340 Vista in June 2010, the 2007 property taxes in November 2010, and the 2008 property taxes in June 2012. For each of these tax years, a majority of the members of 340 Vista, LLC voted to defer paying the property taxes because CPM would be unable to disburse owner draws if the property taxes were paid on time. (Test. of Berrey and MacHugh.)

56. The failure to pay property taxes on the dates due resulted in penalties to the owner, 340 Vista, LLC, which passed to the individual members, including Appellant, according to their membership interests. Each owner was aware of this. Only William MacHugh (MacHugh) objected to deferring payment of property taxes. (Test. of Berrey and MacHugh.)

57. For tax years 2009 through 2012, CPM did not pay property taxes due during the time it managed 340 Vista. Sometime in 2011, MacHugh learned that CPM was not paying the property taxes for 340 Vista. He contacted Appellant who informed him that the other property owners voted to defer tax payments in order to continue to receive owner distributions. (Test. of MacHugh.) The resulting delinquent taxes and penalties exceeded \$200,000. MacHugh eventually paid this delinquency through a loan he extended to the remaining owners in January 2013. (Test. of Berrey and MacHugh; Ex. A49 at 1.)

above are derived solely from Ex. R41 (Third Restated Operating Agreement of 340 Vista, LLC dated July 29, 2006). In addition, the ownership interest of the remaining tenants in common is not stated in the record.

²⁵ In the PMA, the property owner is identified as “340 Vista TIC.” (Ex. A23 at 1.) For clarity, both entities are referred to herein as 340 Vista, LLC.

58. On or about January 16, 2013, the members of 340 Vista, LLC, with the exception of Appellant, voted to revoke all rights of Appellant related to 340 Vista. The members also voted to terminate the 340 Vista PMA with CPM. (Test. of MacHugh; Ex. A50.) CPM ceased providing management services to 340 Vista sometime before January 31, 2013. (Test. of Berrey.)

59. At the time the 340 Vista PMA was terminated, DOJ and CPM were negotiating a renewal of the lease. As of January 31, 2013, DOJ had not signed the lease renewal because it was still negotiating certain terms, including the owners' obligation to bring the property taxes current. The prior lease with DOJ included monthly payments allocated to property taxes, which DOJ paid to CPM each month. (Test. of Berrey and MacHugh.) Appellant informed the other owners that a lease renewal with DOJ could not be signed until the property taxes were paid in full. (Test. of Berrey.)

60. In December 2012, Appellant, through CPM, paid himself a partial commission of \$18,500²⁶ for renewal of the DOJ lease that was still under negotiation. (Test. of MacHugh, Bale, and Berrey.) Upon learning of this payment, MacHugh disputed Appellant's entitlement to a commission because DOJ had not yet signed the lease and was negotiating over HVAC and property tax issues. (Test. of MacHugh; Exs. A1 at 11 and 12 and A24.)

61. During REA's investigation, Bale questioned Appellant about the propriety of the disbursement for commission on an unsigned lease. (Test. of Bale.) Appellant stated that he believed he was entitled to the commission once the lease renewal was procured. Appellant indicated he believed that the renewal was procured when approval was obtained from both parties. He further indicated that both parties approved the renewal terms and a signed lease was just a formality. (Test. of Berrey.)

62. At the time of hearing, DOJ had not signed the lease renewal for 340 Vista. (Test. of MacHugh.)

Lakepointe Apartments

63. On or about July 10, 2006, Appellant and others acquired the Lakepointe Apartments,²⁷ a residential apartment complex in Lincoln City, Oregon, and entered into a TIC Agreement to hold the property as cotenants. (Test. of Berrey; Ex. A10 at 1 and 2.) The TIC Agreement identified the interests of the cotenants as follows:

• Dan L. and Fran H. Berrey, Trustees*	2.500%
• Leon Clifford and Susan Grace Reed, Trustees	20.655%
• Earl C. and Carol M. Schroeder, Trustees	13.905%

²⁶ Upon renewal of the lease, the full commission due to Appellant would have been approximately \$322,000. (Test. of Berrey.)

²⁷ The record contains evidence indicating Appellant may have held partial interest in the subject property prior to July 2006. (See, Ex. A9.) The extent of this ownership is irrelevant to the issues raised by the Amended Notice and is therefore not addressed by this order.

• Richard H. and Barbara L. Whitt, Trustees	23.030%
• Steven H. and Kathleen S. Westfall	2.500%
• Alan N. and Faye Zimmer	4.590%
• Keith Flicker, Trustee	8.640%
• Lakepointe Voorhies, LLC	24.180%

(Ex. R19 at 2 and 3; * denotes Appellant's ownership interest directly or through other entities.)

64. On May 12, 2011, the Lakepointe owners and CPM entered into a PMA for the management of Lakepointe. (Ex. A10.) The Lakepointe PMA specifies CPM shall be paid management fees equal to "(10%) Ten Percent of Gross Revenues[]" on a monthly basis. (*Id.* at 3.) Appellant signed the Lakepointe PMA on behalf of the owners. Lovegren signed on behalf of CPM. (Ex. A10 at 4.)

65. As part of the Agency investigation, Bale reviewed account ledgers for Lakepointe and discovered several instances where CPM failed to pay management fees according to the stated monthly schedule. Specifically, Bale found at least 14 instances between February 28, 2011 and January 30, 2012 where the Lakepointe general ledger reflected entries for management fees paid months after they were due.²⁸ (Exs. A1 at 7 and A11 1 through 4.) Bale's review also revealed that for each month CPM did not disburse management fees timely, it did disburse owner draws exceeding \$8,000. (Ex. A1 at 7.)

Reconciliation Audit.

66. On or about July 27, 2012, the Agency mailed to CPM a Mandatory Mail-In Audit for the Housing Fund.²⁹ (Test. of Bale; Exs. A1 at 12 and A25.) On or about August 20, 2012, in response to the Mail-In Audit, the Agency received a reconciliation of the Housing Fund for May 2012 from CPM. The reconciliation was incomplete and not signed by Appellant. CPM did not provide explanations for differences or discrepancies in the reconciliation. (Test. of Bale; Ex. A26.)

67. Based on the May 2012 reconciliation received from CPM, REA initiated a complaint and opened an additional investigation of Appellant/CPM, on November 7, 2012, that focused specifically on the Housing Fund. (Test. of Bale; Exs. A1 at 12 and A27.)

68. On November 7, 2012, Bale visited Appellant's office in Sisters, Oregon. Bale asked Appellant to produce monthly account reconciliations for the Housing Fund SDA. Appellant admitted that he was unaware he was required to reconcile this account on a monthly basis. Appellant was unable to produce any monthly reconciliations for 2012. (Test. of Bale and Berrey.)

²⁸ These entries reflect management fees paid for the period November 2010 through June 2011. (Ex. A1 at 7.)

²⁹ The audit specified the subject bank account as, "Security Dep-Client Trust Account-Property Management" held by US Bank and ending in account number 6983. (Ex. A25).

69. During his visit, Bale presented Appellant with a list of 13 CTAs the Agency had on record as belonging to or associated with CPM. The following day, Appellant provided Bale with a list of six of the identified CTAs closed between January 26, 2011 and June 8, 2011. Prior to this date, Appellant had not notified the Agency of the account closures. (Test. of Bale and Berrey; Ex. A31.)

70. On or about January 8, 2013, as part of the investigation into the Housing Fund, Bale requested Appellant, through CPM, perform and provide to REA three-way reconciliations of the SDA for each month in 2012. (Exs. A1 at 12 and A28.)

71. In response to Bale's request, CPM delivered reconciliation for each month of 2012 on or about January 17, 2013. The reconciliations were completed by CPM on January 16, 2013. The reconciliations were incomplete, failed to balance, and did not contain explanations of differences or discrepancies. (Exs. A1 at 12 and 13 and A29.)

CONCLUSIONS OF LAW

1. Appellant demonstrated incompetence or untrustworthiness in performing any act for which he was required to hold a real estate license.

2. Appellant committed one or more acts of fraud or engaged in dishonest conduct substantially related to his fitness to conduct professional real estate activity.

3. Appellant disbursed funds from a client trust account or security deposit account without sufficient funds in the ledger account to cover the disbursement.

4. Appellant failed to sign property management agreements on behalf of the property management company.

5. Appellant transferred funds between different owners' ledgers without proper authorization.

6. Appellant failed to register a business name with the Agency prior to conducting professional real estate activity under a name other than his legal name.

7. Appellant consistently failed to complete required account reconciliations for one or more security deposit accounts.

8. Appellant was not required under OAR 863-025-0070(2)(b)(F) to provide property owners with notice that he may destroy records of property management activity performed after six years because the property management agreement was not properly terminated.

9. Appellant was not required under OAR 863-025-0070(2)(a) to disburse all obligated funds to another party because the property management agreement was not properly terminated.

10. Appellant failed to disburse earned management fees from a client trust account at least once each month.

11. Appellant violated one or more of the affirmative duties a property manager owes to a property owner.

12. Appellant failed to notify the Agency within 10 business days of closing a client trust account.

13. Appellant engaged in professional real estate activity without an active license.

14. REA may revoke Appellant's real estate license.

15. REA may impose a civil penalty up to \$1,500 against Appellant.

OPINION

The Agency alleges Appellant's Oregon Real Estate License should be revoked and that he should pay a civil penalty of up to \$1,500 because he engaged in multiple violations of statutes and administrative rules. As the proponent of these positions, REA bears the burden of proof. ORS 183.450(2); *Harris v. SAIF*, 292 Or 683, 690 (1982). The Agency must establish by a preponderance of the evidence that it is entitled to revoke Appellant's license and take other proposed disciplinary action. ORS 183.450(2); *see also, Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of legislation adopting a different standard, the standard of proof in administrative hearings is a preponderance of the evidence). Proof by a preponderance of the evidence means the fact finder is persuaded that the facts asserted are more likely true than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

1. *Application of ORS Chapter 696 and OAR Chapter 863 to Appellant's conduct.*

As an initial matter, Appellant argues that his property management activities are exempt from the statutes and rules governing the conduct of real estate licensees by virtue of his status both as an owner of the subject properties and as a managing member of one or more limited liability companies (LLCs) engaged in the management of its own real estate. Appellant relies on an exemption from the relevant licensing requirements, found in ORS 696.030(27).

ORS 696.030 identifies exemptions to the statutory requirements found elsewhere in the chapter and provides, in part:

ORS 696.010 to 696.375, 696.392, 696.395 to 696.430, 696.490, 696.600 to 696.785, 696.990 and 696.995 do not apply to:

* * * * *

(27) An individual who is the sole member or a managing member of a domestic or foreign limited liability company duly registered and operating within this state under ORS chapter 63 and who is engaging in the acquisition, sale, exchange, lease, transfer or management of the real estate of the limited liability company.

a. Appellant's ownership interest in the subject properties.

Appellant, either directly or indirectly, held partial ownership interest in each of the subject properties. During the period in issue, Appellant held interest in a majority of the subject properties as a tenant in common with other owners. In addition, the evidence showed Appellant held this interest through no less than four separate legal entities.

At hearing, the evidence revealed Appellant held varying fractional interests in the subject properties as follows:

- McKenna Estates, 74.841% held through 340 Vista, LLC as a tenant in common with other owners (see 340 Vista, LLC below for Appellant's actual ownership interest in that entity);
- Lakepointe Apartments, 2.5% held through Berrey Family Trust³⁰ as a tenant in common with other owners;
- Westec Business Park,³¹ 22.2809% held by "Dan & Fran Berrey, Trustees" (Ex. A12 at 1.) as tenants in common with other owners;
- Candalaria Crossing, an unidentified ownership percentage held individually as a member of Candalaria South, LLC (Ex. A19 at 1.); and
- 340 Vista, 14.48% held by Berrey Family, LLC³² as a member of 340 Vista, LLC (Ex. R41 at 4.).

As to the Lakepointe and Westec properties, the evidence indicates Appellant held title as a trustee or co-trustee of a family trust, rather than an LLC. ORS 696.030(27) does not exempt individuals acting as trustees from the licensing or regulatory requirements. Therefore, with regard to the Lakepointe and Westec properties, Appellant's argument that he is exempt from the

³⁰ Appellant is Trustee for Berrey Family Trust. (Test. of Berrey.)

³¹ This property is also referred to in the record as Westec South Business Park (Exs. A12 at 1 and A13 at 1.). The individuals owners of this property are identified collectively in the record as Westec Investment Group (see, Exs. A14 and A15.).

