Chapter 696

2013 EDITION

Real Estate and Escrow Activities

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REAL ESTATE LICENSEES

(Generally)

696.007 Statement of legislative purpose. (1) The Sixty-second Legislative Assembly recognizes that notwithstanding amendments made to ORS chapter 696 by sections 9, 17, 19, 23, 25, 27 to 30, 32 and 40 to 43, chapter 649, Oregon Laws 1977, section 40, chapter 617, Oregon Laws 1981, and amendments made to ORS chapter 656 by chapter 864, Oregon Laws 1979, section 1, chapter 725, Oregon Laws 1981, and section 4, chapter 854, Oregon Laws 1981, agencies of this state are uncertain regarding application to real estate licensees of statutes of this state relating to employers and employees. This section and ORS 316.209 and 656.037 are enacted to eliminate that uncertainty, to reaffirm the legislative intent of the enactments cited in this section and to conform Oregon law to parallel provisions of the Internal Revenue Code.

(2) Nothing in this section and ORS 316.209 and 656.037 shall be construed to impair or invalidate any claim of refund or defense against collection of any tax, which claim or defense is asserted by a taxpayer who has services performed by an individual who does not meet the requirements of ORS 316.209. [1983 c.597 §1]

Note: 696.007 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 696 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

696.010 Definitions. As used in ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and 696.995, unless the context requires otherwise:

(1) "Associated with" means to be employed, engaged or otherwise supervised by, with respect to the relationship between:

(a) A real estate broker and a principal real estate broker;

(b) A licensed real estate property manager and a principal real estate broker; or

(c) A licensed real estate property manager and another licensed real estate property manager.

(2) "Bank" includes any bank or trust company, savings bank, mutual savings bank, savings and loan association or credit union that maintains a head office or a branch in this state in the capacity of a bank or trust company, savings bank, mutual savings bank, savings and loan association or credit union.

(3)(a) "Branch office" means a business location, other than the main office designated under ORS 696.200 (1), where professional real estate activity is regularly conducted or that is advertised to the public as a place where such business may be regularly conducted.

(b) Model units or temporary structures used solely for the dissemination of information and distribution of lawfully required public reports shall not be considered branch offices. A model unit means a permanent residential structure located in a subdivision or development used for such dissemination and distribution, so long as the unit is at all times available for sale, lease, lease option or exchange.

(4) "Compensation" means any fee, commission, salary, money or valuable consideration for services rendered or to be rendered as well as the promise thereof and whether contingent or otherwise.

(5) "Competitive market analysis" means a method or process used by a real estate licensee in pursuing a listing agreement or in formulating an offer to acquire real estate in a transaction for the sale, lease, lease-option or exchange of real estate. The objective of competitive market analysis is a recommended listing, selling or purchase price or a lease or rental consideration. A competitive market analysis may be expressed as an opinion of the value of the real estate in a contemplated transaction. Competitive market analysis may include but is not limited to an analysis of market conditions, public records, past transactions and current listings of real estate.

(6) "Expired" means, in the context of a real estate licensee, that the license has not been renewed in a timely manner, but may still be renewed.

(7) "Inactive" means, in the context of a real estate licensee, that the license has been returned to the agency to be held until the licensee reactivates the license or the license expires or lapses.

(8) "Lapsed" means, in the context of a real estate licensee, that the license has not been renewed in a timely manner and is not eligible for renewal.

(9) "Letter opinion" has the meaning given that term in ORS 696.294.

(10) "Licensed real estate property manager" means an individual who holds an active real estate property manager's license issued under ORS 696.022.

(11) "Management of rental real estate" means:

(a) Representing the owner of real estate in the rental or lease of the real estate and includes but is not limited to:

(A) Advertising the real estate for rent or lease;

(B) Procuring prospective tenants to rent or lease the real estate;

(C) Negotiating with prospective tenants;

(D) Accepting deposits from prospective tenants;

(E) Checking the qualifications and creditworthiness of prospective tenants;

(F) Charging and collecting rent or lease payments;

(G) Representing the owner in inspection or repair of the real estate;

(H) Contracting for repair or remodeling of the real estate;

(I) Holding trust funds or property received in managing the real estate and accounting to the owner for the funds or property;

(J) Advising the owner regarding renting or leasing the real estate;

(K) Providing staff and services to accommodate the tax reporting and other financial or accounting needs of the real estate;

(L) Providing copies of records of acts performed on behalf of the owner of the real estate; and

(M) Offering or attempting to do any of the acts described in this paragraph for the owner of the real estate; or

(b) Representing a tenant or prospective tenant when renting or leasing real estate and includes but is not limited to:

(A) Consulting with tenants or prospective tenants about renting or leasing real estate;

(B) Assisting prospective tenants in renting or leasing real estate;

(C) Assisting prospective tenants in qualifying for renting or leasing real estate;

(D) Accepting deposits or other funds from prospective tenants for renting or leasing real estate and holding the funds in trust for the prospective tenants;

(E) Representing tenants or prospective tenants renting or leasing real estate; and

(F) Offering or attempting to do any of the acts described in this paragraph for a tenant or prospective tenant.

(12) "Nonlicensed individual" means an individual:

(a) Who has not obtained a real estate license; or

(b) Whose real estate license is lapsed, expired, inactive, suspended, surrendered or revoked.

(13) "Principal real estate broker" means:

(a) An individual who holds an active license as a principal real estate broker; or

(b) A sole practitioner who conducted professional real estate activity as a sole practitioner prior to January 1, 2010.

(14) "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;

(e) Offers, attempts or agrees to perform or provide a competitive market analysis or letter opinion, to represent a taxpayer under ORS 305.230 or 309.100 or to give an opinion in any administrative or judicial proceeding regarding the value of real estate for taxation, except when the activity is performed by a state certified appraiser or state licensed appraiser;

(f) Auctions, offers, attempts or agrees to auction real estate;

(g) Buys, sells, offers to buy or sell or otherwise deals in options on real estate;

(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;

(L) Except as otherwise provided in ORS 696.030 (12), advises, counsels, consults or analyzes in connection with real estate values, sales or dispositions, including dispositions through eminent domain procedures;

(m) Advises, counsels, consults or analyzes in connection with the acquisition or sale of real estate by an entity if the purpose of the entity is investment in real estate; or

(n) Performs real estate marketing activity as described in ORS 696.600.

(15) "Property management agreement" means a written contract for the management of rental real estate between a real es-

tate property manager and the owner of the rental real estate.

(16) "Real estate" includes leaseholds and licenses to use including, but not limited to, timeshare estates and timeshare licenses as defined in ORS 94.803, as well as any and every interest or estate in real property, whether corporeal or incorporeal, whether freehold or nonfreehold, whether held separately or in common with others and whether the real property is situated in this state or elsewhere.

(17) "Real estate broker" means an individual who engages in professional real estate activity and who holds an active license as a real estate broker.

(18) "Real estate licensee" means an individual who holds an active license as a real estate broker, principal real estate broker or real estate property manager.

(19) "Real estate property manager" means a real estate licensee who engages in the management of rental real estate and is a licensed real estate property manager, a principal real estate broker or a real estate broker who is associated with and supervised by a principal real estate broker.

(20) "Registered business name" means a name registered with the Real Estate Agency under which the individual registering the name engages in professional real estate activity.

(21) "Sole practitioner" means a real estate broker conducting professional real estate activity not in conjunction with other real estate brokers or principal real estate brokers and who, prior to January 1, 2010:

(a) Acquired three years of active experience as a real estate broker; or

(b) Acquired three years of active experience as a real estate salesperson as defined in ORS 696.025 (1999 Edition) and successfully completed the real estate broker's examination required by rule of the agency. [Amended by 1953 c.166 §5; 1955 c.322 §6; 1965 c.617 §1; 1973 c.416 §1; 1975 c.746 §1; 1977 c.649 §9; 1981 c.617 §2; 1985 c.589 §6; 1987 c.414 §37; 1987 c.468 §1; 1987 c.611 §12; 1989 c.724 §1; 1991 c.5 §26; 1995 c.217 §14; 1997 c.417 §5; 1999 c.488 §1; 2001 c.300 §10; 2003 c.347 §2; 2003 c.398 §6; 2005 c.116 §1; 2007 c.319 §1; 2009 c.224 §8; 2009 c.324 §1; 2011 c.158 §13; 2013 c.145 §1]

696.015 Legislative finding; short title. (1) The Legislative Assembly finds the activity of persons seeking to assist others, for compensation, to deal in real estate in this state to be a matter of public concern. The provisions of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and 696.995 are enacted to assist in creating for the public a healthy real estate market atmosphere and to assure that professional real estate activity is conducted with high fiduciary standards.

(2) ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and 696.995 may be cited as the Oregon Real Estate License Law. [1977 c.649 §2]

(Licensing)

696.020 License required for individuals engaged in professional real estate activities; exception; rules. (1) The Real Estate Agency may issue a real estate license only to an individual.

(2) 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.

(3) Real estate brokers and principal real estate brokers are bound by and subject to the requirements of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and 696.995 while:

(a) Engaging in professional real estate activity; or

(b) Acting on the licensee's own behalf in the sale, exchange, lease option or purchase of real estate or in the offer or negotiations for the sale, exchange, lease option or purchase of real estate.

(4) A real estate licensee is bound by and subject to the requirements of ORS 696.010 to 696.495, 696.600 to 696.785, 696.890, 696.990 and 696.995 while engaging in the management of rental real estate.

(5) The agency by rule may establish provisions for a nonlicensed individual whose license is inactive or suspended and who acts on the licensee's own behalf in the sale, exchange, lease option or purchase of real estate or in the offer or negotiations for the sale, exchange, lease option or purchase of real estate. [Amended by 1969 c.674 §1; 1975 c.746 §1a; 1977 c.649 §10; 1981 c.617 §2a; 2007 c.319 §4; 2013 c.145 §5]

696.022 Licensing system for real estate brokers and property managers; rules. (1) The Real Estate Agency shall establish by rule a system for licensing real estate brokers, principal real estate brokers and real estate property managers. The system shall establish, at a minimum:

(a) The form and content of applications for licensing under each category of real estate professional licensed by the agency;

(b) A licensing examination for each category of license;

(c) Schedules and procedures for issuing and renewing licenses;

(d) The term of a license in each category; and

(e) Terms and conditions under which the license of a real estate licensee must be returned or transferred to the Real Estate Commissioner for purposes including, but not limited to, inactivation, suspension or termination of the license.

(2)(a) A real estate broker may engage in professional real estate activity only if the broker is associated with and supervised by a principal real estate broker. Except as provided in paragraph (c) of this subsection, a real estate broker may not employ, engage or supervise the professional real estate activity of another real estate licensee.

(b) To qualify for a real estate broker's license, an applicant must furnish to the commissioner at the time of application for the license:

(A) Certification by the applicant that the applicant has a high school diploma or a General Educational Development (GED) certificate or the international equivalent, or other equivalent education acceptable to the commissioner;

(B) Proof that the applicant:

(i) Has successfully completed the basic real estate broker's educational courses required by rule of the agency; and

(ii) Has passed the real estate broker's examination required by rule of the agency; and

(C) Certification that the applicant is at least 18 years of age.

(c) A real estate broker who has acquired three years of active experience as a real estate broker may temporarily supervise the professional real estate activity of another real estate licensee due to unforeseen circumstances or the temporary absence of a sole principal real estate broker, as provided by rule of the agency. The temporary supervision of professional real estate activity allowed under this paragraph may not exceed 90 days.

(3)(a) A principal real estate broker may engage in professional real estate activity. A principal real estate broker may conduct professional real estate activity in conjunction with other real estate brokers or principal real estate brokers or licensed real estate property managers. In addition, a principal real estate broker may employ, engage or supervise the professional real estate activity of another real estate licensee.

(b) To qualify for a principal real estate broker's license, an applicant must furnish to the commissioner at the time of application for the license:

(A) Certification by the applicant that the applicant has a high school diploma or a General Educational Development (GED) certificate or the international equivalent, or other equivalent education acceptable to the commissioner;

(B) Proof that the applicant:

(i) Has three years of active experience as a licensed real estate broker or a licensed real estate salesperson as defined in ORS 696.025 (1999 Edition);

(ii) Has passed the principal real estate broker's examination required by rule of the agency; and

(iii) Has successfully completed the brokerage administration and sales supervision course required by rule of the agency; and

(C) Certification that the applicant is at least 18 years of age.

(4)(a) An individual who holds a real estate property manager license may engage only in the management of rental real estate.

(b) A licensed real estate property manager may employ, engage or supervise the professional real estate activity of another licensed real estate property manager.

(c) To qualify for a real estate property manager's license, an applicant must furnish to the commissioner at the time of application for the license:

(A) Certification by the applicant that the applicant has a high school diploma or General Educational Development (GED) certificate or the international equivalent, or other equivalent education acceptable to the commissioner;

(B) Proof that the applicant:

(i) Has successfully completed the basic real estate property manager's educational courses required by rule of the agency; and

(ii) Has passed the real estate property manager's license examination required by rule of the agency; and

(C) Certification that the applicant is at least 18 years of age.

(5)(a) A license for a real estate broker, principal real estate broker or real estate property manager may be granted only to an individual who is trustworthy and competent to conduct professional real estate activity in a manner that protects the public interest. As a condition of licensing, the commissioner may require proof of competence and trustworthiness that the commissioner deems necessary to protect the public interest.

(b) In implementing this subsection, the commissioner shall require fingerprints and criminal offender information of an applicant for initial licensing and may require fingerprints and criminal offender information of

an applicant for license renewal. Fingerprints acquired under this subsection may be used for the purpose of requesting a state or nationwide criminal records check under ORS 181.534.

(6) In order to qualify for a real estate broker's license, a real estate salesperson licensed in another state or country must successfully complete a course of study and pass a real estate broker's license examination, both as prescribed by agency rule.

(7) In order to satisfy the educational requirements under subsections (2) to (4) and (6) of this section, a course must be approved by the commissioner. The commissioner shall determine the final examination score acceptable as evidence of successful completion for each required course.

(8) The Real Estate Board may determine that an applicant for a principal real estate broker's license has experience related to professional real estate activity that is equivalent to the experience required under subsection (3) of this section. [2001 c.300 §9; 2003 c.398 §7; 2005 c.116 §2; 2005 c.730 §37; 2007 c.319 §5; 2009 c.324 §2; 2009 c.502 §1; 2011 c.158 §10]

Note: 696.022 to 696.026 were added to and made a part of the Oregon Real Estate License Law by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

696.024 Payments due and owing to Real Estate Agency. To qualify for a real estate license under ORS 696.022 or to renew an active or inactive real estate license, the applicant must make full payment of any unpaid moneys due and owing to the Real Estate Agency, including any unpaid civil penalties assessed under a final order of the Real Estate Commissioner. [2001 c.300 §15]

Note: See note under 696.022.

696.025 [1977 c.649 §8a; 1981 c.617 §3; 1987 c.468 §2; 1987 c.611 §13; 1989 c.724 §2; 1991 c.5 §27; repealed by 2001 c.300 §84]

696.026 Registration of business names; rules. (1) The Real Estate Agency shall establish by rule a system for the registration of business names.

(2)(a) The system must require:

(A) The physical address associated with a registered business name to be the main office of a principal real estate broker or licensed real estate property manager; and

(B) The registered business name to be the corporate name, professional corporate name, business corporate name, cooperative name, limited partnership name, business trust name, reserved name, registered corporate name or assumed business name of active record with the Office of the Secretary of State;

(b) The agency may establish by rule that the registration system must:

(A) Identify the principal real estate broker or the licensed real estate property manager who is responsible for:

(i) Maintaining the registration of the business name, as described in subsection (2)(a) of this section;

(ii) Registering any branch offices of the registered business name; and

(iii) Registering any additional business names as described in subsection (9)(a) of this section.

