

Oregon Real Estate News-Journal

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Commissioner
Gene Bentley

Cracking Down on Clients' Trust Account Law, Rule Violations

Gene Bentley, Real Estate Commissioner

In the past, the Oregon Real Estate Agency has taken an educational stance when it finds some of most common violations of real estate license law pertaining to clients' trust accounts and security deposit accounts.

Not anymore.

The Agency may choose to issue at minimum a reprimand for these violations. The Agency can also issue suspensions and revocations should a case warrant such an action. All disciplinary actions remain on the license record for 25 years and are printed in the *Oregon Real Estate News-Journal*.

The Agency is taking this firmer approach because it continues to see the same types of violations despite many years of targeted continuing education and outreach.

So, how does a property manager or principal broker avoid a disciplinary action?

Report the opening and closing of clients' trust accounts and security deposit accounts. (ORS 696.245)

Within 10 business days of opening a client's trust account or security deposit account, you must:

- Prepare and have a bank representative sign the [Notice of Clients' Trust Account and Authorization to Examine Form](#).
- [Log in to your personal eLicense account](#) and add the trust account. This will include uploading the completed the Notice of Clients' Trust Account and Authorization to Examine Form.

Within 10 business days of closing a clients' trust account or security deposit account, you must log in to your personal eLicense account and record the closing of

Please see CTA Violations on page 2



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Views from the Board

Reflections on My Tenure on the Real Estate Board

Marcia Edwards, Oregon Real Estate Board Member



Marcia Edwards

“Views from the Board” features the opinions of Real Estate Board members. The views expressed are not necessarily those of the *Oregon Real Estate News-Journal*, the Oregon Real Estate Agency or Agency staff.

I tried to be cool, as it was the first meeting of my Chairmanship of the Oregon Real Estate Board. But it was with trepidation that I took the gavel into my hands and called the meeting to order at the Oregon Real Estate Agency (OREA) conference room table in Salem on February 6, 2017. Roberts Rules of Order were in play, as well as the requirements of all public meeting laws and rules. With the strong support of staff preparation, and fellow Board members’ engagement, we got through it!

The legacy of the Board chairmanship includes so many great real estate industry minds, most recently Byron Hendricks (2015) and Chris Hermanski (2016). We all serve at the will of the Governor of the State of Oregon for four-year terms. The Board is comprised of seven industry members (licensees), and two ‘public members’ (non-licensees).

The typical meeting begins with reading of the rules of public meetings and an explanation of the make-up of the Board and the scope of our role with the Agency. We have five primary duties as a Board:

1. Providing advice to the Real Estate Commissioner and the Governor’s office regarding real estate industry matters.
2. Reviewing proposed rulemaking and provide recommendations.
3. Reviewing and approving or denying experience waiver requests for applicants for a principal broker license.
4. Making recommendations about the license examination process.
5. Approving or denying a person as a continuing education provider if that person does not qualify under the

statute.

I struck the gavel for the last time as Chairperson, closing the meeting held at the Holiday Inn Express in Troutdale, Oregon, on December 4, 2017. On February 5th, Jef Farley opened the meeting -- likely much more composed than I had been one year earlier!

During my tenure on the Board, I learned some eye-opening facts about the inner-workings of the Oregon Real Estate Agency.

- No State of Oregon general funds are used to support the OREA’s budget.
- The last increase in license fees (prior to 2018) was in 1997.
- The Agency has downsized the Agency’s facility footprint by 44%, reflecting great stewardship of the funding provided.
- The Agency has reduced other expenses, including printing and paper, by moving most services online.

As a practitioner in the industry, I was encouraged by reading today’s OREA mission statement: “The mission of the Oregon Real Estate Agency is to provide quality protection for Oregon consumers of real estate, escrow, and land development services, balanced with a professional environment conducive to a healthy real estate market.” It has been my experience that the OREA staff and managers, and the Board members, diligently strive to promote a professional environment conducive to a healthy real estate market.