³² The record does not identify the membership interest held by Appellant in the Berrey Family, LLC entity. Nonetheless, a determination of his ownership interest is unnecessary for purposes of this order. Instead, it is sufficient to note that Appellant is not a direct member of 340 Vista, LLC but, rather, holds interest derivatively through a separate legal entity.

regulatory provisions of statute and administrative rule pursuant to ORS 696.030(27) are without merit.

With regard to the McKenna, Candalaria, and Vista properties, Appellant held interest either directly as a member of an LLC owning the subject property (Candalaria) or derivatively through one or more LLC's which held membership in other entities holding ownership interest in the properties (McKenna and Vista).

b. *Whether Appellant qualifies as a sole member or a managing member of an LLC for purposes of statutory exemption.*

To determine whether Appellant's proffered interpretation of ORS 696.030(27) is permissible, it is necessary to decide if the term "individual," as it is used in the statute, can extend to Appellant's actions on behalf of the entities through which he held membership in the LLCs that owned portions of the subject properties.

ORS Chapter 696 does not define the term "individual." Likewise, OAR Chapter 863, applicable to the conduct and licensing of real estate professionals, does not provide a definition for this term. As with all cases of statutory construction, this tribunal must look first to a statute's text and context to best ascertain the intent to the legislature. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-611 (1993), citing, *State v. Person*, 316 Or 585, 590 (1993). Words of common usage typically should be given their plain, natural, and ordinary meaning. *Id.*, citing *State v. Langley*, 314 Or 247, 256 (1992). The legislature expressed no intent, within the text of the relevant statute, to provide a definition of the term "individual." Nor is the term "individual" a term or art subject to an alternate definition. Rather, "individual" is a term of common usage. Accordingly, it is necessary to look to the plain, natural, and ordinary meaning of the term to ascertain whether Appellant's statutory interpretation falls within the legislative intent encompassed by ORS 696.030(27).

The ordinary dictionary definitions of the term "individual" used as a noun include, in relevant part:

1: a single or particular being or thing or group of beings or things: as **a:** a particular being or thing as distinguished from a class, species, or collection * * * **(1) :** a single human being as contrasted with a social group or institution * * * **b:** A particular person[.] *Webster's Third New Int'l Dictionary* 1152 (unabridged ed 1993; emphasis original.)

Applied to the context of ORS Chapter 696, the most appropriate definition to apply is one that recognizes an "individual" as a single human being or person, rather than a single entity, social group, or institution. The majority of the relevant statute regulates licensing as well as conduct of any person performing or seeking to perform professional real estate activity.³³ More specifically, the provisions subject to exemption in ORS 696.030(27) apply to conduct of single individuals, who would otherwise be subject to the licensing requirements of the statute.

³³ ORS 696.375 to .495 apply to the administration of the Agency, rather than direct regulation of conduct of those engaged in professional real estate activities.

Further, use the singular terms "sole member" and "a managing member" imply intent to include within the exemption a single designated person, rather than multiple members of an LLC.

Applied to the facts of this case, the above definition presents difficulties for Appellant's suggested application of the statutory exemption with regard to at least two of the three remaining properties.

As noted above, the Vista property was wholly owned by 340 Vista, LLC during the period in issue. Nonetheless, Appellant was not a direct member of 340 Vista, LLC. Rather, Appellant held interest in 340 Vista, LLC through an entity designated as the Berrey Family, LLC. While Appellant was identified as the managing member of Berrey Family, LLC, the statutory exemption found in ORS 696.030(27) does not operate to exempt from regulation a managing member of a third party LLC holding membership in an LLC which then owns the subject real estate to be managed. Nothing in the text or context of the statute suggests the legislature intended such a convoluted result. To find the exemption applicable in such a circumstance would require applying a definition of the term "individual" other than that implied by common usage and accepted by this order.

As for the McKenna property, during the period in issue it was owned through a tenancy in common which included 340 Vista, LLC. Appellant does not directly own any interest in the McKenna property. Rather, as above, Appellant's only interest in the property derives through his membership in two interrelated LLCs. As identified above, Appellant is a member of Berrey Family, LLC, which in turn is a member of 340 Vista, LLC, which is a tenant in common with the individual owners of the McKenna property. Again, to find Appellant exempt under the provisions of ORS 696.030(27) would require adopting a unique definition of the term "individual" not identified in this order.

For the reasons identified above, I find the exemptions identified in ORS 696.030(27) are inapplicable to Appellant with regard to his professional real estate activities for the Lakepointe, Westec, Vista, and McKenna properties.

Finally, during the period in issue the Candalaria property was wholly owned by Candalaria South, LLC. According to a preponderance of the evidence at hearing, Appellant is the managing member of Candalaria South, LLC. As such, with regard to property management activities performed for the Candalaria property, Appellant would appear to fall within the exemption provided by ORS 696.030(27). Unfortunately, Appellant's decision to organize and operate, as a licensee, a separate entity identified as Commercial Property Management further complicated the analysis of the claimed exemption. The effect of Appellant's actions must be analyzed under the statutory scheme to determine the applicability of the exemption asserted.

c. The effect of Appellant's voluntary status as a licensee and organization of CPM on the statutory exemption.

Since approximately 1977, Appellant has held a license issued by the Agency. Beginning in 1977, Appellant obtained a real estate sales license. In or about 1981, Appellant obtained a license as an associate real estate broker. Sometime in the mid-1980's Appellant obtained a

principal real estate broker's license. Appellant maintained that license until January 31, 2014. At hearing, Appellant testified that he has been engaged in property investing and development for more than 25 years. Further, Appellant testified that, in relation to these investment activities, he obtained a real estate license because he believed it would assist in the leasing of commercial properties in which he invested.

In 2003, Appellant formed C.P. Management Co. That entity provided property management services under the dba, Certified Property Management (CPM). Appellant later registered CPM with the Agency as a property management company for which he was the principal property manager. During the period in issue, CPM employed between five and eight individuals at any given time. Appellant was the designated property manager at CPM. CPM provided property management for the McKenna, Lakepointe, Westec, Candalaria, and Vista properties. For these services, CPM charged property management fees from which it paid operating costs and wages for employees, including Appellant.

A review of ORS Chapter 696 reveals that a primary purpose of the statute is to regulate professional real estate activities within the state, including property management activities. The exemption claimed by Appellant applies to a sole member or managing member of an LLC who is directly engaged in the management of property owned by the LLC. That is not how Appellant elected to manage the property held by Candalaria South, LLC, or any other property in issue. Instead, Appellant formed a separate legal entity, registered that entity with the Agency, and performed professional property management functions through that entity. The evidence reveals he was acting as an employee of CPM, rather than as a managing member of the LLC(s), when he engaged in property management activities.³⁴

Appellant did not act directly as a member of Candalaria South, LLC. Rather, he acted through CPM as a licensed broker and charged property management fees for his services. Accordingly, he is not entitled to the exemption provided by ORS 696.030(27).

2. *Incompetence or untrustworthiness in performing any act for which Appellant was required to hold a real estate license.*

Throughout the Amended Notice, REA alleges Appellant engaged in conduct during the period in issue that demonstrates incompetence and/or untrustworthiness in performing any act for which he was required to hold a license. REA also identifies the specific conduct, giving rise to the allegations of incompetence or untrustworthiness, as independent violations of administrative rules. Specifically, REA alleges Appellant demonstrated incompetence or untrustworthiness by:

³⁴ In addition, ORS 696.030(27) does not exempt an individual who is a managing member of an LLC from the requirements identified in ORS 696.890, which identifies, *inter alia*, the affirmative duties a real estate property manager owes to a property owner. Because this order determines the exemptions in ORS 696.030(27) are inapplicable to Appellant, it is unnecessary to analyze how, if at all, the omission of this provision impacts Appellant's argument.

- Providing a false or incorrect response on the April 17, 2012 application to renew his license;
- Disbursing funds from a CTA without sufficient credit balance to cover the disbursements;
- Allowing inconsistent provisions between a PMA and tenant lease agreements regarding custody of tenant security deposits;
- Making misleading statements to REA and others regarding tenant security deposits;
- Failing to maintain records of authorization for loans taken from Westec;
- Failing to keep a CTA balance at the minimum amount required by the PMA; and
- Failing to identify the proper landlord on the Candalaria lease with The French Press.

Each of the above violations is discussed in detail below. Accordingly, it is unnecessary to reiterate the analysis related to each allegation here. Rather, it is sufficient to note that this order finds, with the exception of allowing inconsistent provisions between a PMA and tenant leases, Appellant engaged in the conduct alleged above and that each instance constitutes a violation of administrative rule regulating professional real estate activity. Accordingly, it must be determined if such conduct also constitutes incompetence or untrustworthiness.

ORS 696.301³⁵ identifies grounds for discipline and provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

* * * * *

(12) Demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

During the period in issue, Appellant was engaged in professional property management as the principal broker of CPM. ORS 696.020(2) requires any person conducting professional real estate activity in this state to hold an active license issued by REA. ORS 696.010(14) includes within the meaning of professional real estate activity, actions for another and for compensation including leasing, offering to lease, engaging in management of rental real estate, and purporting to be engaged in the business of leasing real estate. ORS 696.010(15)(a) through (d), (h), (i). CPM engaged in the management of residential apartment complexes and commercial retail and office projects.

As discussed more fully below, Appellant's violation of each of the provisions of administrative rule related to each of the above allegations demonstrates a lack of basic

³⁵ Former ORS 696.301(31), also cited in the Amended Notice, provides substantially similar language to ORS 696.301(12). Because the showing required by REA to prove the alleged violation would be the same under either version of the statute, this order does not undertake an in-depth discussion of the alleged conduct under the former version. The relevant text of *former* ORS 696(31) is laid out in fn. 1 above.

competence and knowledge of the rules and regulations relating to professional real estate activity, specifically those applicable to property managers. In addition, Appellant's lack of candor related to tenant security deposits for McKenna, loan authorizations for more than \$400,000 procured from Westec, and potential self-dealings related to The French Press demonstrate a lack of trustworthiness in dealing with clients (the property owners) and the Agency.

In addition, as discussed below, REA alleged and Appellant admitted that he failed perform any monthly reconciliations of a pooled SDA (the Housing Fund), as required by administrative rule, before asked to do so by REA in July 2012. While not specifically pled as incompetence in the Amended Notice, I find this conduct supportive of REA's allegation that Appellant lacked basic competence in performing professional real estate activities.

As such, I find the Agency has demonstrated Appellant's conduct during the period in issue demonstrates incompetence and untrustworthiness in performing any act for which Appellant is required to hold a real estate license.

3. *Fraud or dishonest conduct substantially related to Appellant's fitness to conduct professional real estate activity.*

ORS 696.301(14) also permits the REA to discipline a licensee who has:

Committed an act of fraud or engaged in dishonest conduct substantially related to the fitness of the applicant or licensee to conduct professional real estate activity, without regard to whether the act or conduct occurred in the course of professional real estate activity.

Similarly, *former* ORS 696.301(31) (2003) provided REA could discipline any licensee who:

Committed an act or conduct substantially related to the applicant or licensee's fitness to conduct professional real estate activity, whether of the same or of a different character and whether or not in the course of professional real estate activity, that constitutes or demonstrates bad faith or dishonest or fraudulent dealings.

As is evident from both the former and the current versions of the statutory provision above, the Agency may discipline a licensee who has engaged in fraudulent or dishonest conduct, whether or not in the conduct of professional real estate activity, which is substantially related to the licensee's fitness to conduct such activity.

The relevant question, therefore, is whether Appellant's conduct, as proven by REA, constitutes fraudulent or dishonest conduct substantially related to his fitness to conduct professional real estate activity. In this context, REA makes three allegations. Specifically, REA asserts Appellant (1) provided false statements on an application for license renewal; (2)

demanding a 10 percent ownership distribution to which he was not entitled; and (3) took unauthorized loans from a property that he managed.

a. Appellant's renewal application.

In January 2012, Appellant accessed the Agency's website in order to renew his real estate license, which was due to expire at the end of the month. Appellant entered the required information including his credit card information and submitted the application. Appellant believed the application was accepted and processed. Unfortunately, due to an unidentified error, with either the Agency's computer system or Appellant's, the application was not processed. On February 1, 2012, Appellant's real estate license expired. In April 2012, Appellant was alerted to the license expiration by a vendor attempting to post properties for lease on Appellant's behalf. On April 17, 2012, Appellant logged on to the Agency's website, completed a renewal application, and paid the renewal fee as well as a late fee.