(B) Maintain the information described in ORS 696.241 (4) and (6) for each clients' trust account opened, closed or transferred by a principal real estate broker or by a licensed real estate property manager who conducts professional real estate activity under the registered business name; and

(c) The system must allow a principal real estate broker or licensed real estate property manager to register one or more branch offices under the registered business name of the main office.

(3) Only a principal real estate broker or licensed real estate property manager may register a business name or register a branch office under the registered business name of the main office.

(4) Only 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.

(5) A business name registered under this section has no license standing.

(6) A principal real estate broker or licensed real estate property manager may conduct professional real estate activity only under:

(a) The name under which the principal broker or property manager's license was issued; or

(b) A registered business name.

(7) If a principal real estate broker or licensed real estate property manager has a registered business name:

(a) All professional real estate activity conducted by the principal broker or property manager must be conducted under the registered business name; and

(b) All professional real estate activity conducted by a real estate licensee associated with the principal broker or property manager must be conducted under the registered business name.

(8) A principal real estate broker or licensed real estate property manager who registers a business name need not be an owner or officer of any entity lawfully enti-

tled to use or have an ownership interest in the registered business name. However, only 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.

(9)(a) A principal real estate broker or licensed real estate property manager who registers a business name may register additional business names for business organizations that are affiliated with the business with the registered name, or business organizations that are subsidiaries of the business with the registered name.

(b) A principal real estate broker or licensed real estate property manager may conduct professional real estate activity under two or more registered business names only if the business organizations are affiliated with, or subsidiaries of, the business with the registered name.

(10) A real estate broker or licensed real estate property manager associated with a principal real estate broker may have an ownership interest in any business through which the principal real estate broker conducts professional real estate activity, but may not control or supervise the professional real estate activity of any other real estate licensee.

(11) A nonlicensed individual may have an ownership interest in any business through which a licensed real estate property manager or principal real estate broker engages in professional real estate activity, but may not control or supervise the professional real estate activity of any real estate licensee.

(12) Two or more principal real estate brokers operating under the same registered business name who do not exercise any administrative or supervisory control over one another are solely responsible for their own professional real estate activity.

(13) Notwithstanding any other provision of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and 696.995, a principal real estate broker or real estate broker associated with a principal real estate broker may create a corporation, limited liability company, limited liability partnership or any other lawfully constituted business organization for the purpose of receiving compensation. A real estate broker associated with a principal real estate broker may receive compensation only from a principal real estate broker. A business organization created under this subsection may not be licensed under ORS 696.022 or conduct in its own name professional real estate activity requiring a real estate license. [2001 c.300 §8; 2005 c.116 §3; 2005 c.393 §1; 2007 c.319 §6; 2007 c.337 §3; 2009 c.224 §1; 2011 c.158 §6; 2013 c.145 §9]

Note: See note under 696.022.

696.028 [2001 c.300 §30; repealed by 2009 c.324 §10]

696.030 Exemptions. 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:

(1)(a) A nonlicensed individual who is a full-time employee of an owner of real estate and whose real estate activity:

(A) Involves only the real estate of the employer; and

(B)(i) Is incidental to the employee's normal, nonreal estate activities; or

(ii) Is the employee's principal activity, but the employer's principal activity or business is not the sale, exchange, lease option or acquisition of real estate.

(b) For the purpose of this subsection, "owner of real estate" means:

(A) An individual who has a sole ownership interest in the real estate; or

(B) More than one individual, each of whom has an ownership interest in the real estate, if the ownership interest is by survivorship, tenancy in common or tenancy by the entirety.

(2) A nonlicensed individual who acts as attorney in fact under a duly executed power of attorney from the owner or purchaser authorizing the supervision of the closing of or supervision of the performance of a contract for the sale, leasing or exchanging of real estate if the power of attorney was executed prior to July 1, 2002, in compliance with the requirements of law at the time of execution or if:

(a) The power of attorney is recorded in the office of the recording officer for the county in which the real estate is located;

(b) The power of attorney specifically describes the real estate; and

(c) The individual does not use the power of attorney as a device to engage in professional real estate activity without obtaining the necessary real estate license.

(3) A nonlicensed individual who acts as attorney in fact under a duly executed power of attorney in which the authorized agent is the spouse of the principal, or the child, grandchild, parent, grandparent, sibling, aunt, uncle, niece or nephew of the principal or of the spouse of the principal, authorizing real estate activity if the power of attorney is recorded in the office of the recording officer for the county in which the real estate to be sold, leased or exchanged is located.

(4) A nonlicensed individual who is an attorney at law rendering services in the performance of duties as an attorney at law.

(5) A nonlicensed individual who acts in the individual's official capacity as a receiver, a conservator, a trustee in bankruptcy, a personal representative or a trustee, or a regular salaried employee of the trustee, acting under a trust agreement, deed of trust or will.

(6) A nonlicensed individual who performs an act of professional real estate activity under order of a court.

(7) A nonlicensed individual who is a regular full-time employee of a single corporation, partnership, association, limited liability company or nonlicensed individual owner of real property acting for the corporation, partnership, association, limited liability company or nonlicensed individual owner in the rental or management of the real property, but not in the sale, exchange, lease option or purchase of the real property.

(8) An individual who is a registered professional engineer or architect rendering services in performance of duties as a professional engineer or architect.

(9) A nonlicensed individual who is employed by a principal real estate broker engaged in the management of rental real estate or by a licensed real estate property manager and who acts on behalf of the principal real estate broker or licensed real estate property manager pursuant to a written delegation of the principal real estate broker's or licensed real estate property manager's authority, as provided by the agency by rule, if the real estate activity of the nonlicensed individual is limited to:

(a) Negotiating rental or lease agreements;

(b) Checking tenant and credit references;

(c) Physically maintaining the real estate;

(d) Conducting tenant relations;

(e) Collecting the rent;

(f) Supervising the premises' managers;

(g) Discussing financial matters relating to the management of the real estate with the owner; and

(h) Receiving and disbursing trust funds in a clients' trust account under ORS 696.241.

(10) An individual who sells or leases cemetery lots, parcels or units while engaged in the disposition of human bodies under ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990 or an employee of the nonlicensed individual performing similar activities.

(11) An individual who is a salaried employee of the State of Oregon, or any of its political subdivisions, engaging in professional real estate activity as a part of such employment.

(12) A nonlicensed individual who analyzes or provides advice regarding permissible land use alternatives, environmental impact, building and use permit procedures or demographic market studies, or a regular full-time employee of the nonlicensed individual performing similar activities. This exclusion does not apply to the handling of transactional negotiations for transfer of an interest in real estate.

(13) An individual who is a hotelkeeper or innkeeper as defined by ORS 699.005 arranging the rental of transient lodging at a hotel or inn in the course of business as a hotelkeeper or innkeeper.

(14) An individual who is a travel agent arranging the rental of transient lodging at a hotel or inn as defined in ORS 699.005 in the course of business as a travel agent for compensation. For the purpose of this subsection, "travel agent" means a person, and employees of the person, regularly representing and selling travel services to the public directly or indirectly through other travel agents.

(15) An individual who is a common carrier arranging the rental of transient lodging at a hotel or inn as defined in ORS 699.005 in the course of business as a common carrier. For the purpose of this subsection, "common carrier" means a person that transports or purports to be willing to transport individuals from place to place by rail, motor vehicle, boat or aircraft for hire, compensation or consideration.

(16) An individual who is a hotel representative arranging the rental of transient lodging at a hotel or inn as defined in ORS 699.005 in the course of business as a hotel representative. For the purpose of this subsection, "hotel representative" means a person that provides reservations or sale services to independent hotels, airlines, steamship companies and government tourist agencies.

(17) A nonlicensed individual transferring or acquiring an interest in real estate owned or to be owned by the individual.

(18) An individual who is a general partner for a domestic or foreign limited partnership duly registered and operating within this state under ORS chapter 70 engaging in the sale of limited partnership interests and the acquisition, sale, exchange, lease, trans-

fer or management of the real estate of the limited partnership.

(19) An individual who is a membership camping contract broker or salesperson registered with the Real Estate Agency selling membership camping contracts.

(20) An individual who is a professional forester or farm manager engaging in property management activity on forestland or farmland when the activity is incidental to the nonreal estate duties involving overall management of forest or farm resources.

(21) An individual who is a registered investment adviser under the Investment Advisers Act of 1940, 15 U.S.C. §80b-1 et seq., rendering real estate investment services for the office of the State Treasurer or the Oregon Investment Council.

(22) A nonlicensed individual who refers a new tenant for compensation to a real estate licensee acting as the property manager for a residential building or facility while the individual resides in the building or facility or within six months after termination of the individual's tenancy.

(23) A nonlicensed individual who gives an opinion in an administrative or judicial proceeding regarding the value of real estate for taxation or representing a taxpayer under ORS 305.230 or 309.100.

(24) A nonlicensed individual acting as a paid fiduciary whose real estate activity is limited to negotiating a contract to obtain the services of a real estate licensee.

(25) A nonlicensed individual who is a fiduciary under a court order, without regard to whether the court order specifically authorizes real estate activity.

(26) An individual who is a representative of a financial institution or trust company, as those terms are defined in ORS 706.008, that is attorney in fact under a duly executed power of attorney from the owner or purchaser authorizing real estate activity, if the power of attorney is recorded in the office of the county clerk for the county in which the real estate to be sold, leased or exchanged is located.

(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.

(28) An individual who is a partner in a partnership as defined in ORS 67.005 and who is engaging in the acquisition, sale, exchange, lease, transfer or management of the real estate of the partnership.

(29) An individual who is an officer or director of a domestic or foreign corporation duly registered and operating within this state under ORS chapter 60 and who is engaging in the acquisition, sale, exchange, lease, transfer or management of the real estate of the corporation. [Amended by 1955 c.322 §7; 1963 c.593 §1; 1967 c.277 §1; 1969 c.674 §2; 1975 c.746 §2; 1977 c.649 §11; 1979 c.125 §3; 1979 c.289 §1a; 1981 c.617 §4; 1985 c.639 §13; 1985 c.677 §64; 1991 c.5 §28; 1991 c.212 §1; 1993 c.18 §149; 1995 c.246 §1; 1997 c.307 §2; 1999 c.488 §2; 2001 c.300 §11; 2003 c.347 §1; 2005 c.116 §4; 2007 c.319 §7; 2009 c.136 §1; 2013 c.145 §10]

696.040 Single act sufficient to constitute professional real estate activity. One act or transaction of professional real estate activity is sufficient to constitute engaging in professional real estate activity, within the meaning of this chapter. [Amended by 1955 c.322 §8; 1977 c.649 §12]

696.050 [Amended by 1955 c.322 §9; 1961 c.471 §1; 1963 c.412 §1; 1969 c.515 §1; 1969 c.674 §3; 1971 c.671 §1; 1973 c.416 §3; 1973 c.827 §78; 1974 c.36 §21; 1975 c.746 §3; 1977 c.191 §1; 1977 c.649 §13; 1981 c.617 §5; 1983 c.258 §1; 1989 c.532 §6; 1989 c.724 §3; 1991 c.5 §29; repealed by 2001 c.300 §84]

696.060 [Amended by 1975 c.746 §4; 1977 c.649 §14; 1981 c.617 §6; repealed by 2001 c.300 §84]

696.070 [Amended by 1963 c.412 §2; repealed by 1977 c.649 §53 and 1977 c.842 §17]

696.080 [Amended by 1975 c.746 §5; 1977 c.649 §15; 1981 c.617 §6a; 1987 c.611 §14; repealed by 2001 c.300 §84]

696.085 [1991 c.462 §2; repealed by 2001 c.300 §84]

696.090 [Amended by 1955 c.322 §10; repealed by 1977 c.649 §16 and 1977 c.842 §17 (694.169 enacted in lieu of 696.090)]

696.100 [Amended by 1963 c.412 §3; 1977 c.649 §17; repealed by 2001 c.300 §84]

696.110 Exclusive nature of regulation of real estate licensees. The provisions of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.995 shall be exclusive and no political subdivision or agency of this state shall require or issue any license or charge any fee for licensing or regulation of individuals licensed under ORS 696.022. Nothing in this section shall limit the authority of a county, city or town to levy and collect a general and nondiscriminatory license fee upon all businesses in the county, city or town or to levy a tax based upon the business conducted by any licensee or firm within the county, city or town. [Amended by 1955 c.322 §11; 1961 c.309 §3; 1965 c.617 §2; 1975 c.746 §1b; 2001 c.300 §12; 2007 c.319 §22]

696.120 [Amended by 1977 c.649 §18; repealed by 2001 c.300 §84]

696.125 Limited license. (1) The Real Estate Commissioner may issue a limited license to an applicant for a license as a real estate broker, principal real estate broker or real estate property manager if the commissioner determines that the issuance is in the public interest. The commissioner may limit a license issued under this section:

(a) By term;

(b) To acts subject to the supervision of a specific principal real estate broker;

(c) By conditions to be observed in the exercise and the privileges granted; or

(d) In other ways determined by the commissioner as necessary or appropriate to protect the public.

(2) A limited license issued under this section does not confer any property right in the privileges to be exercised under the license, and the holder of a limited license does not have the right to renewal of the limited license. A limited license may be suspended or revoked, or the real estate licensee may be reprimanded, by the commissioner on the grounds set out in ORS 696.301 or for failure to comply with the limitations of the license. [2009 c.224 §3; 2011 c.158 §14]

Note: 696.125 was added to and made a part of 696.010 to 696.495 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

696.130 Effect of revocation of license; limited license. (1)(a) If the license of a real estate broker or principal real estate broker is revoked by the Real Estate Commissioner on grounds related to professional real estate activity other than the management of rental real estate, the commissioner may not issue a new license until the individual complies with the provisions of ORS 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870.

(b) If the license of a licensed real estate property manager is revoked by the commissioner, or if the license of a real estate broker or principal real estate broker is revoked by the commissioner, on grounds related to the management of rental real estate, the commissioner may not issue a new license until the individual complies with the provisions of ORS 696.010 to 696.495, 696.600 to 696.785 and 696.890.

(2) Notwithstanding subsection (1) of this section, the commissioner may issue the individual a limited license if, in the discretion of the commissioner, it is in the public interest to do so. The commissioner may limit a license issued under this subsection:

(a) By term;

(b) To acts subject to the supervision of a specific principal real estate broker; or

(c) By conditions to be observed in the exercise and the privileges granted.