Experience an Oregon Real Estate Board meeting first-hand in a location near you. This year, the Board will meet in Hood River, Brookings, Pendleton, Bend, Portland, and Salem. For dates and times, go to: http://www.oregon.gov/rea/about_us/Pages/Real_Estate_Board.aspx ■

CTA Violations

Continued from page 1

the trust account. Note: You must keep all records from the trust account for 6 years.

Reconcile every clients' trust account and security deposit account monthly. (OAR 863-015-0275, OAR 863-025-0028)

You must conduct a 3-way reconciliation of each clients' trust account and security deposit account every month. Although you don't have to use the [Agency's reconciliation form](#), a reconciliation must have the components found on the form. The reconciliation and all supporting documentation must be retained and available for review by the Agency upon request.

Disburse earned property management fees from clients' trust accounts. (OAR 863-025-0027)

You must pay yourself any earned fees that come from the clients' trust account at least once a month, unless there is a different schedule set out in the property management agreement. A disbursement can only occur if sufficient funds are available.

Keep money for your personal rentals separate from money for rentals owned by others. (ORS 696.241)

Don't run money for your personal rentals through a clients' trust account. The purpose of a clients' trust account is to maintain and account for the money of other people. Keeping money for your own rental properties in that same account is considered commingling, which is against the law.

Disburse earned interest as required. (ORS 696.241, OAR 863-015-0257, OAR 863-025-0027)

If you have a clients' trust account or security deposit account that earns interest for your benefit, it must be disbursed within 10 calendar days from the date of the bank statement on which the interest first appears.

Maintain sufficient credit balance in owners' and tenants' ledgers. (OAR 863-025-0010, OAR 863-025-0027)

You can't disburse funds from a clients' trust account or security deposit account unless there is enough money in the corresponding owner's or tenant's ledger to maintain a positive balance.

Make sure there is a positive balance in receipts and disbursements journal or check register at end of day. (OAR 863-025-0040)

Although the receipts and disbursements journal or check register for a clients' trust account can show a negative balance during the course of a day, it must have a positive balance by the close of day.

Make sure security deposits are in a security deposit account. (OAR 863-025-0025)

Unless a property management agreement, and the corresponding lease or rental agreement, state that a security deposit will be held by the owner, security deposit funds must be deposited within five banking days of receipt into a security deposit account. This is a special clients' trust account different from your regular clients' trust account; security deposit accounts can only hold security deposits and earned interest per OAR 863-025-0025(8). ■



10 Most Common Issues Found in Mail-In Reviews

Trust Account Reconciliations

All requirements for property management clients' trust accounts and security deposit accounts can be found in OAR 863-025-0025 through 863-025-0028.

If you are a broker or principal broker, and you are keeping a clients' trust account that holds funds for transactions involving the sale, purchase, lease option, or exchange of real property, you will find all requirements in OAR 863-015-0255, 863-015-0265, and 863-015-0275.

All records must be kept for 6 years.

Here are the 10 problems the Agency finds most often with trust accounts during random Reconciliation Mail-In Reviews:

1. Clients' trust accounts and security deposit clients' trust accounts are not being reconciled within 30 days of the date of the bank statement, and property managers or principal brokers are not reviewing and approving each reconciliation.
2. "Trust Account Reconciliations" are not being completed in a single reconciliation document showing all three required components for balancing purposes.
3. Personal or business funds are being commingled with clients' funds. A clients' trust account is an account that holds other people's funds. Most commonly these would be rents collected or funds held for the owner to complete repairs or maintenance on properties managed by the licensee. Licensees may not hold their personal or business funds
4. Negative balances are being carried in the check register or receipts disbursement journal, and in owner's and security deposit ledgers.
5. Clients' trust accounts are not being balanced to the bank statement with both the check register and the owner's or security deposits ledger. (Some software packages can balance with the bank statement, but cannot provide a true 3-way trust account reconciliation as required.)
6. Corrective actions are not being taken to resolve adjustments made in a reconciliation prior to the following month's reconciliation.
7. Separate owner's ledgers are not being prepared and maintained for each property management agreement, recording all funds received and disbursed. Monthly statements are not being sent to each owner monthly as required. For an owner's ledger, please reference OAR 863-025-0055.
8. The tenants' name, amount held per tenant, and the date funds were received are not provided with the reconciliations. Security deposit ledgers are not showing an ending balance that equals the bank statement and check register ending balances. For a security deposits ledger, please reference OAR 863-025-0030.
9. Check registers or receipt and disbursement journals are often not submitted with complete data as required. Please read OAR 863-025-0040 and record each transaction with either the owner's identifying name or code and the tenant from whom the funds represent.
10. All funds in a clients' trust account are not being identified with separate reports that detail the individual deposits or disbursements when there are aggregated transactions per OAR 863-025-0040(6). ■