In completing the renewal application on April 17, 2012, Appellant indicated he had not engaged in professional real estate activity during the period between expiration and renewal of his license. At hearing, REA submitted evidence that CPM, for which Appellant was the principal broker and only licensee, maintained several online postings offering properties for lease Pursuant to ORS 696.010(15)(d), this constitutes professional real estate activity. Further, the evidence indicated Appellant continued to operate CPM even if no commercial leases were executed during that period. Accordingly, Appellant's response on the renewal application was false.

At hearing, and in closing arguments, Appellant argued that his response "was correct to the extent that he had not * * * engaged in any real estate activities for property in which he did not hold * * * an ownership interest." [Appellant's] Written Closing Argument at 4. This argument relates directly to Appellant's claims, addressed more fully above, that he was not required to hold a license and is therefore not subject to regulation by REA pursuant to ORS 696.030(27). This order explicitly rejects those arguments. Further, I find Appellant's arguments are self-serving and disingenuous.

During the investigation of the complaints giving rise to the Amended Notice, at no time did Appellant assert he believed he did not require a license because of the statutory exemptions claimed at hearing. Further, he made no such assertions during the Agency's separate investigations into his management of the Housing Fund. Rather, the statutory exemption is a legal argument presented by counsel in the context of this proceeding. There is no evidence in the record to support the contention that Appellant held a good faith belief he was not required to hold a real estate license to engage in property management through CPM. His conduct of obtaining and maintaining the license for over 30 years speaks contrary to his arguments at hearing.

I find Appellant engaged in dishonest conduct in his application for renewal of his license when he indicated he had not engaged in professional real estate activity while his license was expired. Appellant's lack of sincerity with the REA is directly related to his fitness to hold a real estate license and conduct professional real estate activity.

b. Appellant's demand for 10 percent ownership distribution.

Next, the Agency asserts Appellant engaged in fraudulent or dishonest conduct when he demanded a 10 percent ownership distribution in McKenna to which he was not entitled.

At hearing, the parties presented vague and inconsistent evidence surrounding the ownership distribution in question and Appellant's alleged entitlement to the distribution. The parties' evidence and arguments provide little clarity. Nonetheless, the burden rests with REA, rather than Appellant.

At hearing, the parties presented competing theories and arguments about the accounting methods used to determine the appropriateness of the distribution in issue. However, neither party presented clear evidence to indicate Appellant's proffered accounting methods were impermissible. Instead, Bale testified that Appellant's arguments in favor of his demand for the ownership distribution relied on using an accrual-basis accounting method rather than the previously used cash-flow-basis. Nonetheless, Bale also conceded that switching between the two methods, while irregular, was not impermissible.

The evidence in the record fails to establish that Appellant knew or believed he was not entitled to the ownership distribution at issue when he made the demand. Accordingly, I do not find Appellant engaged in fraud or dishonest conduct substantially related to his fitness to conduct professional real estate activity when he requested the 10 percent ownership distribution.

c. Taking unauthorized loans from Westec.

As a final allegation in this violation, the Agency asserts Appellant took two loans from Westec, totaling approximately \$483,000, for which he did not have authorization from a majority of the owners. Appellant admits to disbursing the funds to himself through CPM but argues that a majority of the owners voted to extend both loans to him, as evidenced by certain email communications and promissory notes offered at hearing. I am not persuaded.

In November 2003, shortly after acquiring the property, Appellant approached the owners of Westec and proposed that they vote to extend a one-year loan to him of \$100,000 to invest in one of the other projects Appellant managed. At least two owners objected to this loan, preferring to keep the Westec funds, amounting to approximately \$500,000, available for tenant improvements. Appellant assured these owners that the remaining \$400,000 would remain available for such improvements and the loan would be limited to \$100,000 for one year with his personal guarantee. Eventually, the owners agreed to extent Appellant \$100,000 for one year.

Prior to REA's investigation, several owners learned Appellant had not taken the \$100,000 loan agreed upon. Instead, Appellant had taken a loan of \$200,000 followed by a second loan of \$283,000. As of 2012, a significant portion of these loans remained unpaid. The owners were unaware of any authorization for such loans. At hearing, at least two owners, Westfall and Reed, testified Appellant had never presented either of the loans in question to them for approval. In response, Appellant asserted he had majority approval and did not need

approval from either Westfall or Reed. Unfortunately, for Appellant, the evidence does not support his assertions.

At hearing, Appellant alleged that, after the initial vote to extend the \$100,000 loan, the group amended the loan amount to \$200,000. In addition, he asserted a majority of owners voted to extend a second loan of \$283,000. Despite these assertions, Appellant was unable to present reliable evidence of which owners, constituting a majority, voted in favor of these loans. When pressed, Appellant indicated that owners Berrey Family Trust, Fernwood Investments, Bobrowitz, and Duda voted to extend the loans. Appellant asserted these owners comprised more than 60% interest in Westec.

Appellant's testimony is contrary to certain evidence, which draws his reliability in into question. Specifically, Appellant's tally of voting members includes himself through Berrey Family Trust. Yet, in communications to Reed, Appellant stated he was abstaining from the vote due to the obvious conflict of interest. (Ex. A54 at 2.) If he did in fact abstain, the asserted tally is inaccurate. If not, his representation to co-owner and client appears to have been disingenuous. The unresolved conflict casts shadows on Appellant's representations.

In addition, when asked to present documentary evidence of these loan approvals, Appellant was unable. At hearing, he presented vague emails from Bobrowitz and Duda indicating they recalled approval of the loans. However, he was unable to present any contemporaneous evidence of the vote, either directly or through voting owners. Oddly, the only owners who recalled these specific loan votes are related to Appellant. Again, this evidence is less than persuasive. Bale's notes of a meeting with Kelly Haverkate, on behalf of Fernwood Investments, revealed that she had no recollection of the details of any loans from Westec to Appellant. (Ex. A67.)

The Agency's evidence established Appellant took loans, totaling \$483,000 from Westec without authorization. Westec was a property that Appellant provided property management services for through CPM. Appellant's acts of taking substantial loans from a client without authorization demonstrate dishonest conduct, at best. Further, because Appellant's conduct occurred in his capacity as a professional property manager and relate directly to his honesty and integrity in dealing with client funds, I find it is substantially related to his fitness to conduct professional real estate activity.

4. *Disbursing funds from a CTA or SDA without sufficient funds in the ledger account to cover the disbursement.*

REA also alleges Appellant, through CPM, disbursed funds from the McKenna SDA and Westec CTA without sufficient funds in the ledger account thus causing the ledger to reflect a negative account balance. At hearing, Appellant argued that, while the ledger might reflect a negative balance, it was his practice to ensure no check issued without sufficient funds in the account. Appellant further argued that CPM's accounting software posted certain credits at the beginning of each month but his staff never sent out checks until the accounts contained sufficient funds to cover those credits. Further, Appellant asserted that certain entries in the

McKenna SDA ledger failed to reflect a \$7,500 deposit to that account from escrow overages refunded to the owners. (Test. of Berrey.) Appellant's arguments are unpersuasive.

At hearing, REA's investigator testified he reviewed, among others, the ledgers of accounts for Westec and McKenna. In reviewing McKenna's general ledger for the Housing Fund SDA, Bale discovered several instances where CPM recorded disbursements that resulted in a negative balance on the ledger. Specifically, the Housing Fund general ledger for McKenna revealed 117 entries between September 29, 2006 and April 25, 2008 where CPM disbursed funds for move outs resulting in a negative ledger balance. REA also found that, upon transferring management Taylor, Appellant disbursed the full balance due as reflected in the financial records. After this disbursement, the Housing Fund general ledger again reflected a negative balance. Finally, the investigator discovered 12 separate entries, dated December 2 or 23, 2009, showing disbursements from the Westec CTA resulting in a negative ledger balance.

OAR 863-025-0025 (12)³⁶ provides:

A property manager must not disburse funds from a clients' trust account or security deposits account unless there are sufficient funds, as defined in OAR 863-025-0010, in the ledger account against which the disbursement is made.

Similarly, *former* OAR 863-025-0025(3) (2006) provided, in part:

Financial dealings by a property manager under a property management agreement shall comply with the following:

(a) A property manager shall not execute or issue a check from the client's trust account prior to the existence of a sufficient credit balance to cover the check in the owner's ledger or tenant's ledger account against which the check is executed or issued.

Appellant's argument that no check issued without sufficient funds and thus no overdraft occurred for the Housing Fund or Westec CTA misses the mark. That argument assumes the applicable rule applies to a bank account. However, the language of the rule, both present and former, addresses ledger accounts, rather than bank accounts. Appellant's argument assumes the terms bank account" and "ledger account" are synonymous. This is not necessarily the case. In accounting, the term ledger account refers to a specific record of transactions, maintained by a business, for a given account.³⁷ This differs from the bank account balance which may reflect the funds held by the bank in that account at a particular moment in time, regardless of outstanding transactions.

³⁶ Formerly OAR 863-025-0025(11) from 2007 to 9-1-2011. Renumbering did not alter the operative language of this section.

³⁷ The term dates back to early accounting methods, which used books, or ledgers, to record all transactions of a business (i.e., general ledger containing entries of all transactions.).

This distinction is apparent in examining the Housing Fund ledger for McKenna. The Housing Fund is a pooled bank account. A pooled bank account is one in which funds for more than one property, or client, is held collectively. In this case, the Housing Fund is an SDA holding tenant security deposits for McKenna and Lakepointe. Reference to the bank account balance would not give an accurate representation of the balance held on behalf of the tenants of Lakepointe or McKenna independently. Rather, it would simply indicate the total on hand with the bank for both properties collectively. The individual ledger accounts, maintained by the property manager, are where one would turn to determine the balance of tenant security deposits held in the pooled account for either property. Appellant's argument regarding a lack of account overdrafts is thus unavailing as it fails to address the fact that monies in the Housing Fund held on behalf of Lakepointe tenants were likely funding the shortfall in McKenna's tenant security deposits which should have been present in that account.

In examining the text of the rule, it is apparent that the rule requires a property manager to verify the presence of sufficient funds in a CTA or SDA before disbursing funds from that account. Further, the rule requires that such verification be done by referring to the ledger account, or record of all transactions maintained by the property manager for that account, rather than the bank account, which may not reflect all outstanding debits and credits for the account. Appellant's proffered interpretation would permit a property manager to issue disbursements from an account so long as the balance of the bank account at the instant of disbursement, irrespective of outstanding transactions, reflects sufficient funds to cover the disbursement. That interpretation could produce absurd results. Accordingly, I decline the opportunity to adopt such an interpretation.

In addition, I find Appellant's arguments about accounting software technicalities implausible and inconsistent. The evidence in the record reflects several instances during September 29, 2006 and April 25, 2008 for the Housing Fund and in December 2009 for Westec when disbursements resulted in a negative ledger balance. Contrary to Appellant's explanation, these instances were not limited to the beginning of the month. Rather, for McKenna, the transactions occurred at random intervals throughout the months in issue. For Westec, the transactions occurred at the beginning and toward the end of the month in issue.

While transactions occurring on or near the first of the month might support Appellant's assertions, transactions occurring throughout the month belie such assertions. Perhaps more telling is the fact that Bale's investigation did not reveal that disbursements, causing similar negative balances in the Westec CTA, regularly occurred at the beginning of each month or even multiple months in 2009.

Finally, Appellant argued that the negative ledger balance for the McKenna account in the Housing Fund SDA did not reflect a \$7,500 deposit to that account from escrow overages and instead that deposit was posted as a credit in the ledger. At hearing, the Agency's investigator testified that he reviewed the Housing Fund records and found no deposit for \$7,500 after close of escrow. Nonetheless, based on Appellant's representations, the investigator recalculated the block of entries resulting in a negative ledger balance accounting for the claimed erroneous \$7,500 debit. Upon recalculation, the investigator found that the Housing Fund general ledger still reflected a negative balance after each entry for the stated period. This

investigator applied this same method to the balance transferred to Taylor Management and found a negative balance remaining in the McKenna ledger of approximately \$1,695.

During the period in issue, Appellant disbursed funds from the McKenna SDA on no less than 117 occasions and from the Westec CTA on 12 occasions without sufficient funds in the ledger account to cover the disbursements.

5. *Failing to sign one or more PMAs on behalf of the property management company.*

OAR 863-025-0020 identifies requirements for property management agreements and provides, in part:

(6) Only a property manager may negotiate and sign a property management agreement, except that a principal real estate broker engaging in the management of rental real estate may delegate such authority under OAR 863-025-0015(6) to a real estate licensee who is under the supervision and control of the principal real estate broker.³⁸

Previously, *former* OAR 863-025-0020(4) (2006) provided:

Only a property manager or a real estate broker may negotiate and sign a property management agreement made in the course of the property manager's property management activity.