(3) A limited license issued under this section does not confer any property right in the privileges to be exercised thereunder, and the holder of a limited license does not have the right to renewal of such license. A limited license may be suspended or revoked, or the licensee may be reprimanded, by the commissioner on the grounds set out in ORS 696.301. [Amended by 1955 c.322 §12; 1969 c.674 §4; 1973 c.416 §4; 1975 c.746 §6; 1977 c.191 §2; 1977 c.649 §19; 1981 c.617 §7; 1987 c.611 §15; 1991 c.5 §30; 2001 c.300 §13; 2003 c.398 §8; 2013 c.145 §7]

696.140 [Amended by 1961 c.471 §2; 1963 c.412 §4; 1973 c.416 §5; repealed by 1975 c.746 §10 (696.141 enacted in lieu of 696.140)]

696.141 [1975 c.746 §11 (enacted in lieu of 696.140); 1977 c.649 §51; 1979 c.243 §1; repealed by 2001 c.300 §84]

696.150 [Amended by 1977 c.649 §20; repealed by 2001 c.300 §84]

696.160 [Amended by 1969 c.674 §5; 1975 c.746 §12; 1977 c.649 §21; 1987 c.611 §16; 1989 c.724 §4; 1991 c.5 §31; repealed by 2001 c.300 §84]

696.162 [1975 c.746 §8; 1977 c.190 §1; 1977 c.649 §22; 1981 c.617 §8; 1987 c.468 §3; repealed by 1991 c.5 §46]

696.165 [1953 c.166 §4; 1969 c.674 §6; 1977 c.649 §23; 1981 c.617 §8a; 1991 c.5 §32; repealed by 2001 c.300 §84]

696.167 [1975 c.746 §9; 1977 c.649 §24; repealed by 1981 c.617 §41]

696.169 [1977 c.649 §16a (enacted in lieu of 696.090); 1989 c.724 §5; repealed by 2001 c.300 §84]

696.170 [Amended by 1955 c.322 §13; repealed by 1969 c.674 §20]

696.172 [1969 c.674 §9; repealed by 1975 c.746 §34]

696.174 License renewal; continuing education courses; rules. (1) To renew an active license, a real estate licensee must complete 30 hours of real estate continuing education courses that are eligible for credit under ORS 696.182 during the two years preceding the renewal. The 30 hours must include:

(a) At least three hours in a course on recent changes in real estate rule and law approved by the Real Estate Board; and

(b)(A) If the real estate broker is renewing an active license for the first time, an advanced course in real estate practices approved by the Real Estate Agency; or

(B) If a licensed real estate property manager is renewing an active license for the first time, an advanced course in property management practices approved by the agency.

(2) The agency, in consultation with real estate professionals and educators, shall develop a form to ensure that a licensee has completed the number of hours required by subsection (1) of this section. A completed form must contain:

(a) The date, name and length of time of each course attended;

(b) The name of the real estate continuing education provider that offered the course;

(c) The name of the instructor who taught the course; and

(d) Any other information that the agency requires by rule.

(3) The agency may waive any portion of the requirements of this section for a licensee who submits satisfactory evidence

that poor health or other circumstances beyond the licensee's control prevented the licensee from attending part or all of the continuing education courses required by subsection (1) of this section. [1969 c.674 §11; 1973 c.416 §6; 1977 c.649 §25; 1981 c.617 §9; 1983 c.359 §1; 1987 c.611 §19; 1989 c.724 §6; 1991 c.5 §33; 1995 c.335 §1; 2001 c.300 §14; 2009 c.324 §4; 2009 c.502 §2; 2011 c.158 §§11,12]

696.176 [1969 c.674 §10; 1975 c.746 §13; 1977 c.649 §26; repealed by 2001 c.300 §84]

696.180 [Amended by 1977 c.649 §27; repealed by 2001 c.300 §84]

696.182 Continuing education; rules. (1) The Real Estate Agency, with advice from real estate professionals and educators, shall prescribe rules for certifying real estate continuing education providers.

(2) The agency shall include in the rules that an applicant for certification under this section must be:

(a) A main or branch office, with a registered business name as provided under ORS 696.026, of a licensed real estate property manager or principal real estate broker;

(b) A licensed title or escrow company conducting business in this state;

(c) A real estate trade association or a trade association in a related field;

(d) A real estate multiple listing service;

(e) An attorney admitted to practice in this state;

(f) A private career school licensed by the Higher Education Coordinating Commission and approved by the agency to provide the basic real estate broker's or property manager's educational courses required under ORS 696.022;

(g) An accredited community college, an accredited public university listed in ORS 352.002 or a private and independent institution of higher education as defined in ORS 352.720;

(h) A distance learning provider as provided by rule of the agency; or

(i) Another provider approved by the Real Estate Board.

(3) The Real Estate Agency may provide continuing education without being certified under this section.

(4) The agency, in consultation with real estate professionals and educators, shall provide by rule:

(a) A broad list of course topics that are eligible for continuing education credit required by ORS 696.174; and

(b) Learning objectives for each course topic.

(5) The list of course topics developed by the agency under subsection (4) of this section must allow for changes in the real estate profession.

(6) The minimum length of each course is one hour. A continuing education provider or course instructor may allow a break of no more than 10 minutes for each hour of instruction. [2009 c.502 §4; 2011 c.158 §9; 2011 c.637 §288; 2012 c.104 §46]

Note: 696.182, 696.184 and 696.186 were added to and made a part of 696.010 to 696.375 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

696.184 Duties of continuing education provider; rules. (1) A real estate continuing education provider shall:

(a) Ensure that the courses offered by the continuing education provider meet the learning objectives adopted under ORS 696.182 (4)(b);

(b) Ensure that instructors who teach a real estate continuing education course meet the requirements set forth in ORS 696.186; and

(c) Keep records of each course offered, for at least three years, in a manner and form prescribed by the Real Estate Agency by rule.

(2) Records maintained under this section must be open at all times for inspection by the Real Estate Commissioner or the commissioner's authorized representatives. Upon request by the commissioner, a real estate continuing education provider must produce records within 15 business days after the date of the request.

(3) The agency may require by rule a real estate continuing education provider to submit a record maintained under this section to the agency electronically.

(4) The agency may prescribe by rule terms and conditions under which a real estate continuing education provider may maintain records outside this state. [2009 c.502 §5; 2013 c.145 §11]

Note: See note under 696.182.

696.186 Qualifications of continuing education instructors; rules. (1) A person must have one of the following qualifications to teach a real estate continuing education course that is eligible for credit required under ORS 696.174:

(a) A bachelor's degree and two years of experience working in a field related to the topic of the course;

(b) Six years of experience working in a field related to the topic of the course;

(c) A total of six years of any combination of college-level coursework and experience working in a field related to the topic of the course;

(d) A designation by a professional real estate organization as determined by rule of the Real Estate Agency and two years of college-level coursework;

(e) A designation by an association of real estate educators of competency as an instructor; or

(f) Certification or approval in good standing as a real estate instructor for the same or a similar course topic in any other state or jurisdiction.

(2) Notwithstanding subsection (1) of this section, a person may not teach a real estate continuing education course if the person:

(a) Has had a professional or occupational license related to the topic of the course revoked for disciplinary reasons, or has a professional or occupational license related to the topic of the course that is currently suspended for disciplinary reasons; or

(b) Has been determined by a state court or an administrative law judge to have violated any statute, rule, regulation or order pertaining to real estate activity in this or any other state in the preceding five years.

(3) Before a person teaches a course for a real estate continuing education provider, the continuing education provider shall require the person to sign a form in which the person attests to:

(a) Meeting one of the qualifications described in subsection (1) of this section; and

(b) Not being disqualified from teaching a course for reasons described in subsection (2) of this section.

(4) The agency, with the advice of real estate professionals and educators, shall prescribe by rule the content of the form described in subsection (3) of this section. [2009 c.502 §6; 2013 c.145 §12]

Note: See note under 696.182.

696.190 [Amended by 1977 c.649 §28; repealed by 1981 c.617 §41]

696.200 Main office; branch offices; change of business location. (1) A licensed real estate property manager or principal real estate broker shall:

(a) Establish and maintain in this state a place of business designated as the real estate licensee's main office;

(b) Register the main office with the Real Estate Agency under a registered business name as provided in ORS 696.026 or under the real estate licensee's licensed name;

(c) Designate the main office by a sign that contains the name under which the real estate licensee conducts professional real estate activity as provided in ORS 696.026; and

(d) Before changing a main office location, notify the agency of the new location on a form approved by the agency.

(2) The change of a business location without notification to the agency as required by subsections (1) and (5) of this section is grounds for revocation of a real estate license.

(3) The place of business of a real estate licensee must be specified in the application for a real estate license and stated on the license.

(4) A principal real estate broker or licensed real estate property manager may:

(a) Establish and maintain one or more branch offices as separate business locations under the control and supervision of a licensed real estate property manager or principal real estate broker; and

(b) Conduct and supervise the professional real estate activity of more than one office, whether a main office or a branch office.

(5) A licensed real estate property manager or principal real estate broker shall:

(a) Register each branch office with the agency under a registered business name as provided in ORS 696.026 or the real estate licensee's licensed name;

(b) Designate each branch office by a sign that contains the name under which the real estate licensee conducts professional real estate activity as provided in ORS 696.026; and

(c) Before changing a branch office location, notify the agency of the new location on a form approved by the agency.

(6) Upon vacating a main or branch office location, the licensed real estate property manager or principal real estate broker shall ensure that the sign containing the real estate licensee's name or the registered business name is removed from the location.

(7) A licensed real estate property manager or principal real estate broker may not display any name at a main or branch office other than the name under which the real estate licensee conducts professional real estate activity. [Amended by 1955 c.322 §14; 1961 c.471 §3; 1965 c.367 §1; 1973 c.416 §7; 1975 c.746 §14; 1977 c.649 §29; 1979 c.823 §1; 1981 c.617 §10; 1989 c.532 §7; 2001 c.300 §16; 2003 c.398 §9; 2005 c.116 §5; 2009 c.224 §4; 2011 c.158 §7]

696.205 Death or incapacity of sole principal real estate broker; temporary license; rules. (1) If a real estate licensee who is the sole principal real estate broker of a real estate business dies or becomes incapacitated, the Real Estate Commissioner may issue a temporary license to the executor, administrator or personal representative

of the estate of the deceased real estate licensee or to the court-appointed fiduciary of the incapacitated real estate licensee, or to some other individual designated by the commissioner, in order to continue to transact the real estate business in the case of the incapacitated real estate licensee or to wind up the affairs of the deceased or incapacitated real estate licensee. The term of a temporary license issued under this section may not exceed one year from the date of issuance unless the commissioner, in the discretion of the commissioner, extends the term of the temporary license based on sufficient cause provided by the temporary licensee to the commissioner.

(2) The Real Estate Agency may adopt administrative rules to administer this section or to authorize an individual to transact or wind up real estate business on behalf of the deceased or incapacitated real estate licensee. [1975 c.746 §7; 2001 c.300 §17; 2005 c.116 §6; 2007 c.319 §8; 2009 c.324 §3]

696.210 [Amended by 1977 c.649 §30; repealed by 2001 c.300 §84]

696.220 [Repealed by 1955 c.322 §15]

696.221 [1955 c.322 §4; 1969 c.674 §12; 1977 c.649 §31; 1983 c.258 §2; 1991 c.5 §34; 2001 c.300 §18; repealed by 2005 c.116 §24]

696.224 [1955 c.322 §5; 1969 c.674 §13; 1977 c.649 §32; 1983 c.258 §3; 1989 c.724 §12; 1991 c.5 §35; repealed by 2001 c.300 §84]

696.226 [1955 c.322 §2; 1977 c.649 §33; 1983 c.258 §4; 1991 c.5 §36; 2001 c.300 §19; repealed by 2005 c.116 §24]

696.228 [1969 c.674 §8; 1977 c.649 §34; 1983 c.258 §5; repealed by 2001 c.300 §84]

696.230 [Repealed by 1969 c.674 §21]

696.232 Return of license by employee of agency; reissuance upon termination of employment. (1) An employee or officer of the Real Estate Agency licensed as a real estate licensee under this chapter shall return the employee's or officer's license to the agency at the time of commencing employment. The agency shall hold the license as an active license held in suspense. At the termination of an employee's or officer's employment, the license may be returned to the licensee as an active or inactive license. The agency shall activate a license held in suspense without payment of further fee, and the license expires on the date on which it would have expired if the license had not been held in suspense.

(2) Except as stated in subsection (1) of this section, the return of the license to the licensee and all renewals are subject to the provisions of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.995. [1975 c.746 §16; 1977 c.649 §35; 1983 c.258 §6; 2001 c.300 §63; 2005 c.116 §7]

696.235 [1975 c.746 §15; 1977 c.649 §36; 1981 c.617 §11; 1989 c.724 §7; 1995 c.335 §2; 2001 c.300 §20; repealed by 2005 c.116 §24]

696.240 [Amended by 1957 c.383 §1; 1963 c.580 §49; repealed by 1975 c.746 §17 (696.241 enacted in lieu of 696.240)]

(Client Trust Fund Accounts)

696.241 Clients' trust accounts; notice to agency; branch trust account; interest earnings on trust account; when broker entitled to earnest money; funds not subject to execution; rules. (1) As used in this section, "trust funds" means money belonging to others that is received or handled by a licensed real estate property manager or principal real estate broker in the course of conducting professional real estate activity and in the real estate licensee's fiduciary capacity.

(2) A licensed real estate property manager, or a principal real estate broker who engages in the management of rental real estate, shall open and maintain in this state one or more separate federally insured bank accounts that are designated clients' trust accounts under ORS 696.245. A principal real estate broker who engages in the management of rental real estate or a licensed real estate property manager shall deposit in a client's trust account all trust funds received or handled by the principal real estate broker, licensed real estate property manager or real estate licensees subject to the supervision of the principal real estate broker.

(3)(a) A principal real estate broker who receives or handles trust funds and does not deposit the trust funds in a licensed neutral escrow depository as described in paragraph (b) of this subsection shall open and maintain in this state one or more separate federally insured bank accounts that are designated clients' trust accounts under ORS 696.245. Pursuant to written agreement of all parties to a real estate transaction having an interest in the trust funds, the principal real estate broker shall immediately place the trust funds in a clients' trust account.

(b) A principal real estate broker may deposit trust funds in a licensed neutral escrow depository in this state.

(4) Within 10 business days after the date a clients' trust account is opened, a licensed real estate property manager or principal real estate broker shall file with the Real Estate Agency, on forms approved by the agency, the following information about the clients' trust account:

(a) The name of the bank;

(b) The account number;

(c) The name of the account;

(d) The date the account was opened; and

(e) A statement by the licensed real estate property manager or principal real estate broker authorizing the Real Estate

Commissioner or the commissioner's representative to examine the clients' trust account at such times as the commissioner may direct.

(5) A principal real estate broker or licensed real estate property manager who opens a clients' trust account under subsection (2) or (3) of this section, or to whom ownership of a clients' trust account is transferred under subsection (6) of this section, is liable for all deposits and disbursements made using the clients' trust account until the principal real estate broker or licensed real estate property manager closes the account or transfers ownership of the account.

(6) 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.

(7) Except for earned interest on a clients' trust account as provided in subsections (9) and (10) of this section, a licensed real estate property manager or principal real estate broker may not commingle any other funds with the trust funds held in a clients' trust account.

(8) If a licensed real estate property manager or principal real estate broker maintains a separate clients' trust account in a branch office, a separate bookkeeping system must be maintained in the branch office and a copy of the records required under ORS 696.280 must be maintained in the main office of the licensed real estate property manager or principal real estate broker.

(9) Trust funds received by a licensed real estate property manager or principal real estate broker may be deposited by the licensed real estate property manager or principal real estate broker in a federally insured interest-bearing bank account that is designated a clients' trust account under ORS 696.245, but only with the prior written approval of all parties having an interest in the trust funds. The earnings of the interest-bearing account do not inure to the benefit of the licensed real estate property manager or principal real estate broker unless expressly approved in writing by all parties having an interest in the trust funds before deposit of the trust funds.

(10) With prior written notice to all parties who have an interest in the trust funds, a principal real estate broker may place trust funds received by the principal real estate broker in a real estate sales, purchase or exchange transaction in a federally insured interest-bearing bank account that is designated a clients' trust account under ORS 696.245, the earnings of which inure to the benefit of a public benefit corporation, as defined in ORS 65.001, for distribution to organizations and individuals for first-time homebuying assistance and for development of affordable housing. The principal real estate broker shall select a qualified public benefit corporation to receive the interest earnings.