Administrative Actions

The Oregon Real Estate Agency is required by law to publish disciplinary actions. The Agency has not processed any actions since the publication of the October issue of the

Oregon Real Estate News-Journal.

The Agency anticipates that there will be disciplinary actions to publish in the next issue. ■

93% Renewed In Time in January

Business Renewal Update

The first month of Registered Business Name renewals are complete. 398 out of 426 business registrations were renewed by January 31.

Business registrations that weren't renewed were voided, and all licensees associated with those businesses were inactivated. Inactive licensees cannot conduct professional real estate activity.

A principal broker or property manager of a voided business who wants to re-register a business **must reapply for a Registered Business Name, pay the \$300 fee, and pay a \$10 transfer fee for each licensee associated with the business.**

As of February 21, 233 of 365 business registrations have been renewed.

As a reminder, any real estate company or business with licensees conducting professional real estate activity, including real estate licensees operating independently under their own name, must register the business name with the Oregon Real Estate Agency. **This is separate** from any registration required by the Corporation Division of the Secretary of State.

Registered Business Names must be renewed with the Agency once a year, starting in 2018. **This is in addition** to any renewal requirement by the Corporation Division of the Secretary of State.

Note: Look up your Registered Business Name's expiration date by searching for the business in our [License Lookup](#). ■

Keep Up with Trust Accounts Every Month

3-Way Reconciliation Video Available

[Check out the Oregon Real Estate Agency's video](#) on how to complete a 3-way reconciliation on [YouTube](#).

Property managers and principal brokers must conduct a 3-way reconciliation on each clients' trust accounts and security deposit accounts monthly.

Different than the standard reconciliation that most software programs offer, a 3-way reconciliation has the additional component of owner ledgers or tenant ledgers, depending on the type of account.

Agency Participates in Food Drive

The staff of the Oregon Real Estate Agency is participating in the annual Governor's State Employees Food Drive. It is the largest food drive benefiting the Oregon Food Bank Network.

During the month of February, Agency staff will raise money by holding a spaghetti lunch, a potato bar, and a silent auction. Our staff members will also directly contribute money and shelf-stable foods.

In addition, we are grateful to have Real Estate Board members make monetary donations.

We hope to beat our 2017 contribution, which equaled 2432 meals for hungry Oregonians.



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The Oregon Real Estate News-Journal is published by the Oregon Real Estate Agency as an educational service to all real estate licensees in the state under the provisions of Section 696.445 of the Oregon Revised Statutes.

*Mesheal Heyman, Editor
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CELEBRATING 99 Years of Real Estate License Law in Oregon

On February 14, 1919, the Oregon Legislature passed the first effective real estate license law in the United States. House Bill 425 required anyone engaged in the business of real estate brokerage to be licensed by the Insurance Commissioner.

To obtain a broker license in 1919, an applicant had to pay an annual fee of \$5, furnish a \$1000 bond, and provide a recommendation signed by 10 property owners certifying that the applicant was "honest, trustworthy, and of good moral character."

A total of 1537 brokers were licensed that year.

A lot has changed over the years:

- Real estate licensing is now regulated by the Oregon Real Estate Agency, led by the Real Estate Commissioner.
- The Agency issues broker, principal broker, and property manager licenses.
- Real estate license application and renewal fees are \$300.
- Background checks are used to determine the trustworthiness of license applicants.

The Agency is looking forward to our 100th license law anniversary next year.