In the Amended Notice, REA alleges Appellant failed to sign the PMAs, as the property manager, for McKenna, Candalaria, 340 Vista, and Lakepointe. Appellant argues the pertinent rule requires only that he sign the PMA without specification to where or in what capacity. I disagree with Appellant.

The evidence in the record demonstrates that, for each of the PMAs specified, Appellant signed on behalf of the property owners. Further, the evidence demonstrates that Lovegren, an employee of CPM who did not hold a real estate license during the relevant period, signed the PMAs on behalf of CPM. Further, in each of the PMAs, Appellant is designated as the owner's representative in dealings with CPM, also owned by Appellant.

A review of the operative language of the pertinent rule, regardless of which version is applicable, reveals a legislative intent that a licensed property manager or broker negotiate with

³⁸ Between April 1, 2007 and June 15, 2010, the pertinent section of OAR 863-025-0020 read:

(6) A property manager must negotiate and sign a property management agreement, except that a principal real estate broker engaging in the management of rental real estate may delegate such authority under OAR 863-025-0015(6) to a real estate licensee who is under the supervision and control of the principal real estate broker.

(Emphasis added.) The alteration of the italicized four words above in the versions of the rule effective since June 15, 2010 do not substantially affect the analysis of the facts in this matter.

the owner over the terms of a PMA. In this instance, it is difficult to fathom how Appellant could have complied with this requirement if he was acting as both the property owner and property manager. Assuming that he could and intended to represent such to the other owners, nothing prevented Appellant from affixing his signature to the PMAs in issue on behalf of the owners and CPM. Appellant did not do so. Rather, he signed indicating acceptance of the agreement on behalf of the owners and had an unlicensed employee, Lovegren, sign indicating acceptance on behalf of the property manager.

The relevant section of rule explicitly states that only a property manager may sign the PMA. By permitting an unlicensed employee to sign the PMAs for McKenna, Candalaria, 340 Vista, and Lakepointe, Appellant violated that rule.

6. *Transferring funds between different owners' ledgers without proper authorization.*

REA next asserts Appellant impermissibly transferred funds between different property owners' ledgers based upon Bale's discovery of at least four instances where Appellant made payments, indicated as temporary loans, to CPM or CCI from a Westec ledger account belonging to the owners. Specifically, the cash account ledger reflected credit entries between August 5 and September 25, 2009 totaling over \$31,000. Bale found no written authorizations from the owners for these disbursements. Appellant was unable to produce any such authorization.

OAR 863-025-0025 identifies requirements of property managers in dealings with CTAs and SDAs and provides, in relevant part:

(13) A property manager may only transfer funds from an owners' ledger account to one or more different owners' ledger accounts if:

(a) Each of the affected owners authorizing the transfer have signed and dated an agreement authorizing such transfer that is separate from any property management agreements;

(b) At the time of the transfer, the property manager enters the transfer information on each affected owners' ledger account, including but not limited to the amount of the transfer, date of the transfer and the source or destination of the transferred funds, as appropriate; and

(c) The property manager gives each owner a separate monthly accounting on the transfer or includes the accounting of the transfer activity in the regular monthly report to the owner.

At hearing, Appellant argued that the disbursements in issue were not loans, but instead disbursements he was entitled to as an owner of Westec. Again, I find Appellant's self-serving explanation inconsistent with the evidence. The entries indicate that Appellant made each of the disbursements in question to either CCI or CPM, his own entities. In addition, the corresponding descriptions characterized each disbursement as a temporary loan. Three of the four

disbursements also specified the purpose of the loan was to fund, in some respect, one of Appellant's other properties or business ventures.

If, as Appellant asserts, the funds in question were properly disbursed to him as an owner, it is unclear why such disbursements were made to CCI or CPM, rather than to Appellant as an individual. Further, if Appellant disbursed the funds as income distribution of the owners, it is uncertain why he would have characterized each disbursement as a temporary loan to another business venture. Finally, if such funds were disbursed to Appellant in his capacity as an owner, one would expect to see disbursements to the remaining owners on or near the same date. The record reflects no such distributions.

The Agency established Appellant, through CPM, disbursed funds from a Westec ledger account to other property account ledgers, belonging to Appellant, on four separate occasions without written authorization from all Westec owners.

7. *Failing to register a business name with the Agency prior to conducting professional real estate activity under a name other than Appellant's legal name.*

Next, the Agency alleges that Appellant engaged in professional real estate activity under an unregistered name, other than his legal name, when he executed the Westec PMA and the lease with The French Press.

*Former OAR 863-015-0095 governed the use of business names in the conduct of professional real estate activity and provided, in part:*³⁹

(1) If a principal real estate broker or property manager wishes to conduct real estate business in a name other than the licensee's legal name, the principal broker or property manager must first register the business name with the Agency using an online application process available through the Agency's website. For the purposes of this rule, "business name" means an assumed name or the name of a business entity, such as a corporation, partnership, limited liability company, or other business entity recognized by law. A licensee must maintain the registered business name in active status with the Oregon Secretary of State's Corporation Division.

(Emphasis added.)

The Westec PMA, signed September 25, 2003, specified the property management entity as "Certified Property Management Company." The Agency asserts the use of the identifier "company" at the end of the dba gave a false impression to the public regarding the entity providing property management services under the PMA. I disagree.

In 2003, Appellant formed C.P. Management Co., a corporation registered in the State of Oregon. During the relevant period, C.P. Management, Co. provided property management

³⁹ Currently, this provision appears at OAR 863-014-0095.

services under the dba, Certified Property Management. Sometime after formation of C.P. Management Co., Appellant registered the CPM dba with the Agency.

As an identifier, the term "company" bears no legal significance. That term denotes no specific legal status of a business such as that implied by the identifiers "Inc." "LLC" or "LLP." Rather, the term "company" is a generic identifier referring to any collection of individuals working together for a specific purpose. As such, I do not find it to be the type of identifier that, when added to a business name, would tend to mislead the public about the identity of the entity providing services. *Former* OAR 863-015-0095(1) required Appellant to register the assumed business name or legal entity name, recognized by law, through which he intended to conduct professional real estate activities. Appellant did so. The addition of the term "company" did not add to or detract from that assumed name. There is no evidence in the record that the addition of the subject term constitutes or creates a business entity recognized by law. For purposes of this order, I find it does not.

Next, the Agency asserts the lease with The French Press, executed on December 1, 2008, identifies multiple entities as landlord and/or property manager, at least one of which is a business name not registered with the Agency. Appellant, through CPM, negotiated the lease. That lease, on page one, identifies the "landlord" as Candalaria Crossing, LLC. On or about May 16, 2008, Candalaria South, LLC, of which Appellant was the managing member, registered the name Candalaria Crossing as an assumed business name with the Secretary of State. Nonetheless, Appellant did not register that name with the Agency. Likewise, during the period in issue, Appellant did not register the name Candalaria Crossing, LLC with the Agency. Further, there is no record of such entity registered with the Secretary of State, either as a domestic or foreign limited liability company. In this instance, the Agency's arguments have merit.

Former OAR 863-015-0095(1) requires a licensee to register any name, other than his/her legal name, under which the licensee intends to conduct professional real estate activities and to maintain that name with the Secretary of State Corporations Division. This includes limited liability companies. At hearing, REA argued that, using an unregistered business name could cause confusion among property owners, tenants, and members of the public. The lease in issue is a prime example of this argument.

In addition to a non-existent legal entity, the lease identifies at least two other entities as the owner's agent. The lease identifies the landlord, for purposes of rent payments as well as notices and communications, at pages four and 16 respectively, as Certified Property Management, Inc. In addition, the lease identifies Commercial Concepts, Inc., as representing the landlord. As the Agency correctly argued at hearing, a lease agreement is a legal document binding on the identified parties. For purposes of identifying the property manager, the lease is not a model of drafting clarity. The identification of a non-existent limited liability company not only detracts from the clarity of the lease, it violates *former* OAR 863-015-0095(1).

During the period in issue, Appellant did not register the name Candalaria Crossing, LLC, with the REA or the Secretary of State. Pursuant to *former* ORS 696.010(15), professional real estate activity includes leasing real estate. Accordingly, when Appellant executed the lease

with The French Press in the name of Candalaria Crossing, LLC, he engaged in professional real estate activity in a name, other than his legal name, not registered with the Agency in violation of former OAR 863-015-0095(1).

8. *Failing to complete required account reconciliations for one or more SDAs.*

In addition to regulating how property managers handle CTAs, OAR 863-025-0025 also identifies requirements for managing SDAs and provides, in relevant part:

(21) A property manager must reconcile each security deposits account within 30 calendar days of the bank statement date pursuant to the requirements contained in this section.

(a) The reconciliation must have three components that are contained in a single reconciliation document:

(A) The bank statement balance, adjusted for outstanding checks and other reconciling bank items;

(B) The balance in the records of receipts and disbursements or the check register as of the date of the bank statement;

(C) The sum of all positive balances of individual security deposits and fees held in the security deposits account.

(b) The balances of each component in section (21)(a) of this rule must be equal to and reconciled with each other. If any adjustment is needed, the adjustment must be clearly identified and explained on the reconciliation document;

(c) Outstanding checks must be listed by check number, issue date, payee and amount;

(d) Within 30 calendar days of the date of the bank statement, the property manager must:

(A) Complete the reconciliation document; and

(B) Sign and date the reconciliation document, attesting to the accuracy and completeness of the reconciliation; and

(e) The property manager must preserve and file in logical sequence the reconciliation document, bank statement, and all supporting documentation including, but not limited to, copies of the record of receipts and disbursements or check register and a listing of all balances of individual security deposits and fees as of the date of the bank statement.

REA asserts Appellant failed to reconcile the Housing Fund SDA for any month in 2012 in accordance with the records. At hearing, Appellant did not dispute this.

The evidence in the records shows that in July 2012, REA mailed a Mandatory Mail-In Audit for the Housing Fund to CPM. Appellant, through CPM responded to the audit in August 2012 with a reconciliation of the Housing Fund for May 2012 that was both incomplete and unsigned by Appellant. Appellant did not provide explanations for differences or discrepancies in the reconciliation. Thereafter, REA opened a separate investigation of Appellant and CPM that focused specifically on Appellant's management of the Housing Fund SDA.

During a visit to Appellant's office in November 2012, an Agency investigator requested that Appellant produce monthly account reconciliations for the Housing Fund. Appellant admitted to the investigator that he was unaware he was required to reconcile SDAs monthly. Appellant could not produce any monthly reconciliations for 2012. Thereafter, in January 2013, the investigator requested CPM perform three-way reconciliations of the SDA for all months of 2012.

In response to REA's request, CPM delivered reconciliations for each month of 2012 on January 17, 2013. CPM completed the reconciliations the day before delivered to REA. The reconciliations were incomplete, failed to balance, and did not contain explanations of differences or discrepancies.

OAR 863-025-0025(21) requires a property manager to reconcile all SDAs within 30 days of the bank statements. Appellant failed to do so for any month in 2012. In addition, subsection (b) of the pertinent section requires the reconciliation must balance and, if necessary, must identify any adjustments necessary. The rule also requires a property manager to sign the reconciliation and to retain copies of the reconciliation and supporting documentation. OAR 863-025-0025(21)(d) and (e). Appellant failed to comply with any section of this administrative rule for each month in 2012.

9. *Failing to provide property owners with notice that Appellant may destroy records of property management activity performed after six years as required by OAR 863-025-0070(2)(b)(F).*

OAR 863-025-0070 identifies requirements and timelines for termination of a PMA and transfer of property management activities and provides in relevant part:

(2) Not later than 60 days after the effective date of the termination, the property manager must:

* * * * *

(b) Provide the owner with the following:

* * * * *

(F) A notice the property manager may destroy the required records of the property management activity performed after six years.

The Agency alleges Appellant violated the above rule because he failed to provide notice to the owners that CPM may destroy property management records for McKenna within 60 days of the termination of the PMA. Because I find insufficient evidence in the record to support termination of the McKenna PMA as required by the McKenna TIC Agreement, I disagree with the Agency.

Under the terms of the McKenna TIC Agreement, CPM was designated as the property manager for McKenna. The McKenna TIC Agreement required a unanimous vote of the owners to remove a property manager. Appellant held interest in McKenna through 340 Vista, LLC. The evidence in the record reflects 340 Vista, LLC held 74.841 percent of the voting and equity interest in McKenna.