(11) In connection with a real estate sales, purchase or exchange transaction, a principal real estate broker is not entitled to any part of any interest earnings on trust funds deposited under subsection (9) of this section or to any part of the earnest money or other money paid to the principal real estate broker as part or all of the principal real estate broker's compensation until the transaction has been completed or terminated. The principal real estate broker and the seller shall negotiate and agree in writing to the disposition of forfeited earnest money at the time of execution by the seller of any listing agreement or earnest money agreement. An agreement about the disposition of forfeited earnest money must be initialed by the seller or immediately precede the seller's signature.

(12) Trust funds in a clients' trust account are not subject to execution or attachment on any claim against a licensed real estate property manager or principal real estate broker.

(13) The agency by rule shall establish an optional procedure by which a principal real estate broker may elect to disburse disputed funds held in relation to the sale, exchange or purchase of real estate from a clients' trust account to the person who delivered the funds to the principal real estate broker. The procedure must allow disbursal not more than 20 days after a request is made for the disbursal. A disbursal pursuant to the procedure does not affect the claim of any other person to the funds.

(14) The agency may provide by rule for other records to be maintained and for the manner in which trust funds are deposited, held and disbursed. [1975 c.746 §18 (enacted in lieu of 696.240); 1977 c.649 §39; 1981 c.617 §11a; 1985 c.589 §4; 1991 c.5 §37; 2001 c.300 §21; 2003 c.224 §1; 2005 c.116 §18; 2005 c.393 §2a; 2007 c.224 §1; 2007 c.319 §9; 2007 c.337 §4; 2009 c.224 §5; 2009 c.324 §5; 2011 c.158 §4; 2013 c.145 §13]

696.243 Substituting copy for original canceled check allowed; electronic fund transfers. (1) Any real estate broker, principal real estate broker, real estate property manager or escrow agent who is required by the Real Estate Commissioner to maintain the canceled checks used to disburse moneys from the licensee's clients' trust account may

substitute a copy of the original canceled check, if the copy is provided by a bank and is produced by optical imaging or other process that accurately reproduces the original or forms a durable medium for reproducing the original, and the copy is at least 300 dots per inch in quality.

(2) A real estate broker, principal real estate broker, real estate property manager or escrow agent may use electronic fund transfers for the deposit into or for withdrawal from a clients' trust account established under ORS 696.241 or 696.578, if the bank furnishes to the licensee an accurate paper record of the deposits and withdrawals.

(3) As used in subsection (2) of this section, "electronic fund transfer" has the meaning set forth in section 903 of the Electronic Transfer Act (P.L. 90-321, 15 U.S.C. §1693a). [1995 c.760 §4; 2001 c.300 §22]

Note: 696.243 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 696 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

696.245 Clients' trust accounts; notice to bank; retention of copy. (1) Each licensed real estate property manager and principal real estate broker, at the time a clients' trust account is opened as required under ORS 696.241, shall provide the bank in which the account is opened with a notice, acknowledged by the real estate licensee and the bank, in substantially the following form:

NOTICE OF CLIENTS' TRUST ACCOUNT

To: _____ (name of bank)

Under the Oregon Real Estate License Law, I, _____ (licensed name), am a licensed real estate property manager or principal real estate broker for _____ (licensed name of principal real estate broker or real estate property manager, or a business name registered under ORS 696.026).

Under ORS 696.241, I am required to maintain in Oregon a clients' trust account for the purpose of holding funds belonging to others received in the course of conducting professional real estate activity.

The account(s) numbered _____ in the name(s) of _____ is/are hereby designated as a clients' trust account and the account(s) is/are maintained with you as a depository for money belonging to persons other than myself and in my fiduciary capacity as a licensed real estate property manager or principal real estate broker established by client agreements in separate documents.

Dated: _____ (insert date)

_____
(signature of real estate licensee)

ACKNOWLEDGMENT OF RECEIPT

I, _____, a duly authorized representative of _____ (bank), do hereby acknowledge receipt of the above NOTICE OF CLIENTS' TRUST ACCOUNT on _____ (date).

_____
(signature)

_____
(title)

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(2) The real estate licensee shall retain the acknowledged copy of the notice described in subsection (1) of this section for at least six years following the closing of the account as provided in ORS 696.280. [1985 c.589 §2; 1991 c.5 §38; 2001 c.300 §23; 2005 c.116 §19; 2009 c.324 §6; 2011 c.158 §3]

Note: 696.245 was added to and made a part of ORS 696.010 to 696.495 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

696.247 [1989 c.916 §1; 1991 c.716 §1; repealed by 1997 c.801 §37]

696.249 [1989 c.916 §2; 1991 c.716 §2; repealed by 1997 c.801 §37]

696.250 [Amended by 1953 c.202 §2; 1961 c.675 §1; 1965 c.367 §2; 1969 c.674 §14; 1975 c.746 §19; 1977 c.649 §37; 1981 c.617 §12; repealed by 1989 c.532 §10]

696.251 [1989 c.916 §2a; repealed by 1997 c.801 §37]

696.253 [1989 c.916 §3; repealed by 1997 c.801 §37]

696.254 [1989 c.916 §7; 1991 c.716 §4; 1993 c.744 §176; repealed by 1997 c.801 §37]

(Nonresident and Reciprocal Real Estate Broker and Salesperson Licensing)

696.255 Nonresident license equivalent to appointment of commissioner as agent for service of process; service on commissioner; fee. (1) The acceptance by a nonresident of a real estate license shall be considered equivalent to an appointment by the nonresident of the Real Estate Commissioner as the nonresident licensee's true and lawful attorney, upon whom may be served any lawful summons, process or pleading in any action or suit against the nonresident licensee in any court of this state, arising out of any business done by the nonresident licensee as a real estate licensee in this state. The acceptance shall be considered equivalent to an agreement by the nonresident licensee that any summons, process or pleading so served shall be of the same legal force and validity as if served on the nonresident licensee personally in this state.

(2) If it appears by the certificate of the sheriff of the county in which an action or

suit has been filed against a nonresident licensee, that the defendant cannot be found in this state, service of any summons, process or pleading in the action or suit may be made by leaving a copy thereof, with a fee of $2, in the hands of the commissioner or in the commissioner's office. Such service shall be sufficient and valid personal service upon the defendant; provided that:

(a) Notice of the service and copy of the summons, process or pleading is sent forthwith by registered mail or by certified mail with return receipt by the plaintiff or the plaintiff's attorney to the defendant, at the most recent address furnished to the commissioner by the nonresident licensee or to the nonresident licensee's last-known address; and

(b) The affidavit of the plaintiff or the plaintiff's attorney of the mailing is appended to the summons, process or pleading and entered as a part of the return thereof.

(3) Notwithstanding any other provision of this section, personal service outside of the state in accordance with the statutes relating to personal service of summons outside of the state shall relieve the plaintiff from the mailing requirement under this section.

(4) Any summons served as provided in this section shall require the defendant to appear and answer the complaint within four weeks after receipt thereof by the commissioner.

(5) The fee of $2 paid by the plaintiff to the commissioner shall be taxed as costs in favor of the plaintiff if the plaintiff prevails in the action.

(6) The commissioner shall keep a record of each summons, process or pleading served upon the commissioner under this section, showing the day and hour of service. [1981 c.617 §12a; 1989 c.532 §9; 1991 c.249 §62]

696.258 [1989 c.532 §1; repealed by 2001 c.300 §84]

696.260 [Repealed by 1977 c.649 §53 and 1977 c.842 §17]

696.262 [1989 c.532 §§2,3; repealed by 1999 c.470 §4]

696.265 Recognition of nonresident real estate licensee; rules. Notwithstanding ORS 696.040 to 696.232 and 696.255, the Real Estate Commissioner may prescribe by rule the terms and conditions for license recognition of a nonresident real estate broker or salesperson and for reciprocity agreements with other states and countries, including but not limited to application procedures, license qualifications, license maintenance, limitations on activities and license renewal requirements. [1989 c.532 §4; 1999 c.470 §3; 2001 c.300 §24]

Note: 696.265 was added to and made a part of 696.010 to 696.495 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

(Miscellaneous)

696.270 Fees. The maximum fees described in this section may be charged by the Real Estate Agency. Actual fees shall be prescribed by the Real Estate Commissioner with approval of the Oregon Department of Administrative Services. This section applies to the following fees:

(1) For each licensing examination applied for, $75.

(2) For each real estate broker's, principal real estate broker's or real estate property manager's license, $230.

(3) For each renewal of a real estate broker's, principal real estate broker's or real estate property manager's license, $230.

(4) For each notification of the opening or closing of a registered branch office of a real estate broker or principal real estate broker, at times other than the time of issuing or renewing the broker's license, $10.

(5) For each change of name or address of a broker on the records of the agency, $10.

(6) For each duplicate license, when the original license is lost or destroyed and affidavit made thereof, $20.

(7) For each transfer of a real estate broker's, principal real estate broker's or real estate property manager's license within the same license category, $10.

(8) For the renewal of a real estate broker's, principal real estate broker's or real estate property manager's inactive license, $110.

(9) For the reactivation of a real estate broker's, principal real estate broker's or real estate property manager's inactive license, $75.

(10) In addition to the renewal fee, for late renewal, $30.

(11) For a temporary license issued under ORS 696.205, $40, and for an extension thereof, $40.

(12) For initial registration of a business name, $230. [Amended by 1953 c.166 §5; 1955 c.457 §1; subsections (13), (14), (15) enacted as 1955 c.322 §3; 1957 c.383 §2; 1961 c.670 §1; 1965 c.617 §3; 1969 c.674 §15; 1971 c.293 §1; 1975 c.746 §20; 1977 c.191 §3; 1977 c.649 §52; 1981 c.566 §4; 1987 c.58 §13; 1987 c.158 §146; 1987 c.611 §20; 1989 c.724 §8; 1991 c.5 §39; 1991 c.462 §3; 1997 c.451 §1; 2001 c.300 §25; 2003 c.398 §10; 2005 c.116 §20; 2011 c.158 §15]

696.275 [1977 c.873 §18; repealed by 1987 c.58 §15]

Note: Section 9, chapter 324, Oregon Laws 2009, provides:

Sec. 9. Notwithstanding ORS 696.270, the Real Estate Agency may not charge a fee for the initial issuance of a principal real estate broker's license to a sole practitioner who conducted professional real estate ac-

tivity as a sole practitioner prior to January 1, 2010. [2009 c.324 §9]

696.280 Records of licensed real estate property managers and real estate brokers; rules. (1) A licensed real estate property manager or principal real estate broker shall maintain within this state, except as provided in subsection (6) of this section, complete and adequate records of all professional real estate activity conducted by or through the property manager or principal broker. The Real Estate Agency shall specify by rule the records required to establish complete and adequate records of a licensed real estate property manager's or principal real estate broker's professional real estate activity. The only documents the agency may require by rule a licensed real estate property manager or principal real estate broker to use or generate are documents that are otherwise required by law or are voluntarily generated in the course of conducting professional real estate activity.

(2) A real estate licensee shall maintain records of the licensee's attendance in continuing education courses for a period of at least three years. The records of attendance must meet the requirements of ORS 696.174.

(3) Records maintained under this section must at all times be open for inspection by the Real Estate Commissioner or the commissioner's authorized representatives.

(4) Except as provided in subsection (2) of this section, records under this section must be maintained by the real estate licensee for a period of not less than six years after the following date:

(a) For a notice of clients' trust account under ORS 696.245, the date the account was closed;

(b) For real estate transactions, the date a transaction closed or failed, whichever is later;

(c) For management of rental real estate, the date on which the record expired, was superseded or terminated, or otherwise ceased to be in effect; and

(d) For all other records, the date the record was created or received, whichever is later.

(5) Records under this section may be maintained in any format that allows for inspection and copying by the commissioner or the commissioner's representatives, as prescribed by rule of the agency.

(6) The agency may prescribe by rule terms and conditions under which a licensed real estate property manager or principal real estate broker may maintain records outside this state. [Amended by 1977 c.649 §38; 1981 c.617 §12b; 1983 c.258 §7; 1983 c.359 §2; 1991 c.5 §40; 1995 c.335 §3; 2001 c.300 §26; 2005 c.116 §21; 2007 c.319 §9a; 2009 c.324 §7; 2009 c.502 §10; 2011 c.158 §8]

696.290 Sharing compensation with or paying finder's fee to unlicensed person prohibited; exceptions. (1)(a) Except as provided in paragraph (b) of this subsection, a real estate licensee may not offer, promise, allow, give, pay or rebate, directly or indirectly, any part or share of the licensee's compensation arising or accruing from any real estate transaction or pay a finder's fee to any person who is not a real estate licensee licensed under ORS 696.022.

(b) A real estate broker or principal real estate broker may pay a finder's fee or a share of the licensee's compensation on a cooperative sale when the payment is made to a licensed real estate broker in another state or country, provided that:

(A) The state or country in which the nonresident real estate broker is licensed has a law permitting real estate brokers to cooperate with real estate brokers or principal real estate brokers in this state; and

(B) The nonresident real estate broker does not conduct in this state any acts constituting professional real estate activity and for which compensation is paid. If a country does not license real estate brokers, the payee must be a citizen or resident of the country and represent that the payee is in the business of real estate brokerage in the other country.

(2) A real estate broker associated with a principal real estate broker may not accept compensation from any person other than the principal real estate broker with whom the real estate broker is associated at the time.

(3) A principal real estate broker may not make payment to the real estate broker of another principal real estate broker except through the principal real estate broker with whom the real estate broker is associated.

(4) Nothing in this section prevents payment of compensation earned by a real estate broker or principal real estate broker while licensed because of the real estate broker's or principal real estate broker's association with a different principal real estate broker or because of inactivation of the real estate broker's or principal real estate broker's license.

(5) Nothing in subsection (1) of this section prohibits a real estate licensee who has a property management agreement with the owner of a residential building or facility from authorizing the payment of a referral fee, rent credit or other compensation to an existing tenant of the owner or licensee, or a former tenant if the former tenant resided in the building or facility within the previous

six months, as compensation for referring new tenants to the licensee.

(6)(a) Nothing in subsection (1) of this section prevents an Oregon real estate broker or principal real estate broker from sharing compensation on a cooperative nonresidential real estate transaction with a person who holds an active real estate license in another state or country, provided:

(A) Before the out-of-state real estate licensee performs any act in this state that constitutes professional real estate activity, the licensee and the cooperating Oregon real estate broker or principal real estate broker agree in writing that the acts constituting professional real estate activity conducted in this state will be under the supervision and control of the cooperating Oregon broker and will comply with all applicable Oregon laws;

(B) The cooperating Oregon real estate broker or principal real estate broker accompanies the out-of-state real estate licensee and the client during any property showings or negotiations conducted in this state; and

(C) All property showings and negotiations regarding nonresidential real estate located in this state are conducted under the supervision and control of the cooperating Oregon real estate broker or principal real estate broker.

(b) As used in this subsection, "nonresidential real estate" means real property that is improved or available for improvement by commercial structures or five or more residential dwelling units. [Amended by 1953 c.42 §2; 1961 c.670 §2; 1969 c.674 §16; 1975 c.746 §21; 1977 c.649 §40; 1981 c.617 §13; 1989 c.724 §9; 1997 c.307 §1; 1999 c.470 §1; 2001 c.300 §27; 2007 c.337 §5; 2009 c.324 §8; 2013 c.145 §3]

696.294 Opinion letter; rules. (1) As used in this section, "letter opinion" means a document that expresses a real estate licensee's conclusion regarding a recommended listing, selling or purchase price or a rental or lease consideration of certain real estate and that results from the licensee's competitive market analysis.