According to the evidence, in April 2012, certain McKenna owners became dissatisfied with Appellant's management of McKenna. As a result, these owners voted to transfer property management from CPM to Taylor Management. The best evidence in the record indicates 340 Vista, LLC voted against replacing CPM. That entity controlled over 74 percent of the interest in McKenna. As such, the decision to replace the property manager was not unanimous, and therefore not in compliance with the TIC Agreement's terms. Nonetheless, CPM conceded to the transfer, on at least a temporary basis, of property management functions to prevent disruption to McKenna's operations. However, CPM's concession to transfer of the property management functions, temporarily or otherwise, did not validate the termination of the PMA between McKenna and CPM. The record is devoid of evidence that the McKenna PMA was amended to permit a less than unanimous vote to remove the property manager. Likewise, there is no evidence in the record to show Appellant was divested of his voting or ownership rights in either McKenna or 340 Vista, LLC at the time the McKenna PMA was purportedly terminated.

For these reasons, the Agency failed to show the owners properly terminated the McKenna PMA on April 12, 2012. Accordingly, the Agency failed to show on what date, if ever, the 60-day period for Appellant to provide the notice required by OAR 863-025-0070(2)(b)(F) expired.

10. Failing to disburse all obligated funds to an entitled party within 60 days of termination of a PMA.

Similar to the allegation above, the Agency asserts Appellant violated OAR 863-025-0070(2)(a), which requires a property manager to disburse all obligated funds to the party or parties entitled to such funds within 60 days after termination of a PMA. The Agency asserts Appellant failed to disburse such funds within 60 days after termination of the McKenna PMA in April 2012.

As discussed more fully above, REA failed to prove, by a preponderance of the evidence, that the McKenna owners terminated the PMA by a unanimous vote. Because the McKenna TIC Agreement required such unanimity to replace the property manager, there is insufficient

evidence in the record to indicate the McKenna PMA was properly terminated. Accordingly, the REA failed to show Appellant was obligated, by OAR 863-025-0070(a), to disburse funds to any party within 60 days of the purported April 12, 2012 termination of the McKenna PMA.

11. *Failing to disburse earned management fees from a CTA at least once each month.*

Next, the Agency alleges Appellant failed to disburse, to himself as property manager, earned management fees in accordance with the administrative rule.

OAR 863-025-0025(15) provides:⁴⁰

A property manager must disburse earned management fees from the client's trust account at least once each month unless a different schedule of disbursement is specified in the property management agreement, and may only disburse such fees if sufficient funds are available.

The McKenna and Lakepointe PMAs required Appellant, through CPM, to pay property management fees on a monthly basis. There is no evidence in the record of any change to those or other terms in the two PMAs.

The evidence in the record reveals that, on several occasions, Appellant failed to pay management fees on a monthly basis. Specifically, the record shows that, on 11 occasions between May 29, 2008 and January 30, 2012, Appellant made disbursements for management fees from McKenna accounts, which did not comply with the PMA because they were made several months after the month in which they were earned. Moreover, the record reflects no less than 14 entries, between February 28, 2011 and January 30, 2012, in the Lakepointe general ledger showing Appellant paid management fees months after they were due. The record also indicates that for each month Appellant failed to disburse management fees timely, Appellant, through CPM, disbursed owner draws exceeding \$8,000.

At hearing, Appellant argued that these deviations were permissible because he was not just a property manager but also an owner in both projects. In addition, Appellant argued that sufficient funds were not available to disburse property management fees during these months and therefore he was acting in the owners' best interest and in accordance with the cited rule. I find Appellant's arguments unpersuasive.

The text of the applicable rule requires a property manager to disburse funds on a specific interval. The rule permits an alternate schedule may be provided in the PMA. In addition, OAR 863-025-0025(15) permits a property manager to deviate from the monthly disbursement of management fees if sufficient funds are not available. No other exceptions are provided for failing to pay management fees monthly. Accordingly, Appellant's assertions that he was

⁴⁰ This provision appeared in former OAR 863-025-0025(14) from April 1, 2007 until January 1, 2009. The operative language has remained the same for all versions between April 1, 2007 and present, regardless of renumbering.

permitted to deviate from the monthly schedule required by the applicable rule and the McKenna and Lakepointe PMAs are without merit.

Likewise, the evidence does not support Appellant's assertions, at hearing, that during the months in which he failed to disburse management fees as required, there were insufficient funds to do so. At hearing, the Agency's investigator testified that, for each such month, he found disbursements to the owners in excess of \$8,000. The investigator also testified that, according to the Agency's interpretation of OAR 863-025-0025(15), a determination of whether sufficient funds exist to disburse property management fees should be done prior to disbursing owner draws. The Agency explained that this is because property management fees are an operating expense of the property and such expenses are paid before owner income is distributed.

I find REA's interpretation of OAR 863-025-0025(15) in this matter is entitled to deference. *See, Don't Waste Oregon Com. v. Energy Facility Siting*, 320 Or 132, 142, 881 P2d 119 (1994). (An agency's interpretation of its own validly promulgated administrative rule is entitled to deference unless "inconsistent with the wording of the rule itself, or with the rule's context, or with any other source of law * * *.") Pursuant to *Don't Waste Oregon*, an agency's interpretation is erroneous and therefore not entitled to deference only if it is: (1) implausible; (2) inconsistent with the wording of the rule; (3) inconsistent with the context of the rule; or 4) inconsistent with any other source of law. 320 Or at 142. Here, the Agency's investigator testified that such an interpretation is consistent with generally accepted accounting principles. As such, I find REA's interpretation is plausible. Further, Appellant does not argue otherwise, and I find nothing in that interpretation that is inconsistent with the wording or context of the rule or any other source of law.

Appellant failed to disburse property management fees monthly as required by OAR 863-025-025(15) and the McKenna and Lakepointe PMAs on at least 25 occasions between May 29, 2008 and January 30, 2012.

12. *Violating one or more of the affirmative duties a property manager owes to a property owner.*

Next, the Agency alleges Appellant's conduct during the period in issue failed to adhere to the affirmative duties he owed to his clients as a property manager. *Former* ORS 696.890(3) identified affirmative duties a property manager owes to each property owner and provided, in relevant part:

A real estate property manager owes the property owner the following affirmative duties:

(a) To deal honestly and in good faith;

* * * * *

(c) To exercise reasonable care and diligence;

* * * * *

(e) To act in a fiduciary manner in all matters relating to trust funds;

(f) To be loyal to the owner by not taking action that is adverse or detrimental to the owner's interest[.]

The Agency asserts Appellant made misleading statements about McKenna tenant security deposits, failed to pay property taxes for 340 Vista, and took a partial commission for a lease when he was not entitled to do so. Each allegation is addressed below.

a. Misleading statements about tenant security deposits related to McKenna (ORS 696.890(3)(a)).

As discussed above, in April 2012, Taylor Management took over property management duties for McKenna. As part of this transition, Taylor reviewed the McKenna ledgers realized a deficit of \$51,150 in tenant security deposits transferred from CPM. Taylor notified the owners, including Appellant, of this shortfall. In response, Appellant advised Taylor and the other owners that the shortage was due to the owners' use of \$82,700 in tenant security deposits to finance the purchase of the property. He also asserted that draws for McKenna owners had been reduced during the period between acquisition and transfer to Taylor Management to make up for the initial \$82,700. Appellant claimed that the \$51,150 shortage represented the outstanding balance of the \$82,700.

At hearing, the Agency presented reliable evidence that its investigator reviewed the records of all accounts for McKenna and found Appellant's statements regarding the tenant security deposits were untrue. The Agency demonstrated that, when a pre-acquisition McKenna tenant moved out, Appellant, through CPM, transferred the amount of that tenant's security deposit from the Housing Fund SDA to the McKenna owners' CTA. From there, any refundable portion of the security deposit was paid to the tenant and the residual remained in the owners' CTA. The evidence also showed that, in no instance were deposits made from owners' accounts to replenish the funds used from the tenant security deposits to finance the purchase of McKenna. The evidence revealed that, if in fact the owners' draws were reduced to the shortfall, the ledgers for the owners' CTA and the Housing Fund SDA would reflect transfers in amounts commensurate with the reductions in owners' draws. Finally, the evidence revealed that, because only \$51,000 of the McKenna tenant security deposits were refundable, the purported reduction in owner draws should have reduced the balance significantly. Accordingly, the evidence demonstrated Appellant's statements regarding the \$51,150 shortfall in McKenna security deposits were false.

The Agency correctly asserts Appellant violated former ORS 696.860(3)(a) by making false statements pertaining to the tenant security deposits because these statements were both dishonest and made without a good faith belief in the substance of the assertion. Rather, it appears Appellant made such statements in order to deflect responsibility for his failure to manage the McKenna tenant security deposits in a fiduciary manner.

b. *Failure to pay property taxes for 340 Vista (ORS 696.890(3)(a)(c)(e).)*

On July 1, 2009, 340 Vista, LLC and Appellant, through CPM, entered into a PMA for management of 340 Vista. The 340 Vista PMA granted Appellant, as property manager, authority and power which included paying all expenses from the owners' CTA.

The record reflects that, for tax years 2006 through 2008, Appellant paid the property taxes for 340 Vista after the due date, in most cases several years later. In addition, for tax years 2009 through 2012, Appellant did not pay property taxes due during the time his entity, CPM, managed 340 Vista.

The Agency asserts Appellant's failure to pay the property taxes from the 340 Vista owners' CTA in a timely manner violated his obligations to deal with owners honestly and in good faith, to exercise reasonable care and diligence, and to act in a fiduciary manner in all matters relating to trust funds.

The undisputed evidence in the record shows that, for the tax years 2006 through 2008, a majority of the members of 340 Vista, LLC voted to defer paying the property taxes because it would negatively impact their ability to take owner draws if the property taxes were timely paid. The evidence also indicates Appellant informed the property owners that the property taxes could be paid late but that doing so would result in penalties and interest. Only MacHugh objected to deferring payment of property taxes. Based on this evidence, Appellant asserts he violated no rule because he acted in accordance with a majority of the owners' wishes.

With respect to Appellant's honesty and good faith dealings in this matter, the Agency failed to show he acted either dishonestly or in bad faith when he notified the owners that draws would stop or be reduced if the property taxes were paid on time for 340 Vista. Likewise, the Agency failed to show Appellant failed to exercise reasonable care and diligence in withholding payment of the taxes. As the property manager, Appellant served the interests of his clients, in this instance the owners of 340 Vista. The evidence shows those owners voted to withhold payment of property taxes after Appellant informed them that doing so would cause penalties and interest to accrue. Ultimately, the penalties for those tax years exceeded \$70,000. Nonetheless, Appellant's actions for tax years 2006 through 2008 were in accordance with the owners' informed instructions and thus not in violation of his duty to act with reasonable care and diligence.

Nonetheless, the same cannot be said for Appellant's alleged failure to act in a fiduciary manner in all matters relating to trust funds. A fiduciary relationship is one "in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. Fiduciary relationships * * * require the highest duty of care." *Black's Law Dictionary*, 7th Ed. at 640 (1999). This definition includes the agent-principal relationship. (*Id.*) Accordingly, the property manager, as the agent of the owner, owes a property owner the highest duty of care. In the context of the applicable rule, Appellant, as the property manager, owed the remaining owners of 340 Vista the highest duty of care with regard to funds held in trust, including those allocated from the owners' CTA for property taxes.

In deciding to withhold property tax payments for 2006 through 2008, the evidence indicates Appellant, as an owner, cast a significant percentage of the voting interest in favor of deferring payment. This vote was self-serving and thus in violation of Appellant's obligation, as property manager, to act in a fiduciary manner toward the remaining owners. While Appellant was, as an owner, entitled to cast a vote, that entitlement is overshadowed by his legal obligation as a property manager to act in a fiduciary manner toward the remaining owners. Without the 49.94 percent⁴¹ controlled by Appellant and that of MacHugh, the tally of votes cast in favor of deferring tax payments may not have constituted a majority.

The evidence pertaining to tax years 2009 through 2012 is less favorable to Appellant. The undisputed evidence reveals that Appellant again failed to pay property taxes for 340 Vista for this period. The evidence does not show, however, that a majority of the owners voted to defer tax payments for these years. Instead, a preponderance of the evidence indicates that Appellant did not present such a decision to every owner. The evidence also shows that, sometime in 2011, MacHugh learned that Appellant was not paying the property taxes and asked why this was not done. Appellant then claimed that enough of the other property owners voted to defer tax payments to permit Appellant to do so without every owner voting. This time, the resulting delinquent taxes and penalties exceeded \$200,000. MacHugh eventually paid those delinquencies through a loan to the remaining owners in January 2013.

With regard to Appellant's failure to pay property taxes for 340 Vista during 2009 to 2012, I find Appellant failed to deal honestly and in good faith with all remaining property owners. Unlike the prior tax years, Appellant did not present each owner with the option to vote on the decision to defer tax payments. Rather, the evidence suggests that Appellant presented the option only to as many owners as was necessary to constitute a majority. This is particularly troubling considering that Appellant's voting interest at the time constituted over 49 percent. Accordingly, Appellant needed less than two percent of the ownership interest in order to constitute a majority. Any single remaining owner likely held at least that much interest. Appellant failed to act honestly, when he secreted, from at least one of the remaining owners, the decision again to defer payment of property taxes.

Likewise, Appellant's failure to pay property taxes for four consecutive tax years without a majority of the owner's approval demonstrates a failure to exercise reasonable care and diligence. This is particularly true in light of the fact that his prior withholding of property taxes cost the owners over \$70,000 in penalties. As the property manager, Appellant was obligated to pay all expenses connected with the management and maintenance of the premises as authorized by the 340Vista PMA unless the property owners directed him otherwise. There is no evidence, other than Appellant's self-serving assertion, that a majority of the owners directed him not to pay the property taxes in issue.

Finally, Appellant's failure to pay the property taxes due for 2009 through 2012 demonstrate a failure to act in a fiduciary manner in all matters relating to trust funds. The analysis pertaining to tax years 2006 through 2008 above is applicable to Appellant's conduct

⁴¹ Because the 340 Vista TIC Agreement is not in the record, it cannot be determined whether Appellant held interest individually, through 340 Vista, LLC, or through some other entity.

here, as well. However, in this case, Appellant's breach of his fiduciary duty is underscored by his failure to present the proposal to defer tax payments to all property owners.

First, the evidence does not support Appellant's assertions that a majority of the owners authorized the deferment. Accordingly, Appellant, as the property manager, failed to act with the highest duty of care owed to the property owner. This is evidenced by the added costs associated with Appellant's unilateral decision, to wit \$200,000 in tax penalties. Second, assuming Appellant did obtain at least a majority of the voting interest to defer tax payments, his failure to present the proposal to all owners showed a disregard for fiduciary duty owed to those owners. Instead, Appellant's best argument indicates he cherry-picked the owners necessary to obtain a majority interest and disregarded the rest. This is not demonstrative of the highest duty of care afforded to those owners.

The Agency has demonstrated Appellant's failure to pay property taxes for 340 Vista during the period in issue violated ORS 696.890(3)(a),(c), and (e).

c. *Taking lease commission without signed lease from DOJ-340 Vista (ORS 696.890(3)(a)(c)(e)(f)).*

On July 1, 2009, 340 Vista, LLC and CPM entered into a PMA for management of 340 Vista. The 340 Vista PMA granted Appellant, as the property manager, the authority to pay management fees and commissions out of the owners CTA. The PMA provided Appellant, through CPM, would be paid monthly property management fees equal to five percent of gross revenues. The PMA also entitled Appellant, through CPM, to a commission of seven percent of the lease term for new leases and five percent for procuring a renewal lease. During the period in issue, the entirety of 340 Vista was occupied by DOJ.

In January 2013, the owners of 340 Vista (with the exception of Appellant) voted to revoke Appellant's rights related to 340 Vista. The members also voted to terminate the 340 Vista PMA with CPM.

At the time the 340 Vista PMA was terminated, DOJ and CPM were negotiating a renewal of the lease. The evidence in the record reveals that, as of January 31, 2013, DOJ had not signed the lease renewal because it was still negotiating certain terms, including the owners' obligation to bring the property taxes current. During the negotiations, Appellant informed the other owners that a lease renewal with DOJ could not be signed until the property taxes were paid in full.

The evidence also reveals that, in December 2012, prior to termination of the 340 Vista PMA, Appellant paid himself \$18,500 as partial commission for renewal of the DOJ lease. Upon learning of this payment, MacHugh disputed this payment because DOJ had not signed the lease. In response, and at hearing, Appellant stated that he believed he was entitled to the commission once the lease renewal was procured. Appellant argued that renewal was procured when approval was obtained from both parties. He asserted that both parties approved the renewal terms and, as such, a signed lease was just a formality. I am not persuaded by Appellant's arguments.

Appellant's argument that he believed the lease was "procured" as soon as he obtained preliminary assent from the parties strains credulity. This is especially true in light of the evidence that DOJ was still negotiating the terms of that renewal when he paid himself the partial commission. At hearing, Appellant was unable to explain what the effect of failed negotiations would be on the assent he presumably obtained from DOJ. Further, his actions do not support the assertion that he truly believed he was entitled to a commission for the lease renewal. According to the evidence at hearing, the five percent commission payable for renewal of the DOJ lease exceeded \$320,000. Thus, if Appellant is to be believed, he was entitled to over \$320,000 and yet elected to take only \$18,500. Such magnanimous behavior was not explained at hearing.

The Agency established Appellant disbursed \$18,500 to himself to which he was not entitled. He then asserted implausible and unreasonable arguments to justify his actions. In doing so, he failed to deal honestly and in good faith with the owners of 340 Vista. His actions also violated his obligation, as property manager, to exercise reasonable care and diligence and to act in a fiduciary manner in all matters relating to funds held in trust for the owners. Finally, Appellant's actions of taking trust funds to which he was not entitled were adverse to the owners' interests as those funds are the property of the owner to be used either for the management of 340 Vista or as income by the owner.

The evidence in the record reveals Appellant paid himself of a commission for an unexecuted lease renewal in violation of the affirmative duties a property manager owes to a property owner as enumerated in ORS 696.890(3)(a),(c),(e), and (f).

13. *Appellant failed to notify the Agency within 10 business days of closing a CTA.*

*Former ORS 696.241(5) provided:*⁴²

A licensed real estate property manager or principal real estate broker who closes a clients' trust account, or to whom ownership of a client's trust account is transferred as authorized by the agency by rule, shall notify the agency, within 10 business days after the date the account is closed or transferred, on a form approved by the agency.

In November 2012, an REA investigator presented Appellant with a list of 13 CTAs REA had on record as belonging to or associated with CPM. The following day, Appellant provided REA with a list of six of those CTAs that had closed between January 26, 2011 and June 8, 2011. The undisputed evidence revealed that Appellant had not notified REA of the account closures prior to November 2012.

At hearing, Appellant argued that the accounts identified were not true CTAs but rather partner operating accounts that he designated as CTAs to protect the monies belonging to the

⁴² The legislature subsequently renumbered the relevant subsection of statute to ORS 696.241(6). The pertinent language remains unchanged in the current version of the statute.

various property owners in those accounts from creditors of CPM. Again, I am unpersuaded by Appellant's arguments.

OAR 863-025-010(4) provides:

"Clients' Trust Account" means a federally insured bank account labeled as "Clients' Trust Account" on all bank records and checks that is established and maintained by a property manager, acting on behalf of an owner under a property management agreement, for depositing, holding and disbursing funds received by the property manager on behalf of an owner, including application fees and application screening fees

By his own arguments, Appellant admits that he designated the accounts in issue as CTAs for the purpose of holding funds received by CPM and belonging to the property owners. The fact that Appellant may have considered and treated these accounts as partner operating accounts is irrelevant. All six accounts met the definition of a CTA provided above. As such, Appellant was required, by *former* ORS 696.241(5), to notify the Agency within 10 business days of closing each account. Appellant failed to do so.

14. *Appellant engaged in professional real estate activity without an active license.*

ORS 696.020(2) prohibits any individual from engaging in professional real estate activity without an active license issued by the Agency.⁴³ Professional real estate activity is defined in ORS 696.010(14) which provides, in part:

"Professional real estate activity" means any of the following actions, when engaged in for another and for compensation or with the intention or in the expectation or upon the promise of receiving or collecting compensation, by any person who:

- (a) Sells, exchanges, purchases, rents or leases real estate;
- (b) Offers to sell, exchange, purchase, rent or lease real estate;
- (c) Negotiates, offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate;
- (d) Lists, offers, attempts or agrees to list real estate for sale;

* * * * *

⁴³ ORS 696.020(2) reads:

An individual may not engage in, carry on, advertise or purport to engage in or carry on professional real estate activity, or act in the capacity of a real estate licensee, within this state unless the individual holds an active license as provided for in this chapter.

- (h) Engages in management of rental real estate;
- (i) Purports to be engaged in the business of buying, selling, exchanging, renting or leasing real estate;
- (j) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, leasing or rental of real estate;
- (k) Assists or directs in the negotiation or closing of any transaction calculated or intended to result in the sale, exchange, leasing or rental of real estate[.]

In January 2012, Appellant attempted to renew his principal broker license using the Agency's online renewal application. Appellant entered all necessary information, including his credit card information for payment of the renewal fee. Unbeknownst to Appellant, the payment did not process. On February 1, 2012, Appellant's license expired.

Between February 1 and April 17, 2012, Appellant maintained multiple property advertisements for commercial lease opportunities on the multiple listing services (MLS), a services used by real estate professionals to advertise and locate commercial and residential properties for clients. In addition, Appellant continued to operate CPM, a property management company in which he was the only licensee through which he managed the properties in issue.

At hearing, Appellant argued that he reasonably believed his license was renewed in January 2012. Further, Appellant argued that, because he did not sign any commercial leases during the period between February 1 and April 17, 2012, he did not engage in professional real estate activities. Both arguments lack merit.

First, the statute is silent on a party's intent with regard to the unlicensed practice of real estate. Rather, ORS 696.020(2) places a strict prohibition on an unlicensed individual engaging in professional real estate activities, including property management. With the exception of those exemptions found in ORS 363.030, no unlicensed person may conduct property management activities. A reasonable belief that one possesses a license is not an exemption to the licensing requirements or a justification to unlicensed practice found in ORS Chapter 696.

Next, as identified above, advertising real estate for lease and engaging in or purporting to be engaged in property management both fall within the definition of professional real estate activities. ORS 696.010(14)(d) and (h).

The evidence in the record demonstrates Appellant engaged in professional real estate activities without a valid license in violation of ORS 696.020(2) for 77 days between February 1 and April 17, 2012.

15. *Revocation of Appellant's real estate license.*

ORS 696.301 identifies grounds for discipline and provides, in relevant part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

* * * * *

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 *or any rule of the Real Estate Agency.*⁴⁴

* * * * *

(12) Demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

* * * * *

(14) Committed an act of fraud or engaged in dishonest conduct substantially related to the fitness of the applicant or licensee to conduct professional real estate activity, without regard to whether the act or conduct occurred in the course of professional real estate activity.

(Emphasis added.)

ORS 696.396 identifies the Agency's progressive discipline policy and provides, in part:

(1) The Real Estate Commissioner shall provide by rule for the progressive discipline of real estate licensees and an objective method for investigation of complaints alleging grounds for discipline under ORS 696.301.

(2) The rules adopted by the commissioner under this section:

* * * * *

(b) Must provide for progressive discipline designed and implemented to correct inappropriate behavior.

(c) May not authorize imposition of a suspension or a revocation of a real estate license unless the material facts establish a violation of a ground for discipline under ORS 696.301 that:

⁴⁴ Prior to 2005, this provision appeared at *former* ORS 696.301(27), which provided a licensee was subject to discipline if he/she "[v]iolated or disregarded any rule of the Real Estate Agency." Effective January 1, 2005, this provision was moved to (3) and violations of statutory provisions were added as grounds for discipline.

- (A) Results in significant damage or injury;
- (B) Exhibits incompetence in the performance of professional real estate activity;
- (C) Exhibits dishonesty or fraudulent conduct[.]

(Emphasis added.)

In the Amended Notice, REA seeks to revoke Appellant's principal broker license. Appellant argues that, assuming REA has proven one or more allegations, revocation is inappropriate under ORS 696.369 because REA has not engaged in progressive discipline. I disagree.

As set forth above, ORS 696.396 requires REA to adopt rules for progressive discipline of licensee. The statute also prohibits REA from imposing suspension or revocation of a license unless the facts establish certain violations under ORS 696.301, including incompetence and/or dishonest or fraudulent conduct.