(2) The Real Estate Commissioner by rule shall specify the minimum contents of a letter opinion, including but not limited to the distinction between a letter opinion and a real estate appraisal. [2007 c.319 §3]

Note: 696.294 was added to and made a part of 696.010 to 696.495 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

696.300 [Amended by 1959 c.585 §1; 1961 c.670 §3; 1969 c.674 §17; 1971 c.743 §409; 1973 c.421 §50; 1974 c.1 §25; repealed by 1975 c.746 §22 (696.301 enacted in lieu of 696.300)]

696.301 Grounds for discipline. 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:

(1) Created a reasonable probability of damage or injury to a person by making one or more material misrepresentations or false promises in a matter related to professional real estate activity.

(2) Represented, attempted to represent or accepted compensation from a principal real estate broker other than the principal real estate broker with whom the real estate broker is associated.

(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.

(4) Knowingly or recklessly published materially misleading or untruthful advertising.

(5) Acted as an agent and an undisclosed principal in any transaction.

(6) Intentionally interfered with the contractual relations of others concerning real estate or professional real estate activity.

(7) Intentionally interfered with the exclusive representation or exclusive brokerage relationship of another licensee.

(8) Accepted employment or compensation for the preparation of a competitive market analysis or letter opinion that is contingent upon reporting a predetermined value or for real estate in which the licensee had an undisclosed interest.

(9) Represented a taxpayer as described in ORS 305.230 or 309.100, contingent upon reporting a predetermined value or for real estate in which the licensee had an undisclosed interest.

(10) Failed to ensure, in any real estate transaction in which the licensee performed the closing, that the buyer and seller received a complete detailed closing statement showing the amount and purpose of all receipts, adjustments and disbursements.

(11) Has been convicted of a felony or misdemeanor substantially related to the licensee's trustworthiness or competence to engage in professional real estate activity.

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

(13) Violated a term, condition, restriction or limitation contained in an order issued by the commissioner.

(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.

(15) Engaged in any conduct that is below the standard of care for the practice of professional real estate activity in Oregon as established by the community of individuals engaged in the practice of professional real estate activity in Oregon. [1975 c.746 §23 (enacted in lieu of 696.300); 1977 c.649 §41; 1981 c.617 §14; 1989 c.532 §8; 1991 c.5 §41; 1993 c.547 §9; 1993 c.570 §13; 1999 c.470 §2; 2001 c.300 §28; 2003 c.398 §10a; 2005 c.116 §22; 2005 c.393 §3; 2007 c.319 §10; 2007 c.337 §6]

696.310 Intracompany supervision and control; effect of revocation on licensed associates. (1) If two or more principal real estate brokers are in business together, the brokers may have equal supervisory control over and shall be equally responsible for the conduct of other principal real estate brokers or real estate brokers associated with the principal real estate brokers, or other employees employed by the principal real estate brokers. The principal real estate brokers shall execute a written agreement between them and establish office policies specifying the supervisory control and responsibility for each principal real estate broker who is a party to the agreement.

(2) An act constituting a violation of any of the provisions of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.995 or of any rule adopted thereunder by any licensee is not cause for the suspension or revocation of a license of any real estate licensee associated with or engaged by such licensee, unless it appears to the satisfaction of the Real Estate Commissioner that such associated or engaged real estate licensee had guilty knowledge of the act. A course of dealing shown to have been persistently and consistently followed by any real estate licensee shall constitute prima facie evidence of such knowledge upon the part of any real estate licensee associated with or engaged by that licensee. [Amended by 1977 c.649 §42; 1981 c.617 §15; 2001 c.300 §31]

696.315 Prohibition against licensee permitting nonlicensed individual to engage in activity with or on behalf of licensee; exception. (1) Except as provided in subsection (2) of this section, a real estate licensee may not knowingly permit a nonlicensed individual to engage in professional real estate activity, with or on behalf of the licensee.

(2)(a) A principal real estate broker engaging in the management of rental real estate or a licensed real estate property manager may delegate to a person who is not licensed under this chapter the authority to conduct an activity described in ORS 696.030 (9). A delegation made under this paragraph must be in writing.

(b) The principal real estate broker or licensed real estate property manager is liable for the conduct of the nonlicensed person that the principal real estate broker or licensed real estate property manager authorizes under paragraph (a) of this subsection. [1977 c.649 §7; 1981 c.617 §15a; 2007 c.319 §11; 2013 c.145 §6]

696.320 Effect of suspension or revocation of principal broker license on associated licensees. The suspension or revocation of a principal real estate broker's license renders inactive every license of the real estate brokers engaged by the principal real estate broker pending a transfer of the license. The Real Estate Agency shall transfer a license rendered inactive under this section if the real estate licensee requests a transfer within 30 days after the effective date of the suspension or revocation of the principal real estate broker's license and pays a transfer fee. [Amended by 1969 c.674 §18; 1975 c.746 §24; 1977 c.649 §43; 1981 c.617 §15b; 1989 c.724 §10; 2001 c.300 §32; 2005 c.116 §9]

696.325 [1975 c.746 §36; 1977 c.649 §44; repealed by 1981 c.617 §41]

696.330 [Amended by 1967 c.206 §1; repealed by 1971 c.734 §21]

696.340 [Repealed by 1971 c.734 §21]

696.345 [1977 c.649 §4; repealed by 1991 c.5 §46]

696.350 [Repealed by 1971 c.734 §21]

696.355 [1977 c.649 §6; 1987 c.468 §4; 1991 c.5 §42; repealed by 2001 c.300 §84]

696.359 [1981 c.617 §39; repealed by 2001 c.300 §84]

696.360 [Amended by 1967 c.206 §2; repealed by 1971 c.734 §21]

696.361 [1987 c.611 §18; 1989 c.724 §17; 1991 c.5 §43; 2001 c.300 §33; repealed by 2013 c.145 §17]

696.363 Relationship between licensees as independent contractors or employer and employee. Nothing contained in ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and 696.995 prevents the establishment of an independent contractor relationship between real estate licensees or requires the establishment of an employer-employee relationship. [1981 c.617 §40]

696.365 City or county business license tax. (1) A city or county may not impose a business license tax on or collect a business license tax from an individual licensed as a real estate broker who engages in professional real estate activity only as an agent of a principal real estate broker.

(2) As used in this section, "business license tax" has the meaning given that term in ORS 701.015. [1987 c.581 §4; 2001 c.300 §78; 2007 c.319 §12]

Note: 696.365 was added to and made a part of ORS 696.010 to 696.495 but was not added to any smaller series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(Administration)

696.375 Real Estate Agency; Real Estate Commissioner; confirmation, salary and security of commissioner. (1) The Real Estate Agency is established.

(2) The Real Estate Agency shall be under the supervision and control of an administrator who shall be known as the Real Estate Commissioner. The Governor shall appoint the Real Estate Commissioner who shall have been, before the date of appointment, for five years a real estate broker or principal real estate broker actively engaged in business as such in this state. The Governor also may appoint an individual who has been actively connected with the administration of the agency for at least one year as acting or temporary commissioner. The commissioner shall hold office at the pleasure of the Governor and shall be responsible for the performance of the duties imposed upon the agency. The Real Estate Commissioner shall receive such salary as may be provided by law.

(3) The appointment of the commissioner is subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(4) Before entering upon the duties of office the commissioner shall give to the state a fidelity bond with one or more corporate sureties authorized to do business in this state, or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, in either case in the sum fixed by the Governor. The premium for the bond or the fee for the letter of credit shall be paid by the agency. [1963 c.580 §§40,41; 1974 c.25 §1; 1975 c.746 §25; 1987 c.414 §38; 1991 c.331 §104; 1995 c.674 §1; 1997 c.631 §523; 2001 c.300 §34; 2007 c.319 §13]

696.380 [Repealed by 1963 c.580 §103]

696.385 Power of agency; rulemaking procedures. The Real Estate Agency shall have the power to:

(1) Adopt a seal by which it shall authenticate its proceedings.

(2) From time to time, prepare and cause to be printed and circulated among the real estate licensees of Oregon such printed matter as it may deem helpful or educational or proper for the guidance and welfare of such licensees.

(3) Make and enforce any and all such reasonable rules as shall be deemed necessary to administer and enforce the provisions of, and enforce and discharge the duties defined in, any law with the administration or enforcement of which the agency is charged.

(4) Except as provided in subsection (5) of this section, when the agency proposes to adopt, amend or repeal a rule concerning real estate licensees, the agency shall:

(a) Submit a copy of the proposed rule to the Real Estate Board at least 10 days prior to publication of the notice of intended action required under ORS 183.335 for the rule.

(b) Consider any recommendations that the board, by majority vote, makes concerning the proposed rule.

(c) Publish as part of the statement of need in the matters any written comments submitted by the board for publication under paragraph (b) of this subsection.

(5) Subsection (4) of this section does not apply to a temporary rule that is adopted, amended or suspended pursuant to ORS 183.335 (5). However, the agency shall submit to the board a copy of any proposed temporary rule as soon as practicable and, to the extent possible under the circumstances, consider any recommendations that the board may make by majority vote regarding the temporary rule. [1963 c.580 §48; 1965 c.617 §5; 1981 c.617 §16; 1985 c.565 §116; 2013 c.145 §14]

696.390 [Repealed by 1963 c.580 §103]

696.392 Power of commissioner to administer oaths, take depositions and issue subpoenas. (1) The Real Estate Commissioner may administer oaths, take depositions and issue subpoenas to compel the attendance of witnesses and the production of books, papers, records, memoranda or other information necessary to the carrying out of the laws the commissioner is charged with administering.

(2) If any person fails to comply with a subpoena issued under this section or refuses to testify on any matters on which the person may be lawfully interrogated, the procedure provided in ORS 183.440 shall be followed to compel obedience. [1995 c.217 §13]

696.395 Power of commissioner. The Real Estate Commissioner shall have the power to:

(1) For the purpose of administration, organize and reorganize, as necessary, the Real Estate Agency in the manner that the commissioner deems necessary to properly conduct the work of the agency.

(2) Appoint all subordinate officers and employees of the agency, or such other agents or representatives, and prescribe their duties and fix their compensation, subject to the applicable provisions of the State Personnel Relations Law. Subject to any other applicable law regulating travel expenses, the officers, employees, agents or representatives of the agency shall be allowed such reasonable and necessary travel and other

expenses as may be incurred in the performance of their duties.

(3) Require a fidelity bond or an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 of any officer or employee of the agency who has charge of, handles or has access to any state money or property, and who is not otherwise required by law to give a bond or letter of credit. The amounts of the bonds or letters of credit shall be fixed by the commissioner, except as otherwise provided by law, and the sureties or letter of credit issuers shall be approved by the commissioner. The agency shall pay the premium on the bonds and the fees for the letters of credit. [1963 c.580 §42; 1977 c.649 §45; 1987 c.414 §38a; 1991 c.331 §105; 1997 c.631 §524]

696.396 Investigation of complaints and progressive discipline; rules. (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:

(a) Must establish procedures for the discovery of material facts relevant to an investigation and for the reporting of those facts without conclusions of violation or grounds for discipline to the commissioner or the commissioner's designee by the individual assigned to investigate the complaint.

(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:

(A) Results in significant damage or injury;

(B) Exhibits incompetence in the performance of professional real estate activity;

(C) Exhibits dishonesty or fraudulent conduct; or

(D) Repeats conduct or an act that is substantially similar to conduct or an act for which the real estate licensee was disciplined previously. [2005 c.393 §5]

696.397 Cease and desist order. (1) If the Real Estate Agency has reason to believe that a person has engaged, is engaging or is about to engage in a violation of ORS 696.020 (2) or 696.603 (1), the agency may, subject to ORS chapter 183, issue an order directing the person to cease and desist from the violation or threatened violation.

(2) A cease and desist order issued under subsection (1) of this section must include:

(a) A statement of the facts constituting the violation.

(b) A provision requiring the person named in the order to cease and desist from the violation.

(c) The effective date of the order.

(d) A notice to the person named in the order of the right to a contested case hearing under ORS chapter 183.

(3) A cease and desist order issued under subsection (1) of this section becomes effective 30 days after the date of the order unless the person named in the order requests a hearing on the order.

(4) A final cease and desist order issued under subsection (1) of this section may be recorded in the County Clerk Lien Record in the manner provided by ORS 205.125 and enforced in the manner provided by ORS 205.126. After the order is recorded, and subject to any other requirements that may apply to the enforcement remedy sought by the agency, the agency may commence proceedings for the enforcement of the order in the same manner as provided for the enforcement of judgments issued by a court, including contempt proceedings.

(5) The Attorney General, the prosecuting attorney of any county or the agency, in its own name, may maintain an action for an injunction in a court of competent jurisdiction against a person violating ORS 696.020 (2), 696.511 (1) or 696.603 (1). An injunction may be issued without proof of actual damage sustained by any person. An injunction does not relieve a person from criminal prosecution for violation of this section or from any other civil, criminal or disciplinary remedy. [2011 c.557 §1]

Note: 696.397 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 696 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

696.398 Delegation by commissioner to employees; requirements. (1) The Real Estate Commissioner may delegate to any of the officers and employees of the Real Estate Agency to exercise or discharge in the commissioner's name any power, duty or function vested in or imposed upon the commissioner under this chapter. The power to administer oaths and affirmations, subpoena witnesses, take evidence and require the production of books, papers, correspondence, memoranda, agreements or other documents or records, and to sign notices and orders may be exercised by an officer or employee of the agency only when specified in writing by the commissioner and filed in the records of the Real Estate Agency.

(2) An official act of an individual acting in the commissioner's name and by authority of the commissioner shall be deemed to be an official act of the commissioner. [1975 c.746 §26; 2007 c.319 §14]

696.400 [Repealed by 1963 c.580 §103]

696.405 Real Estate Board; appointment; term; qualifications; compensation; expenses. (1) The Real Estate Board is established within the Real Estate Agency. The board shall consist of nine members appointed by the Governor to hold office for a period of four years, but to serve at the pleasure of the Governor. Seven members of the board appointed by the Governor must have been, before the date of their appointment, real estate licensees actively engaged for five years in professional real estate activity in this state. Two members to be appointed by the Governor shall not be real estate licensees or have been connected with, or employed by, the Real Estate Agency or a predecessor thereof. In case of a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(2) A member of the board is entitled to compensation or expenses as provided in ORS 292.495. [1963 c.580 §43; 1969 c.314 §97; 1975 c.746 §27; 1977 c.649 §46; 1981 c.617 §17; 1987 c.414 §39; 1993 c.744 §250]

696.410 [Repealed by 1963 c.580 §103]

696.415 Officers; meetings; quorum. (1) The Real Estate Board shall annually select one of its members as chairperson, who shall preside at the meetings of the board. In the absence of the chairperson some other member of the board may serve as chairperson. The board shall meet at such times and places as determined by the board and may also meet upon call of the chairperson.

(2) A majority of the board shall constitute a quorum for the transaction of business. A vacancy on the board shall not impair the right of the remaining members to perform all the duties and exercise all the functions and authority of the board. [1963 c.580 §45]

696.420 [Repealed by 1963 c.580 §103]

696.425 Powers and duties of board; expenses. (1) The Real Estate Board is authorized to inquire into the needs of the real estate licensees of Oregon, the functions of the Real Estate Agency and the matter of the business policy thereof, to confer with and advise the Governor as to how the agency may best serve the state and the licensees, and to make recommendations and suggestions of policy to the agency as the board may deem beneficial and proper for the welfare and progress of the licensees and of the public and of the real estate business in Oregon.