As set out in this order, the Agency has established, by a preponderance of the evidence, that Appellant: (1) engaged in incompetence and untrustworthiness in performing property management activities, (2) committed one or more acts of dishonest conduct related to his fitness to conduct property management, (3) violated one or more affirmative duties owed to his clients, and (4) engaged in unlicensed property management activity. In addition, the Agency established Appellant engaged in numerous violations of OAR Chapter 863 Division 25 through his professional real estate activities.

The language of ORS 696.301 grants REA discretion, subject to the provision of ORS 696.396, in determining appropriate discipline for violations of statutes and rules governing professional real estate activity. While ORS 696.396 does require REA to adopt rules for progressive discipline, it also provides criteria under which REA may exercise its discretion to suspend or revoke a license. In this matter, REA has established it is entitled to impose suspension or revocation pursuant to ORS 696.396(2)(c)(B) and (C) because Appellant's conduct constitutes incompetence and untrustworthiness and because he engaged in multiple acts of dishonest conduct. At hearing, REA asserted the extensive number and egregious nature of the violations warrant revocation, rather than suspension. Viewing the record in its entirety, I agree. Accordingly, I find REA has not abused its discretion in proposing revocation of Appellant's principal broker license.

16. *Civil penalty.*

ORS 696.990 identifies penalties for engaging in prohibited activity and provides, in relevant part:

- (4) Any person that violates ORS 696.020 (2) may be required by the Real Estate Commissioner to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the commissioner of: *

(a) Not less than \$100 nor more than \$500 for the first offense of unlicensed professional real estate activity; and

(b) Not less than \$500 nor more than \$1,000 for the second and subsequent offenses of unlicensed professional real estate activity.

* * * * *

(9) For the purposes of subsection (4) of this section, any violation of ORS 696.020 (2) that results from a failure of a real estate licensee to renew a license within the time allowed by law constitutes a single offense of unlicensed professional real estate activity for each 30-day period after expiration of the license during which the individual engages in professional real estate activity. A civil penalty imposed for a violation of ORS 696.020 (2) that results from a failure of a real estate licensee to renew a license within the time allowed by law is not subject to the minimum dollar amounts specified in subsection (4) of this section.

As discussed above, Appellant engaged in unlicensed professional real estate activities for approximately 77 days. In the Amended Notice, REA seeks to assess a civil penalty for this conduct of \$1,500. As provided by ORS 696.990(9), each 30-day period of unlicensed practice constitutes a separate instance of violation. Accordingly, REA may assess a civil penalty of \$500 for the first violation occurring between February 1 and March 1, 2012. For the second violation, occurring between March 2 and April 17, 2012,⁴⁵ REA may assess an addition penalty of \$1,000.

ORDER

I propose the Real Estate Agency issue the following order:

The Amended Notice of Intent to Revoke issued July 30, 2014 is MODIFIED as set forth above.

Based on the violations of statutes and administrative rules specified herein, the real estate principal broker license of Dan Lee Berrey is REVOKED;

Dan L. Berrey shall pay a civil penalty of \$1,500.

Joe L. Allen

Senior Administrative Law Judge
Office of Administrative Hearings

⁴⁵ While this period exceeds 30-days, the Agency does not seek an additional penalty for the period exceeding 60 days.

NOTICE

This is the Administrative Law Judge's Proposed Order. If the Proposed Order is adverse to you, you have the right to file written exceptions and argument to be considered by the Real Estate Commissioner in issuing the Final Order. Your exceptions and argument must be received by the 20th day from the date of service. Send them to:

Denise Lewis
Oregon Real Estate Agency
1177 Center St. NE
Salem OR 97301-2505

The Real Estate Commissioner will issue a Final Order, which will explain your appeal rights.

CERTIFICATE OF MAILING

On March 23, 2015, I mailed the foregoing Proposed Order issued on this date in OAH Case No. 1403688.

By: First Class Mail

David Leonard
Attorney at Law
PO Box 804
Salem OR 97308

Denise Lewis
Real Estate Agency
1177 Center Street NE
Salem OR 97301-2505

Raul Ramirez
Senior Assistant Attorney General
Department of Justice
1162 Court St NE
Salem OR 97301-4096

Carol Buntjer
Administrative Specialist
Hearing Coordinator

REAL ESTATE BOARD
ADMINISTRATIVE SERVICES DIVISION REPORT
April 6, 2020

Administrative Services Manager: Vacant
Communications Coordinator: Mesheal Heyman
Accountant: Caty Karayel.

Operations & Policy Analyst: Denise Lewis
Systems Administrator: Tiffani Miller
Program Analyst: Rus Putintsev

Section Overview

The Administrative Services Division acts as business support for the Agency overall. This division manages budget preparation, accounting, purchasing and contracting, inventory control, facilities, payroll, human resources, special projects, information technology (IT) and communications.

Budget Update

Financials: The Legislative Adopted Budget for the 2019-2021 biennium is **\$8.5 million**. The Agency cash balance as of February 29th is **\$3.42 million**. The Agency had filed a notice of intent with the Legislative Fiscal Office and Chief Financial Office to request legislative approval in the 2020 session for a limitation increase of \$899,415 to account for revenue related to examination services. The revenue would have been a technical pass-through and had a net zero effect on the Agency's revenue though the 2020 legislative session did not proceed with the intended technical adjustment bill. Changes to expenditure limitation have not been made though it may be proposed in the next session or technical adjustment opportunity with the legislature.

Biennium to date, the Agency has averaged a monthly surplus of just over \$100,000. This calendar year, 2020, started off very strong with new applications up by 10% as compared 2018 to 2019. Renewal rates also remained high early in the year with 1% fewer licensees renewing late or letting their license lapse when contrasted to 2019.

However COVID 19 has put Oregon in a state of emergency. The economic consequences have the potential to be severe. The outcome to the real estate industry is yet to be determined but we do know that real estate is a cornerstone in our economy and any long lasting, far reaching effects are likely to impact this industry. While the current vantage point is murky, there are things we do know today, including: new applicants are not currently able to complete the application process as fingerprinting and examination services are closed, in-migration to Oregon from other states has halted for the time being, the practice of residential Real Estate is limited. The question today is how long will this last? From the lessons learned of the 2008 financial crisis and the resultant recession, in the very near term we do not expect substantial changes to renewal revenue. Though new applications are likely to slow given the obstacles to testing and fingerprint.

Organizational Change & Staffing

The Agency had anticipated posting a recruitment for the Administrative Services Division statewide in February and hiring in March but has had to postpone this engagement due to priorities in responding to the COVID19 continuity efforts. The Agency office is now closed to the public. Two staff remain working on site to maintain processes which must be done at the office. This includes IT systems support and reception duties (mail handling, scanning).

All remaining staff have been issued a laptop and are working remotely using electronic processes to support their work. Agency management is monitoring work product, meeting with staff by phone regularly and continuing service to the public by phone and email.

Real Estate Agency - AY21

2019-2021 Budget - Biennium to Date Through June 30th 2021

<i>Budget Codes</i>		<u>19-2021 Legislative Approved Budget</u>	<u>Expected Total Expenditures for Biennium (current)</u>	<u>Expected Remaining Limitation at end of Biennium</u>
	Total Personal Services	6,757,897	6,750,293	7,604
4100 & 4125	In-State Travel & Out-of-State Travel	98,762	114,619	(15,857)
4150	Employee Training	36,994	24,976	12,018
4175	Office Expenses	83,040	43,234	39,806
4200	Telecom/Tech Services & Support	64,621	47,160	17,461
4225	State Government Services	233,574	310,789	(77,215)
4250	Data Processing	109,297	120,060	(10,763)
4275	Publicity & Publications	36,718	1,047	35,671
4300 & 4315	Professional Services & IT Professional Services	186,339	186,791	(452)
4325	Attorney General Legal Fees	293,465	173,347	120,118
4375	Employee Recruitment	7,748	250	7,498
4400	Dues & Subscriptions	9,575	5,630	3,945
4425	Facilities Rent & Taxes	254,611	244,153	10,458
4475	Facilities Maintenance	4,519	5,631	(1,112)
4575	Agency Program Related S&S	41,308	1,895	39,413
4650	Other Services & Supplies	88,482	158,915	(70,433)
4700	Expendable Property \$250-\$5000	29,148	8,636	20,512
4715	IT Expendable Property	162,972	50,981	111,991
	Total Services & Supplies and Capital Outlay	1,741,173	1,498,115	243,058
	Totals	8,499,070	8,248,408	250,662

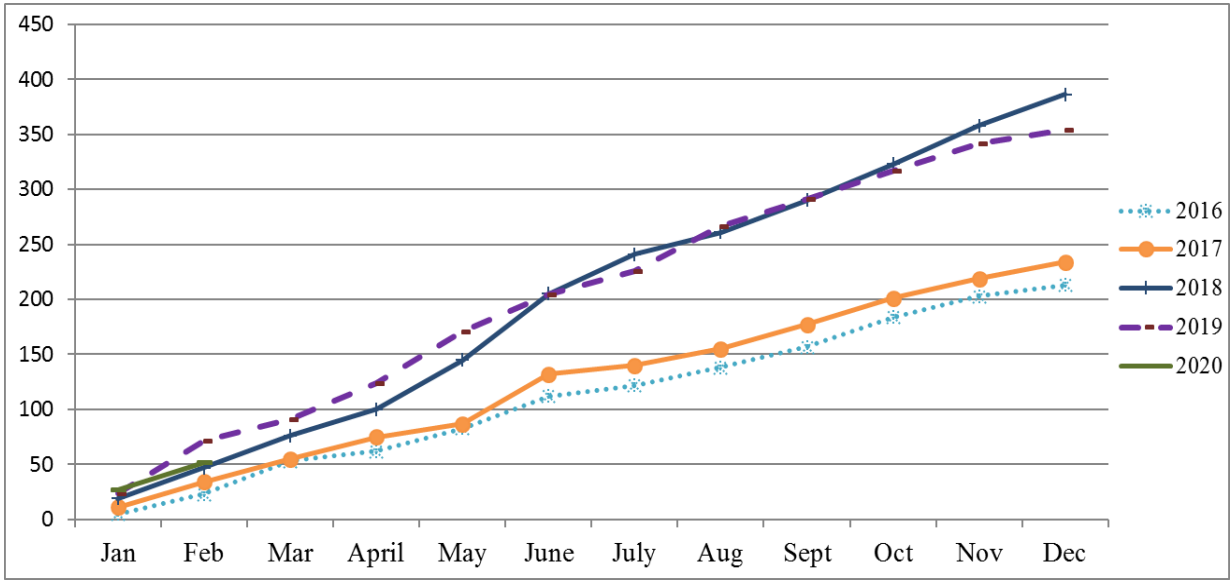
**Report to the Real Estate Board
Land Development Division
6 April 2020**

Division Manager: Michael Hanifin

Section Overview:

The Land Development Division reviews and approves filings related to condominiums, timeshares, subdivisions, manufactured home subdivisions, and membership campgrounds. The section reviews and approves the foundational documents creating these types of properties, as well as later amendments to those documents, to verify compliance with statutory requirements. We also issue the Disclosure Statement (sometimes referred to as a Public Report) required for sales of these interests to Oregonians. The Disclosure Statement summarizes key information about the condominium for the consumer, somewhat like the owner’s manual for a car.

Workload and Activity Indicators



Filings thru end of February have been in line with what was seen in 2018/2019. Current filings do not reflect any impact from the current pandemic, and I suspect those effects won’t be seen until mid-year, as developers are likely to continue converting finished projects into saleable condominiums. Some county surveyor’s offices have closed and my understanding is that “field checks” are not being conducted at this time (part of the county plat review process) so I’m not sure when or how the counties will work to complete review of new projects just coming into the pipeline.

Current Activity:

Permanent Rulemaking: The agency has filed notice of permanent rulemaking to implement HB 3030, as amended by SB 688 (2019 Regular Session), which created a right for certain persons to apply for a temporary authorization to practice a profession they are duly licensed for in another state. After review and comment by the advisory committee the decision was made to go forward with filing the permanent rulemaking using the text of the temporary rule. A copy of the notice of permanent rulemaking filing is attached.

There will be a telephonic hearing on this rulemaking, which is scheduled for 10AM to 11AM on April 16th. The deadline for comment on the rulemaking is April 21st, 3PM. The effective date of the permanent rule will be determined after close of the comment period, but will be before the end of June (to ensure there is no gap between the temporary and permanent rules).