(2) The board shall make recommendations to the agency about the manner and methods for conducting examinations.

(3) The board shall create or approve a real estate continuing education course for real estate licensees based on recent changes in real estate rule and law.

(4) The expenses of the board shall be paid from moneys available to the agency for payment of administrative expenses relating to the real estate activities of the agency. [1963 c.580 §46; 1969 c.674 §19; 1977 c.649 §47; 1981 c.617 §18; 1987 c.414 §39a; 1993 c.744 §179; 2009 c.502 §8; 2013 c.145 §15]

696.430 Records of commissioner as evidence; records open to inspection; rules. Copies of all records and papers in the office of the Real Estate Commissioner duly certified and authenticated by the seal of the commissioner shall be received in evidence in all courts equally and with like effect as the original. Except for records of open investigations, all records kept in the office of the commissioner under authority of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.995 shall be open to public inspection under such reasonable rules and regulations as shall be prescribed by the commissioner. [Amended by 2001 c.300 §35]

696.435 [1963 c.546 §5; 1965 c.617 §6; repealed by 2001 c.300 §84]

696.440 [Repealed by 1963 c.580 §103]

696.445 Advancement of education and research; Oregon Real Estate News Journal; content as to disciplinary actions. (1) Pursuant to ORS 696.385 (2), the Real Estate Agency shall provide for the advancement of education and research in connection with the educational requirements for the securing of licenses for real estate licensees under ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.995.

(2) The Real Estate Commissioner may assign and reassign staff in the agency to perform such duties as the commissioner considers necessary to carry out subsection (1) of this section, including but not limited to the preparation and distribution of a periodic publication to be known as the Oregon Real Estate News Journal and the preparation and publication of other printed or electronic information of an educational nature for the benefit of real estate licensees.

(3) The commissioner shall publish in the Oregon Real Estate News Journal the names and the city and state of:

(a) Real estate and escrow agent licensees who have been reprimanded;

(b) Real estate and escrow agent licensees whose licenses have been suspended or revoked; and

(c) Real estate and escrow agent licensees against whom the agency has assessed civil penalties.

(4) Each publication under subsection (3) of this section must include:

(a) A brief description of the situation involved and the grounds for the commissioner's action; or

(b) The complete final order issued by the agency. [1974 c.26 §5; 1975 c.746 §28; 1977 c.649 §48; 1981 c.617 §19; 1983 c.258 §8; 2001 c.300 §64; 2009 c.224 §6; 2013 c.145 §16]

696.450 [Repealed by 1963 c.580 §103]

696.460 [Repealed by 1963 c.580 §103]

696.470 [Repealed by 1963 c.580 §103]

696.480 [Amended by 1977 c.649 §49; repealed by 1981 c.617 §41]

696.490 Real Estate Account; disposition of receipts. (1) There is established in the General Fund of the State Treasury the Real Estate Account. All moneys, fees and charges collected or received by the Real Estate Agency shall be deposited in the account.

(2) The moneys in the Real Estate Account are continuously appropriated for the payment of the expenses of the agency in carrying out the provisions of ORS 92.305 to 92.495, 94.803, 94.807 to 94.945, 100.005 to 100.910, 100.990, 696.010 to 696.785, 696.800 to 696.870 and 696.995. [Amended by 1955 c.457 §2; 1961 c.309 §4; 1963 c.440 §16; 1963 c.580 §50; 1965 c.617 §7; 1971 c.293 §2; 1974 c.26 §1; 1977 c.41 §2; 1981 c.85 §11; 1983 c.17 §30; 1983 c.530 §53; 1985 c.565 §117]

696.495 Revolving fund; amount; use; procedure for repayment. (1) Upon written request by the Real Estate Agency, the Oregon Department of Administrative Services shall draw a warrant on the Real Estate Account, established by ORS 696.490, for use as a revolving fund. Warrants drawn to establish or increase the revolving fund, rather than to reimburse the revolving fund, may not exceed the aggregate sum of $1,500. The State Treasurer shall hold the revolving fund in a special account against which the Real Estate Agency may draw checks.

(2) The Real Estate Agency may use the revolving fund for the purpose of paying witness fees and other administrative expenses.

(3) All claims for reimbursement of moneys paid from the revolving fund are subject to approval by the Director of the Oregon Department of Administrative Services and by the Real Estate Commissioner. When such claims have been approved, a warrant covering them shall be drawn in favor of the Real Estate Agency and used to reimburse the revolving fund. Such warrants shall be charged against the Real Estate Account established by ORS 696.490. [1974 c.26 §3; 1977 c.41 §3]

696.500 [Amended by 1959 c.27 §1; repealed by 1961 c.309 §5]

ESCROWS AND ESCROW AGENTS

(Generally)

696.505 Definitions for ORS 696.505 to 696.590. As used in ORS 696.505 to 696.590:

(1) "Close an escrow" means the final disbursement of all funds, property and documents in an escrow as directed by written escrow instructions from the principals.

(2) "Collection escrow" means an escrow in which the escrow agent:

(a) Receives:

(A) Installment payments;

(B) Instruments evidencing or securing an obligation; or

(C) Instruments discharging the security interest; and

(b) Disburses the payments or delivers the instruments upon specified conditions pursuant to the written instructions of an obligor and obligee.

(3) "Compensation" means a fee, commission, salary, money or valuable consideration for services rendered or to be rendered as well as the promise thereof and whether contingent or otherwise.

(4) "Escrow" means a transaction in which any written instrument, money, evidence of title to real or personal property or other thing of value is delivered, for the purpose of paying an obligation or effecting the sale, transfer, encumbrance or lease of real or personal property, to a person not otherwise having any right, title or interest therein, to be held by that person as a neutral third party until the happening of a specified event or the performance of a prescribed condition, when it is then to be delivered by the neutral third party to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, bailor or any agent or employee of any of them pursuant to the written instructions of the principals to the transaction.

(5) "Escrow agent" means a person who engages in the business of receiving escrows for deposit or delivery and who receives or is promised compensation, whether contingent or otherwise, for or in anticipation of performance.

(6) "Escrow trust account" means a bank account that meets all of the following requirements:

(a) Is kept separate, distinct and apart from funds belonging to the escrow agent;

(b) Is designated as an escrow trust account; and

(c) Is used to deposit trust funds received by an escrow agent on behalf of a principal.

(7) "Principal" means:

(a) The buyer, seller, lessor, lessee or exchanging party in an escrow transaction involving the sale, lease, lease-option or exchange of real property or personal property;

(b) The borrower in an escrow transaction involving the refinancing of real property or personal property, including but not limited to the refinancing of an obligation secured by a land sale contract requiring a deed to be delivered as part of the refinancing;

(c) The buyer, seller, lender, borrower, vendor or vendee in a collection escrow;

(d) A person directing the escrow agent to hold back funds from a closing escrow for payment of obligations related to the closing or the financing of real property or personal property;

(e) A person who deposits funds, property or documents in a one-sided escrow, as defined by rule of the Real Estate Commissioner; or

(f) A subservicer.

(8) "Real estate closing escrow" means an escrow in which:

(a) The escrow fee is paid in whole or in part by the principals to a real estate transaction; and

(b) The unpaid purchase price is delivered to an escrow agent for disbursal pursuant to the written instructions of the principals to the transaction simultaneously on the transfer of specified title to the real property.

(9) "Subservicer" means an escrow agent, a financial institution or a trust company, as those terms are defined in ORS 706.008, or a collection agency registered under ORS 697.015 when providing, pursuant to written instructions, a portion of the escrow services for an escrow to an escrow agent, or a person in the business of receiving escrows under the laws of another state, that would otherwise provide the escrow services directly to the principals.

(10) "Trust funds" means funds held by an escrow agent on behalf of a principal. [1963 c.440 §1; 1977 c.351 §4; 1981 c.617 §20; 1991 c.874 §1; 1993 c.18 §150; 2003 c.427 §4; 2005 c.116 §23; 2007 c.337 §2; 2009 c.174 §1]

696.508 Legislative finding; short title. (1) The Legislative Assembly finds the activity of escrow agents in handling large sums of money and important rights of clients to be of public concern. In order to permit uniform and equitable regulation of all escrow agents and to improve the standards of escrow conduct, the provisions of ORS 696.505 to 696.590 shall be construed to grant the Real Estate Commissioner authority to protect the public.

(2) ORS 696.505 to 696.590 may be cited as the Oregon Escrow Law. [1977 c.351 §2]

696.510 [Repealed by 1961 c.309 §6]

(Licensing)

696.511 License requirement; licensing system; rules. (1) A person may not directly or indirectly engage in or carry on, or purport to engage in or carry on, within this state, the business of an escrow agent, or act in the capacity of an escrow agent, unless the person holds an active license as an escrow agent under the provisions of ORS 696.505 to 696.590.

(2)(a) The Real Estate Commissioner shall establish by rule a system for licensing escrow agents. The system shall establish, at a minimum, the following:

(A) The form and content of applications for initial licensing and license renewal.

(B) The requirements for submitting surety bonds under ORS 696.525 or evidence of deposits in lieu of a bond under ORS 696.527.

(C) The form and content of applications for changes in any of the following:

(i) Ownership interest in an escrow agent.

(ii) Corporate officers in charge of escrow operations for an escrow agent.

(iii) Other individuals in charge of escrow operations for an escrow agent.

(D) Schedules and procedures for issuing and renewing licenses.

(E) Schedules and procedures for approving changes in ownership interest in an escrow agent, changes in corporate officers in charge of escrow operations or changes in other individuals in charge of escrow operations.

(F) The term of a license.

(G) The requirements for an escrow agent to notify the Real Estate Agency of changes in the information contained in an application, including but not limited to office location changes, branch office establishment, office closure and business operations cessation.

(H) The requirements for an applicant that is not an individual to provide a certificate of existence or similar documentation.

(b) If an applicant for a license as an escrow agent is an individual, the applicant must be 18 years of age or older.

(3) For the initial license of an escrow agent, the commissioner may require information and evidence the commissioner considers necessary to demonstrate the applicant's qualifications to transact escrow business including, but not limited to, information regarding the applicant's financial resources, the applicant's escrow business in another state or the experience or training of employees in escrow business, or a testimonial of an escrow agent licensed in this state. Subject to subsection (4) of this section, an applicant:

(a) Who is an individual must demonstrate a minimum of three years of experience in the administration of escrows within Oregon or a state with comparable escrow laws; or

(b) Who is not an individual must demonstrate a minimum collective experience among its personnel of three years in the administration of escrows within Oregon or a state with comparable escrow laws.

(4) The commissioner may waive the three-year experience requirement in subsection (3) of this section for an applicant who demonstrates other qualifications sufficient to ensure the protection of the public.

(5)(a) For the purpose of this subsection, an escrow agent that is not an individual may satisfy the requirements for fingerprints and a criminal records check by providing the fingerprints of and conducting a criminal records check on an individual who:

(A) Has more than five percent ownership interest in the escrow agent;

(B) Is a corporate officer in charge of escrow operations for the escrow agent; or

(C) Is in charge of escrow operations for the escrow agent.

(b) For an initial escrow agent license, the commissioner shall require fingerprints and a state or nationwide criminal records check under ORS 181.534 of the applicant. The commissioner may require additional information from the applicant that the commissioner considers necessary for protecting the public.

(c) For license renewal as an escrow agent, the commissioner may require fingerprints and a state or nationwide criminal records check under ORS 181.534 of the applicant. The commissioner may require additional information from the applicant that the commissioner considers necessary for protecting the public.

(d) For a change in individuals who will have ownership interest in an escrow agent, the individuals who will be corporate officers in charge of escrow operations or any other individuals who will be in charge of escrow operations, the commissioner shall require fingerprints and a state or nationwide criminal records check under ORS 181.534 of the individuals who will have the ownership interest or who will be in charge. The commissioner may require additional information from the individuals that the commissioner considers necessary for protecting the public.

(6) For license renewal, an applicant that is an escrow agent shall provide:

(a) A certification of training, by which the applicant certifies that the applicant provides escrow agency staff within Oregon with an average of six hours or more of training per year per permanent, full-time employee in subjects that bear directly on the administration of escrows;

(b) A statement identifying by name, address and telephone number one or more individuals who can respond to the inquiries of or referrals by the commissioner or the commissioner's authorized representative regarding the applicant's escrow business; and

(c) Other documents and information that the commissioner may require by rule.

(7) The commissioner shall issue or renew an escrow agent license, approve a change in ownership interest in an escrow agent, approve a change in corporate officers in charge of escrow operations of the escrow agent or approve a change in any other individuals in charge of escrow operations of the escrow agent for an applicant that complies with the requirements of ORS 696.505 to 696.590 and the rules adopted under ORS 696.505 to 696.590.

(8) To qualify for issuance or renewal of an escrow agent license, an applicant shall pay any outstanding civil penalties or other moneys due and owing to the Real Estate Agency except civil penalties or other moneys due that are the subject of judicial or administrative review on the date of the application for license or license renewal. [1963 c.440 §§4,17; 1975 c.746 §29; 1977 c.351 §5; 1981 c.617 §21; 1991 c.874 §2; 2001 c.300 §36; 2003 c.427 §5; 2005 c.730 §§38,86; 2007 c.319 §15; 2009 c.174 §2]

696.515 [1963 c.440 §3; repealed by 1981 c.617 §41]

696.520 Application of ORS 696.505 to 696.590. The provisions of ORS 696.505 to 696.590 do not apply to and the term "escrow agent" does not include:

(1) Any person doing business under the laws of this state or the United States relating to banks, mutual savings banks, trust companies, savings and loan associations, consumer finance companies, or insurance companies except to the extent that the person provides real estate closing escrow services other than those permitted under subsection (3) of this section.

(2) An attorney at law rendering services in the performance of duties as attorney at law.

(3) Any firm or corporation lending money on real or personal property and which firm or corporation is subject to licensing, supervision or auditing by a federal or state agency but only to the extent of closing a loan transaction between such firm or corporation and a borrower, and seller, if a fee for escrow services is not charged to the seller.

(4) Any person doing any of the acts specified in ORS 696.505 (4) under order of any court.

(5) Any real estate broker or principal real estate broker licensed under ORS 696.022 who performs the closing for the principals in a real estate transaction handled by the broker, if the principals are not charged a separate fee for escrow services.

(6) Any collection agency registered under ORS 697.015 that is engaged in any collection or billing activity without holding documents relating to the debt. [1963 c.440 §2; 1967 c.359 §701; 1971 c.398 §1; 1977 c.351 §6; 1981 c.617 §22; 1991 c.874 §3; 2001 c.300 §37; 2003 c.427 §6; 2007 c.337 §7]

696.523 Application of ORS 696.505 to 696.590 to title insurance activities. The provisions of ORS 696.505 to 696.590 apply to those escrow activities of a title insurance company, or an insurance producer of a title insurance company which prepares abstracts or makes searches of title which are used as a basis for the insurance of titles by a title insurance company. [1971 c.398 §3; 1977 c.351 §7; 2003 c.364 §55]

696.525 Bond for escrow agents. (1) At the time of filing an application for an escrow agent license, the applicant shall deposit with the Real Estate Commissioner a corporate surety bond running to the State of Oregon, executed by a surety company satisfactory to the commissioner, in the amount required by this section.

(2) If the total annual receipts of client trust funds, as reported in the required annual report of the escrow agent, are:

(a) Less than $30 million, the bond or deposit must be $50,000.

(b) $30 million or more, but less than $60 million, the bond or deposit must be $125,000.

(c) $60 million or more, but less than $100 million, the bond or deposit must be $250,000.

(d) $100 million or more, but less than $300 million, the bond or deposit must be $375,000.

(e) $300 million or more, the bond or deposit must be $500,000.

(3) The provisions of the corporate surety bond must be in the form substantially as follows:

Know All Persons by These Presents, That we, _____ as principal, and _____, a corporation, qualified and authorized to do business in the State of Oregon as surety, are held and firmly bound unto the State of Oregon for the use and benefit of any interested person, in the sum of $_____, lawful money of the United States of America, to be paid to the State of Oregon for the use and benefit aforesaid, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

The condition of the above obligation is such that: Whereas the above-named principal has made application for registration as an escrow agent within the meaning of ORS 696.505 to 696.590 and is required by the provisions of ORS 696.505 to 696.590 to furnish a bond in the sum above named, conditioned as herein set forth:

Now, therefore, if the principal, the principal's agents and employees, shall strictly, honestly and faithfully comply with the provisions of ORS 696.505 to 696.590, and shall pay all actual damages suffered by any person by reason of the violation of any of the provisions of ORS 696.505 to 696.590, now or hereafter enacted, or by reason of any fraud, dishonesty, misrepresentation or concealment of material facts growing out of any transaction governed by the provisions of ORS 696.505 to 696.590, then this obligation shall be void; otherwise to remain in full force and effect.

This bond shall become effective on the ____ day of _____, 2__, and shall remain in force until the surety is released from liability by the commissioner, or until this bond is canceled by the surety. The surety may cancel this bond and be relieved of further liability hereunder by giving 30 days' written notice to the principal and to the commissioner.

This bond shall be one continuing obligation, and the liability of the surety for the aggregate of any and all claims which may arise hereunder shall in no event exceed the amount of the penalty hereof.

In witness whereof, the seal and signature of the principal hereto is affixed, and the corporate seal and the name of the surety hereto is affixed and attested by its duly authorized officers at _____, Oregon, this ____ day of _____, 2____.

_____ (Seal)
Principal
_____ (Seal)
Surety
By _____

[1963 c.440 §5; 1971 c.398 §4; 1977 c.351 §8; 1981 c.617 §23; 1983 c.258 §9; 1991 c.874 §4; 2001 c.300 §72; 2003 c.427 §7]

696.527 Deposits in lieu of bond; payment of claims; waiver. (1) Any escrow agent may satisfy the requirements of ORS 696.525 by depositing with the State Treasurer, in an amount equal to the surety bond required, a deposit consisting only of the following:

(a) Cash;

(b) Ample secured obligations of the United States, a state or a political subdivision thereof;

(c) Certificates of deposit, assignments of certificates of deposit or other investments described in ORS 733.650 (4), to the extent that such investments are insured by the Federal Deposit Insurance Corporation;

(d) A certified, annually renewable letter of credit executed by a financial institution and satisfactory to the Real Estate Commissioner in the amount of the surety bond required by ORS 696.525; or

(e) Any combination of paragraphs (a), (b), (c) and (d) of this subsection.

(2) The State Treasurer shall accept and hold the deposit for the faithful performance of escrow activity by the escrow agent. No claimant or judgment creditor or the escrow agent shall have the right to attach or levy upon any of the assets or securities held on deposit.

(3) The commissioner, by order, may authorize the State Treasurer to use such deposit, as follows:

(a) To satisfy any final judgment entered against the escrow agent for actual damages suffered by any person by reason of the violation of any of the provisions of ORS 696.505 to 696.590, now or hereafter enacted, or by reason of any fraud, dishonesty, misrepresentation or concealment of material fact growing out of any escrow transaction;

(b) For use in the liquidation of the escrow agent under the provisions of ORS 696.555; or

(c) To release any or all of such deposit to the escrow agent when, in the opinion of the commissioner, such deposit is no longer necessary to protect the public.

(4) The commissioner may waive the requirement of the surety bond or deposit for any escrow agent that:

(a) Demonstrates to the commissioner's satisfaction that the capital and surplus or net worth, of such escrow agent as of the end of the previous business accounting year of the agent is equal to, or greater than, the average month-end balance of custodial funds held by such agent during the previous business accounting year; or

(b) Provides a certified, personal guarantee executed by one or more owners of the escrow agency and satisfactory to the commissioner in the amount of the surety bond required by ORS 696.525.

(5) All other claims against the bond or deposit of an escrow agent must be paid by the commissioner only upon the receipt of a final court judgment against the escrow agent and only in the amount of actual damages as ordered by the court. [1977 c.351 §3; 1981 c.617 §24; 1991 c.874 §5; 1999 c.107 §11; 2003 c.427 §8; 2009 c.174 §4]

696.530 Expiration and renewal of license; fees; rules. (1) The license of an escrow agent expires on the June 30 after the date of issuance or on a date specified by rule of the Real Estate Commissioner. A license may be renewed as prescribed by rule of the commissioner, which may include paying any required fees.

(2) The filing fees are:

(a) For filing an original or a renewal application, $300 for the main office and $150 for each branch office.

(b) For filing an application for a duplicate copy of a license, upon satisfactory showing of loss of the license, the sum of $20.

(c) For a name change or a change of address of an escrow agent, $10 for the main office plus $10 for each affected branch office.

(3) The commissioner, by rule, may provide an opportunity for the late renewal of an expired escrow agent license by an applicant who fails to renew the license by the date specified under subsection (1) of this section. [1963 c.440 §6; 1977 c.351 §9; 1977 c.873 §19; 1981 c.617 §25; 1991 c.874 §14; 1997 c.451 §2; 2003 c.427 §9; 2005 c.116 §11; 2007 c.225 §1; 2007 c.768 §54a; 2009 c.174 §5]

696.532 Limited license. (1) The Real Estate Commissioner may issue or renew a limited escrow agent license if the commissioner determines it is in the public interest.

(2) The commissioner may limit a license issued under this section:

(a) By term;

(b) To activities subject to supervision by a specific escrow agent;

(c) By conditions to be observed in the exercise of the privileges granted; or

(d) In other ways determined by the commissioner as necessary or appropriate to protect the public.

(3) A limited licensee must comply with the limitations of the license and the requirements of ORS 696.505 to 696.590 and rules adopted under ORS 696.505 to 696.590. [2003 c.427 §2; 2009 c.174 §6]

Note: 696.532 and 696.534 were added to and made a part of 696.505 to 696.590 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

696.534 Records of escrow agents; rules. (1) An escrow agent shall keep and maintain at all times in the licensed office of the agent, complete and suitable records of escrow transactions made by the agent and of the business of the agent including, but not limited to, books, papers and data clearly reflecting the financial condition of the business of the agent. The records must be open for inspection by the Real Estate Commissioner or the commissioner's authorized representatives at all times. An escrow agent shall keep escrow records for a period of six years from the date the escrow closes or is terminated. An escrow agent may maintain the records in any format, as determined by the commissioner by rule, that allows for inspection and copying by the commissioner or the commissioner's representatives. When an escrow agent acts as a subservicer for another escrow agent, the subservicer shall keep its records in the manner required for an escrow agent under this section.

(2) Notwithstanding the requirement of subsection (1) of this section that an escrow agent maintain escrow records in the agent's licensed office, an escrow agent shall keep escrow records in the office in which the transaction occurred for one year from the date the escrow closes or is terminated.

(3) Notwithstanding the requirements of subsections (1) and (2) of this section to maintain escrow records in specified locations, an escrow agent may maintain escrow records at another location satisfactory to the commissioner if the escrow agent provides the commissioner with prior written notice of the proposed location. [2003 c.427 §3]

Note: See note under 696.532.

696.535 Grounds for refusing, suspending or revoking license or reprimanding licensee. (1) The Real Estate Commissioner may suspend or revoke the license of an escrow agent, reprimand an escrow agent who is licensed, refuse to issue an escrow agent license to an applicant or refuse to renew the license of an escrow agent, if the escrow agent or applicant:

(a) Is insolvent under generally accepted accounting principles;

(b) Demonstrated untrustworthiness or incompetence to transact the business of an escrow agent;

(c) Failed to conduct business in accordance with law or violated any provision of ORS 696.505 to 696.590 or any rule adopted under ORS 696.505 to 696.590;

(d) Committed fraud in connection with any transaction governed by ORS 696.505 to 696.590 or the rules adopted under ORS 696.505 to 696.590;

(e) Made any misrepresentations or false statement of an essential or material fact to, or concealed any essential or material fact from, any person in the course of the escrow business;

(f) Knowingly made or caused to be made to the commissioner any false representation of a material fact, or suppressed or withheld from the commissioner any information the applicant or licensee possesses that, if submitted, would have disqualified the applicant or licensee from original or renewed licensing under ORS 696.505 to 696.590 or rules adopted under ORS 696.505 to 696.590;

(g) In a real estate transaction, failed to account to the principals or persons entitled to an accounting of the funds, property or documents or other things of value received in the transaction;

(h) Failed to deliver within a reasonable time to persons entitled to receive funds, property or documents or other things of value held or agreed to be delivered by the licensee, as and when paid for and due to be delivered;

(i) Caused uncompensated material loss to principals by engaging in a pattern of failures to act with neutrality between principals in multiple escrows;

(j) Refused to permit the commissioner to examine the escrow agent's books and affairs, or refused or failed, within a reasonable time, to furnish any information, records or files or make any report that may be required by the commissioner under the provisions of ORS 696.505 to 696.590 or rules adopted under ORS 696.505 to 696.590;

(k) Has been convicted of a crime that is substantially related to the escrow agent's competency or trustworthiness to engage in the business of an escrow agent;

(L) Committed an act of fraud or engaged in dishonest conduct substantially related to the fitness of the applicant or licensee to conduct the activities of an escrow agent, without regard to whether the act or conduct occurred in the course of escrow activity; or

(m) Failed to maintain a surety bond required under ORS 696.525 or other surety required under ORS 696.527.

(2) It is sufficient cause for refusal or revocation of a license in case of a partnership or corporation or any unincorporated association, if any member of a partnership or any officer or director of the corporation or association has been guilty of any act or omission which would be cause for refusing or revoking the registration of an individual agent. [1963 c.440 §7; 1971 c.734 §159; 1977 c.351 §10; 1981 c.617 §26; 1985 c.399 §3; 1991 c.874 §6; 1995 c.760 §5; 1997 c.812 §1; 2001 c.300 §38; 2003 c.427 §10; 2009 c.174 §7]

696.540 [1963 c.440 §8; repealed by 1977 c.351 §11 and 1977 c.842 §17 (696.541 enacted in lieu of 696.540)]

696.541 Authority of commissioner over escrow agents; rules. (1) The Real Estate Commissioner shall have general supervision and control over all escrow agents doing business in this state. Subject to ORS chapter 183, the commissioner may adopt such rules as reasonably necessary for the administration and enforcement of ORS 696.505 to 696.590.

(2) All escrow agents are subject to audits or examinations by the commissioner, or the commissioner's authorized representatives at any time the commissioner considers advisable. The commissioner may collect from each escrow agent the reasonable expenses of such audit or examination including but not limited to any administrative expense for travel.

(3) The provisions of this section and of any other section relating to the examination of the affairs of an escrow agent shall extend to an escrow agent whose license has expired or been revoked or suspended, if in the judgment of the commissioner, such agent has violated any provisions of ORS 696.505 to 696.590. [1977 c.351 §12 (enacted in lieu of 696.540); 1981 c.617 §27; 1985 c.399 §4; 1991 c.874 §7; 2001 c.300 §39; 2003 c.427 §11]

(Enforcement)

696.545 Investigation; injunction; jurisdiction. (1) The Real Estate Commissioner may investigate either upon complaint or otherwise whenever it appears that an escrow agent has violated ORS 696.505 to 696.590 or that any person is engaging in the escrow business without being licensed under the provisions of ORS 696.505 to 696.590.

(2) If upon investigation it appears that such agent is so conducting business the commissioner may, in addition to any other remedies, bring action in the name and on behalf of the State of Oregon against such person and any other person acting in violation of ORS 696.505 to 696.590, to enjoin such person and such other person from continuing any act in violation of ORS 696.505 to 696.590.

(3) The circuit court of any county of this state is vested with jurisdiction to restrain illegal practices or transactions and may grant injunctions to prevent and restrain such illegal practices or transactions, in addition to the penalties and other remedies provided in ORS 696.505 to 696.590. The court shall have power, during the pendency of the proceedings before it to issue such preliminary restraining orders as may appear to be just and proper; and the findings of the commissioner shall be deemed to be prima facie evidence and sufficient ground, in the discretion of the court, for the issue ex parte of a preliminary restraining order.

(4) In any such court proceedings the commissioner may apply for and on due showing be entitled to have issued the court's subpoena requiring forthwith the appearance of any defendant and employees of the defendant and the production of documents, books and records as may appear necessary for the hearing of such petition, to testify and give evidence concerning the acts or conduct or things complained of in such application for injunction. [1963 c.440 §9; 1979 c.284 §194; 1981 c.617 §28; 1991 c.874 §8]

696.550 [1963 c.440 §10(1), (2); repealed by 1971 c.734 §21]

696.555 Commissioner to take possession of property and assets of escrow agent when assets or capital impaired; appointment of receiver. (1) When the Real Estate Commissioner ascertains by examination or otherwise that the assets or capital of any agent are impaired, as described in ORS 696.535 (1)(a), the commissioner may immediately take possession of all the property, business and assets of the agent which are located in this state and retain possession of them pending the further proceedings specified in this section.

(2) Pursuant to subsection (1) of this section, the commissioner may apply to the circuit court of the county in which the agent's principal place of business is located for an order directing the agent to show cause why a receiver should not be appointed to take charge of and manage or liquidate if necessary the assets of the agent utilized in professional escrow activity in such a manner as to prevent or minimize such financial loss to others.

(3) If the court is satisfied from reading the commissioner's petition that the facts therein alleged, if established, warrant such receivership action, the court shall issue such order to show cause. The court may at such time, without notice, issue a temporary injunction restraining such agent, or any of the agent's officers, directors, stockholders, members, agents or employees, from the transaction of any professional escrow activ-

ity, or the waste or disposition of any such assets until further order of the court. Should such an injunction be issued, a hearing on whether the injunction shall be continued shall be held within five business days of its service.

(4) On return of the order to show cause, and after a full hearing, the court shall either deny the application or grant the same, together with such other relief as the court may deem necessary.

(5) Notwithstanding any other provision of law, no bond shall be required of the commissioner or the commissioner's authorized representatives as a prerequisite for the issuance of any injunction or other order pursuant to this section.

(6) At any time during such proceedings, the agent may satisfy the court that the activity which prompted such proceedings has been rectified or that financial loss to others no longer will likely occur, in which case the court may dismiss such proceedings.

(7) The expenses of the receiver, compensation of the legal counsel of the receiver, as well as all expenditures of the receiver required in such proceedings shall be fixed by the court and shall be paid out of funds in the hands of the receiver or entered as a judgment against such licensee. [1963 c.440 §10(3),(4); 1975 c.746 §30; 1981 c.617 §29; 1991 c.874 §9; 2001 c.300 §40]

696.560 [1963 c.440 §11; 1975 c.746 §31; 1981 c.617 §30; 1985 c.589 §5; renumbered 696.578]

696.565 [1963 c.440 §12; renumbered 696.579]

696.570 Hearings procedure under ORS 696.505 to 696.590; subpoena. (1) All hearings before the Real Estate Commissioner or the commissioner's authorized representative conducted under the authority of ORS 696.505 to 696.590 shall be conducted in accordance with the provisions of ORS chapter 183.