Transition to Online Filing Process: We had been working on taking the division online for some time, but in response to the pandemic those plans were accelerated and the division has now shifted to an online filing process for condominiums. This transition significantly simplifies work-from-home, which is required where possible under the Governor's current guidance, and also minimizes deliveries into the office, which helps protect front-office staff from exposure.

NOTICE OF PROPOSED RULEMAKING

CHAPTER 863 REAL ESTATE AGENCY

FILING CAPTION: Rules for military spouse temporary authorizations as real estate brokers, principal brokers, or property managers.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/21/2020 3:00 PM

HEARING(S):

DATE: 04/16/2020

TIME: 10:00 AM - 11:00 AM

OFFICER: Michael Hanifin

ADDRESS: Real Estate Agency

Equitable Center, suite 100

530 Center St NE

Salem, OR 97301-2505

SPECIAL INSTRUCTIONS:

Conference Room

NEED FOR THE RULE(S):

HB 3030, as amended by SB 688 (2019 Regular Session), create a right for certain persons to apply for a temporary authorization to practice a profession they are duly licensed for in another state. These rules provide the application process and structure for such applications.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

HB 3030, SB 688 (2019 Regular Session) Chapter 142, Chapter 626 (2019 Laws). The document are available on the agency's website, at: https://www.oregon.gov/REA/Pages/laws_rules.aspx and a paper copy is available upon request.

FISCAL AND ECONOMIC IMPACT:

These new rules can be implemented using existing resources.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

There is no anticipated impact on either agencies or small business.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small business owners and licensees were included within the advisory committee that provided input on the rules and advised on impact on small business.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

CONTACT:

Michael Hanifin
503-378-4632
michael.b.hanifin@oregon.gov
Real Estate Agency
530 Center St NE
Salem,OR 97301

RULES PROPOSED:

863-014-0054, 863-024-0054

ADOPT: 863-014-0054

RULE TITLE: Temporary Authorization for Armed Forces Spouses or Domestic Partners

RULE SUMMARY: Provides process to obtain temporary authorization to conduct professional real estate activity as a real estate broker or principal broker.

RULE TEXT:

(1) Upon completion of the requirements in (3) through (5) of this rule, a spouse or domestic partner of an active-duty member of the United States Armed Forces who is stationed in this state may obtain a temporary authorization to conduct professional real estate activity as a real estate broker or principal broker. Such authorization is valid until the earliest of the following:

(a) Two years from the date of issuance;

(b) The date the applicant's spouse or domestic partner completes their term of active duty service in in this state; or

(c) The date the applicant's license issued by another state expires.

(2) Upon submission of the application for authorization, the applicant must hold an active real estate license of the same real estate license category in another U.S. state. The applicant must be in good standing in the state or states in which the applicant is currently licensed.

(3) To apply for temporary authorization, the applicant must:

(a) Complete an application and pay the related fee as provided in OAR 863-014-0010(1).

(b) Submit to a background check and fingerprint as provided in OAR 863-014-0015.

(c) Furnish certification of active license history issued by the state or states where licensed as required in (2) of this rule.

(d) Pay the required fee to the examination provider and pass the state portion of the real estate broker or principal broker license examination to demonstrate competency.

(4) An applicant seeking temporary authorization to conduct professional real estate activity as a real estate broker must be associated with a principal broker as provided in OAR 863-014-0035(3).

(5) An applicant seeking temporary authorization to conduct professional real estate activity as a principal real estate broker must either:

(a) Register a business name using an online application through the Agency's website as provided in OAR 863-014-0095; or

(b) Have an active principal broker transfer the applicant to an active registered business name under OAR 863-014-0063 using an online application available through the Agency's website.

(6) The temporary authorization to conduct professional real estate activity as a real estate broker or principal broker may not be renewed on expiration. Previous holders of a temporary authorization must reapply and fulfill the requirements of ORS 696.022 and OAR 863-014-0035 or 863-014-0040 in order to conduct professional real estate activity in this state.

STATUTORY/OTHER AUTHORITY: HB 3030, SB 688 (2019 Laws)

STATUTES/OTHER IMPLEMENTED: HB 3030, SB 688 (2019 Laws)

ADOPT: 863-024-0054

RULE TITLE: Temporary Authorization for Armed Forces Spouses or Domestic Partners

RULE SUMMARY: Provides process to obtain temporary authorization to engage in management of rental real estate as a property manager.

RULE TEXT:

(1) Upon completion of the requirements of (3) and (4) of this rule, a spouse or domestic partner of an active-duty member of the United States Armed Forces who is stationed in this state may obtain a temporary authorization to engage in the management of rental real estate as a real estate property manager. Such authorization is valid until the earliest of the following:

(a) Two years from the date of issuance;

(b) The date the applicant's spouse or domestic partner completes their term of active duty service in in this state; or

(c) The date the applicant's license issued by another state expires.

(2) Upon submission of the application for authorization, the applicant must hold an active property manager license in another U.S. state. The applicant must be in good standing in the state or states in which the applicant is currently licensed.

(3) To apply for temporary authorization, the applicant must:

(a) Complete an application and pay the related fee as provided in OAR 863-024-0010(1).

(b) Submit to a background check and fingerprint as provided in OAR 863-024-0015.

(c) Furnish certification of active license history issued by the state or states where licensed as required in (2) of this rule.

(d) Pay the required fee to the examination provider and pass the property manager examination to demonstrate competency.

(4) An applicant seeking temporary authorization to engage in the management of rental real estate as a real estate property manager must either:

(a) Register a business name using an online application through the Agency's website as provided In OAR 863-024-0095; or

(b) Have an active principal broker or licensed property manager transfer the applicant to an active registered business name under OAR 863-024-0063 using an online application available through the Agency's website.

(5) The temporary authorization to engage in the management of rental real estate as a real estate property manager may not be renewed on expiration. Previous holders of a temporary authorization

must reapply and fulfill the requirements of ORS 696.022 and OAR 863-024-0045 in order to engage in the management of rental real estate in this state.

STATUTORY/OTHER AUTHORITY: HB 3030, SB 688 (2019 Laws)

STATUTES/OTHER IMPLEMENTED: HB 3030, SB 688 (2019 Laws)

**REAL ESTATE BOARD
EDUCATION & LICENSING DIVISION REPORT
April**

Education & Licensing Manager: Madeline Alvarado

Compliance Specialist: Tami Schemmel

Compliance Specialist: Danette Rozell

Compliance Specialist: Jenifer Wetherbee

Administrative Specialist: Elizabeth Hardwick

Administrative Specialist: Rick Marsland

Administrative Specialist: Nenah Darville

Section Overview

The Education and Licensing Division acts as support to the Agency as well as the first point of contact for the public and services the business functions of the Agency overall. This division manages reception, licensing services, compliance reviews, client trust account reviews and education.

Education

Due to COVID-19 the Agency has allowed providers that typically provide live classroom instruction to provide classes via webinar.

PSI testing centers are currently closed and set to reopen on April 13th due to the pandemic.

Client Trust Account Reviews

Responses due on 3/28/2020. As of 3/23/2020 55% have the review has provided their responses. Based on these responses received, 22% have closed without any issues found, 15% have closed with Educational Letters of Advice, and 66% are still under review.

Licensing

Licensing services include assisting real estate brokers, principal brokers, property managers and escrow agencies as they manage their licenses using eLicense, assisting customers as they process registered business names and branch office registrations in eLicense, registering membership campground contract brokers, completing license applicant criminal background check investigations, processing escrow licensing and security/bonding files, maintaining all licensing history records, electronic processing of fees, and providing general reception services.

RBN Renewal

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Eligible to Renew	420	343										
Failed to Renew	14	11										
% Renewed	97%	97%										

Licensing Statistics

Total Licensee Counts by Month:

Individuals (Persons)	Jan-20	Feb-20
Broker – Total	16,563	16,480
Active	14,657	14,571
Inactive	1,906	1,909
Principal Broker - Total	6,457	6,427
Active	6,060	6,028
Inactive	397	399
ALL BROKERS Total	23,020	22,907
Active	20,717	20,599
Inactive	2,303	2,308
Property Manager - Total	947	939
Active	816	814
Inactive	131	125
MCC Salesperson	20	18
MCC Broker	1	1
TOTAL INDIVIDUALS	23,988	23,865
Active	21,554	21,432
Inactive	2,434	2,433
Facilities (Companies)		
REMO	5	5
Registered Business Name (RBN)	3,873	3,850
Registered Branch Office (RBO)	756	757
Escrow Organization	65	65
Escrow Branch	145	145
PBLN	NA	NA
PMLN	NA	NA
CEP	304	305
MCC Operator	25	25
TOTAL FACILITIES	5,173	5,152
TOTAL INDIVIDUALS & FACILITIES	29,161	29,017

New Licenses by Month:

Individuals (Persons)	Jan-20	Feb-20
Broker	187	177
Principal Broker	17	16
TOTAL BROKERS	204	193
Property Manager	16	11
MCC Salesperson	0	2
MCC Broker	0	0
TOTAL INDIVIDUALS	220	206
Facilities (Companies)		
Continuing Education Provider (CEP)	3	1
REMO	0	0
Registered Business Name	42	32
Registered Branch Office	15	6
Escrow Organization	1	0
Escrow Branch	0	0
MCC Operator	0	0
TOTAL FACILITIES	58	38
TOTAL INDIVIDUALS & FACILITIES	278	244

Exam Statistics

February 2020 Total
ALL LICENSING EXAMS

Broker	372
Property Manager	40
Principal Broker	21
Reactivation	6

Pass Rates

<u>First Time Pass Rate</u> <u>Percentage</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Broker State	64	61	58	57	54
Broker National	74	73	72	70	71
Principal Broker State	59	58	59	51	71
Principal Broker National	75	76	77	69	72
Property Manager	64	69	67	64	50

Oregon Real Estate Agency
Education & Licensing Division
Licensee Application & Renewal
2019 Data

New Applications													
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Brokers	328	259	300	280	287	278	233	245	227	260	250	238	3185
Principal Brokers	47	32	39	25	32	24	36	14	23	32	38	26	368
Property Managers	17	18	24	39	25	22	20	21	19	24	22	19	270
Total	392	309	363	344	344	324	289	280	269	316	310	283	3823

Renewed & Lapsed Licenses														
Brokers		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
On Time	Active	415	398	473	426	485	521	534	503	550	497	439	469	5710
	Inactive	43	41	35	33	38	33	49	37	46	40	36	37	468
Late	Active	42	25	37	47	67	40	52	32	50	35	35	52	514
	Inactive	7	14	9	6	13	7	7	11	17	10	9	7	117
Lapse		79	103	102	96	102	87	99	116	103	105	78	99	1169
Total		586	581	656	608	705	688	741	699	766	687	597	664	7978

Principal Brokers		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
On Time	Active	211	188	208	215	205	243	250	258	243	215	203	233	2672
	Inactive	18	9	11	5	8	8	12	8	10	13	6	13	121
Late	Active	12	7	8	15	12	11	12	12	10	11	15	14	139
	Inactive	1	2	1	4	3	1	4	2	3	4	1	4	30
Lapse		29	28	28	20	33	24	27	23	24	21	23	20	300
Total		271	234	256	259	261	287	305	303	290	264	248	284	3262

Oregon Real Estate Agency
Education & Licensing Division
Phone Counts

(minutes: seconds)	Jan – 20	Feb – 20	Mar – 20	Apr – 20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov--20	Dec-20	2020 Average
Call Count	2117	1834											1975.5
Average Wait Time	:25	:21											:23
Maximum Wait Time	0:11:05	0:09:30											0:10:17

(minutes: seconds)	Jan – 19	Feb – 19	Mar – 19	Apr – 19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19	Nov--19	Dec-19	2019 Average
Call Count	2251	1748	1917	2138	2062	1738	1882	1685	1882	2012	1606	1637	1880
Average Wait Time	:20	:21	:29	:23	:24	:33	:30	:27	:26	:16	:25	:20	:24.5
Maximum Wait Time	16:06	9:32	21:21	14:03	15:58	13:20	11:15	12:00	13:59	10:15	5:51	8:21	12:40

(minutes: seconds)	Jan – 18	Feb – 18	Mar – 18	Apr – 18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov--18	Dec-18	2018 Average
Call Count	2317	2006	2263	2063	2113	2084	1837	2049	1824	2153	1828	1738	2024
Average Wait Time	:22	:15	:17	:16	:16	:27	:21	:19	:21	:23	:17	:25	:20
Maximum Wait Time	5:32	3:23	8:58	7:05	13:27	12:18	14:40	12:53	10:26	13:22	7:41	10:07	8:29