(2) The commissioner, or anyone authorized by the commissioner, shall have the power to subpoena witnesses and administer oaths in connection with hearings in the enforcement of ORS 696.505 to 696.590. [1963 c.440 §13; 1981 c.617 §30a]

696.575 Civil or criminal actions not limited by ORS 696.505 to 696.590. Nothing in ORS 696.505 to 696.590 shall limit any statutory or common law right of any person to bring any action in any court for any act involved in the transaction of the escrow business or the right of the state to punish any person for any violation of any law. [1963 c.440 §14]

696.577 Commissioner's order against unlicensed agent. Whenever the Real Estate Commissioner finds that any person is offering to engage in or engaging in the business of an escrow agent without a license as an escrow agent as required under ORS 696.505 to 696.590, the commissioner may order the person to cease and desist from offering to engage in or engaging in the business of an escrow agent. Any proceeding under this section is subject to the requirements of ORS chapter 183. [1981 c.617 §36]

(Escrow Property)

696.578 Deposit and designation of funds held in escrow; treatment of earnings on escrow account; notice. (1) All funds received by an escrow agent to be delivered upon the close of the escrow or upon any other contingency are trust funds that must be deposited and maintained in a bank authorized to do business within this state. The funds must be deposited in a federally insured account designated as an escrow trust account and kept separate, distinct and apart from funds belonging to the escrow agent. The designation of an account as an escrow trust account indicates that the funds are not the funds of the escrow agent.

(2) Trust funds received by an escrow agent may be placed by the agent in a federally insured interest-bearing bank account, designated as an escrow trust account, but only with the prior written approval of all parties having an interest in the trust funds. The earnings of the interest-bearing account may inure to the benefit of the escrow agent if expressly approved in writing before deposit of the trust funds by all parties having an interest in the trust funds.

(3) With prior written notice to all parties who have an interest in the trust funds, an escrow agent may place trust funds received by the escrow agent in a federally insured interest-bearing bank account that is designated as an escrow trust account and the earnings of which inure to the benefit of a public benefit corporation, as defined in ORS 65.001, for distribution to organizations and individuals for first-time homebuying assistance and for development of affordable housing. The escrow agent shall select a qualified public benefit corporation to receive the interest earnings.

(4) Any bank services, as defined by rule by the Real Estate Commissioner, provided to the escrow agent may not be considered to affect the impartiality or neutrality of the escrow agent. Such services are permitted with approval in the written closing instructions of the principals.

(5) Trust funds may be invested in secured obligations of the United States, if:

(a) The depositing principal gives prior written approval to the escrow agent for such investment after receiving written dis-

closure as may be required by rule adopted by the commissioner;

(b) The depositing principal releases the escrow agent from any liability for loss of the trust funds;

(c) The depositing principal agrees that any loss of trust funds may not be a claim against the bond, deposit or personal guarantee of the agent under ORS 696.525 and 696.527; and

(d) The escrow agent does not have any interest in the investment or earnings from the investment.

(6) If the trust funds to be invested represent earnest money in a transaction, both principals in the transaction must give prior written approval for the investment and are both considered depositing principals. [Formerly 696.560; 1991 c.874 §10; 2003 c.224 §2; 2003 c.427 §12; 2009 c.174 §10]

696.579 Funds exempt from execution or attachment; designation of funds. (1) Escrow or trust funds are not subject to execution or attachment on any claim against the escrow agent.

(2) No person shall knowingly keep or cause to be kept any funds or money in any bank under the heading of "trust funds" or "escrow accounts" or any other name designating such funds or money as belonging to the clients of any escrow agency, except actual escrow or trust funds deposited with such agency. [Formerly 696.565]

696.580 [1963 c.440 §15; repealed by 1973 c.794 §34]

696.581 Written escrow instructions or agreement required; statement; instructions containing blank prohibited; one-sided escrow; exceptions. (1) An escrow agent may not accept funds, property or documents in any escrow transaction without dated, written escrow instructions from the principals to the transaction or a dated executed agreement in writing between the principals to the transaction.

(2) Except as provided in this section, an escrow agent must follow dated, written escrow instructions executed by the principals or a dated executed written agreement between the principals to a transaction.

(3) Except as provided in ORS 314.258, an escrow agent may not close an escrow or disburse any funds or property in an escrow without obtaining dated, separate escrow instructions in writing from the principals to the transaction adequate to administer and close the transaction or, in the case of disbursement, to disburse the funds and property.

(4) The following statement or its substantial equivalent shall appear on or be attached to all written escrow instructions prepared by an escrow agent for signature of the principals to a transaction. The statement shall be in at least 10-point bold type. The statement shall either appear immediately above the signatures of the principals or be separately initialed by the principals:

It is understood by the parties signing the above or attached instructions that the instructions are the complete instructions between this firm as an escrow agent and you as a principal to the escrow transaction. These instructions may not include all the terms of the agreement which is the subject of this escrow. Read these instructions carefully, and do not sign them unless they are acceptable to you.

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(5) An escrow agent may not solicit or accept any original, amended or supplemental escrow instructions containing any blank to be filled in after signing. An escrow agent may not allow any alteration of original, amended or supplemental escrow instructions, unless the alteration is signed or initialed by all principals who signed or initialed the instructions before the alteration.

(6) An escrow agent may accept trust funds, in excess of earnest money required in transaction documents to be held, as individual funds of the principal who has paid them into escrow. Such individual trust funds may be disbursed with only the separate written instructions of the principal who deposited the funds into escrow.

(7) An escrow agent may open a one-sided escrow, as defined by rule by the Real Estate Commissioner, by receiving the funds, property or documents for an escrow. Such escrow funds may be disbursed with only the separate written instructions of the principal who deposited the funds into escrow.

(8) Except as authorized in ORS 105.475, notwithstanding the requirement for dated, separate escrow instructions to close an escrow or disburse funds or property in an escrow, an escrow agent:

(a) May disburse earnest money deposited based on an agreement of the parties executed after the initial sales agreement; and

(b) May not impose additional requirements on the principals to the transaction, including a requirement that the principals sign a release of liability in favor of the escrow agent.

(9) Notwithstanding any provision of this section, an escrow agent may disburse funds, property or documents deposited in escrow in accordance with an order of a court of com-

petent jurisdiction. [1985 c.399 §2; 1991 c.874 §11; 2007 c.289 §1; 2008 c.54 §2; 2009 c.174 §11]

696.582 Escrow agent to hold certain compensation; conditions; notice of demand; disbursement of money; copy of notice to principal. (1) An escrow agent shall hold, as provided in subsection (3) of this section, the amount of money or other property agreed to as compensation in a written real estate broker's or principal real estate broker's compensation agreement, if the escrow agent has at the office at which the escrow is being closed, before the date of closing:

(a) A written notice of compensation, signed by the real estate broker or principal real estate broker who is authorized under rules adopted by the Real Estate Commissioner to enter into the compensation agreement and sign the written notice of compensation, in substantially the form set out in subsection (2) of this section; and

(b) The written closing instructions of the principals which do not honor the amount and terms of payment in the notice of compensation.

(2) The notice of compensation required by subsection (1) of this section may not be incorporated into any document of agreement between the principals or between the broker and a principal, and shall be in substantially the following form:

Notice of
Real Estate Compensation
To: _____
(Name of Escrow Company)
Re: _____
(Names of Principals to
Transaction)
Your Escrow Number: _____

The undersigned real estate broker or principal real estate broker states that such broker has a valid written compensation agreement with _____ (Name of Principal), one of the principals to the transaction referred to above, and that such principal is obligated to pay the broker the compensation on account of that transaction. The compensation amount is $_____ and is to be paid on the following terms: _____. Request is hereby made that the compensation be paid in that amount and on those terms, out of escrow and as a part of your closing of that transaction.

_____
(Name and Signature of Real Estate Broker
or Principal Real Estate Broker)

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(3) An escrow agent in a transaction described in subsection (1) of this section may only disburse the moneys or other property to:

(a) The broker and principal, based upon a written agreement between those parties and directed to the escrow agent as disbursement instructions;

(b) Any persons, as directed by order of a court of competent jurisdiction; or

(c) The court, upon filing by the escrow agent of an interpleader action for the moneys or property.

(4) If the filing of a notice of compensation with an escrow agent under subsection (1) of this section is made more than 10 days prior to the scheduled closing date, the real estate broker or principal real estate broker filing the notice shall deliver a copy of the notice to the principal identified in the notice. If the notice is filed within 10 days of the scheduled closing date, a copy of the notice shall be provided by the escrow agent to the principal identified in the notice at the time of closing. [1985 c.449 §2; 2001 c.300 §41; 2007 c.337 §1]

(Civil Penalties)

696.585 Civil penalties. (1) Any person who violates any provision of ORS 696.505 to 696.590, or any lawful rule or final order of the Real Estate Commissioner or any final judgment made by any court upon application of the commissioner, may be required to forfeit and pay to the General Fund of the State Treasury, a civil penalty in an amount determined by the commissioner of not more than $3,000 for each offense. Each violation shall be deemed a separate offense.

(2) In addition to the civil penalty set forth in subsection (1) of this section, any person who violates any provision of ORS 696.505 to 696.590, any lawful rule or final order of the commissioner or any final judgment made by a court upon application to the commissioner, may be required to forfeit and pay to the General Fund of the State Treasury, a civil penalty in an amount determined by the commissioner but not to exceed the amount by which such person profited in any transaction that violates any such provision, rule, order or judgment.

(3) Civil penalties under this section shall be imposed in the manner provided by ORS 183.745.

(4) The provisions of this section are in addition to and not in lieu of any other enforcement provision contained in ORS 696.505 to 696.590. [1975 c.746 §32; 1981 c.617 §31; 1983 c.696 §26a; 1989 c.706 §24; 1991 c.734 §85; 1991 c.874 §12; 2003 c.427 §13; 2003 c.576 §544; 2009 c.174 §8]

696.590 Penalty amounts. (1) Any person who violates ORS 696.511 (1) 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 $500 nor more than $1,000 for the first offense of unlicensed professional escrow activity; and

(b) Not less than $1,000 nor more than $3,000 for the second and subsequent offenses of unlicensed professional escrow activity.

(2) In addition to the civil penalty set forth in subsection (1) of this section, any person who violates ORS 696.511 may be required by the commissioner to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the commissioner but not to exceed the amount by which such person profited in any transaction which violates ORS 696.511.

(3) Civil penalties under this section must be imposed in the manner provided in ORS 183.745.

(4) The civil penalty provisions of subsections (1) and (2) of this section are in addition to and not in lieu of the criminal penalties for unlicensed professional escrow activity in ORS 696.990 (1) and (2). [1991 c.874 §17; 2003 c.427 §14]

REAL ESTATE MARKETING

696.600 Definitions for ORS 696.392, 696.600 to 696.785 and 696.995. As used in ORS 696.392, 696.600 to 696.785 and 696.995:

(1) "Employee" includes an individual who has an independent contractual relationship with a real estate marketing organization and performs real estate marketing activity.

(2) "Real estate marketing activity" means procuring or offering to procure prospects to purchase, sell, lease or rent real estate by telemarketing, mail or otherwise.

(3) "Real estate marketing organization" means any person, including a partnership, association, corporation, limited liability company or other organization, other than a real estate marketing employee, that engages in real estate marketing activity and is licensed under ORS 696.606.

(4)(a) "Real estate marketing employee" means an individual who receives compensation from a real estate marketing organization for performing real estate marketing activity.

(b) "Real estate marketing employee" does not mean an individual licensed under ORS 696.022. [1995 c.217 §2; 2001 c.300 §65; 2007 c.319 §16]

696.603 License requirement. (1) A person may not engage in real estate marketing activity unless that person is:

(a) Licensed under ORS 696.606;

(b) Licensed under ORS 696.022; or

(c) Registered by a person licensed under ORS 696.606.

(2) No person may employ an individual as a real estate marketing employee unless the person registers the individual with the Real Estate Commissioner as the employee of the real estate marketing organization before the individual commences real estate marketing activity.

(3) This section applies to persons who:

(a) Initiate real estate marketing activity in this state; or

(b) Initiate real estate marketing activity in another state that includes contacting persons in this state.

(4) One act or transaction of real estate marketing activity is sufficient to constitute engaging in real estate marketing activity within the meaning of this section. [1995 c.217 §3; 2001 c.300 §66]

696.606 Real estate marketing organization license; requirements; deposit required; claims against deposit; rules. (1) In accordance with any applicable provisions of ORS chapter 183, the Real Estate Commissioner shall establish by rule a system to license real estate marketing organizations. Such a system shall include but need not be limited to prescribing:

(a) The form and content of and the times and procedures for submitting an application for the issuance or renewal of a license.

(b) The term of the license and the fee for the original issue and renewal in an amount that does not exceed the cost of administering the licensing system.

(c) The requirements and procedures to register the names of and other information regarding the real estate marketing employees employed by applicants or licensees.

(d) Those actions or circumstances that constitute failure to achieve or maintain licensing or competency or that otherwise constitute a danger to the public interest and for which the commissioner may refuse to issue or renew or may suspend or revoke a license or registration or may impose a penalty.

(e) Those activities of principals of the organization that constitute a danger to the public interest and for which the commissioner may refuse to issue or renew or may suspend or revoke a registration or may impose a penalty.

(2) Licenses for real estate marketing organizations shall be granted only if the principal persons of the organization are trustworthy and competent to conduct real estate marketing activity in such manner as to safeguard the interests of the public and only after satisfactory proof has been presented to the commissioner. As used in this subsection, "satisfactory proof" includes but is not limited to the fingerprints and a criminal records check of the applicant. For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the commissioner may require the fingerprints of the applicant.

(3) At the time of filing an application for a license as a real estate marketing organization, the applicant shall deposit with the commissioner a corporate surety bond running to the State of Oregon, executed by a surety company satisfactory to the commissioner, in the amount of $35,000 in a form and under terms and conditions established by the commissioner.

(4) Any real estate marketing organization may satisfy the requirements of subsection (3) of this section by depositing with the commissioner, in an amount equal to the surety bond required, a deposit consisting of any of the following:

(a) Cash;

(b) Ample secured obligations of the United States, a state or a political subdivision thereof;

(c) Certificates of deposit or other investments described in ORS 733.650 (4) to the extent that such investments are insured by the Federal Deposit Insurance Corporation; or

(d) Any combination of paragraphs (a), (b) and (c) of this subsection.

(5) Any real estate marketing organization making a deposit with the commissioner shall assign in trust, to the Real Estate Commissioner, and the commissioner's successors in office, all cash, certificates or securities deposited in accordance with this section.

(6) The deposit shall be accepted and held by the commissioner for the faithful performance of real estate marketing activity by the real estate marketing organization. No claimant or judgment creditor of the real estate marketing organization shall have the right to attach or levy upon any of the assets or securities held on deposit.

(7) The commissioner, by order, may use such deposit under subsection (3) or (4) of this section, as follows:

(a) To satisfy any final judgment entered against the real estate marketing organization for actual damages suffered by any person by reason of the violation of this section or ORS 696.603 or 696.612 or a rule adopted pursuant thereto, or by reason of any fraud, dishonesty, misrepresentation or concealment of material fact growing out of any real estate marketing activity.

(b) To satisfy an order of the commissioner if the commissioner determines that a violation of this section or ORS 696.603 or 696.612 or a rule adopted pursuant thereto has occurred and directs the payment of a claim from the deposit provided the following conditions have been met:

(A) The amount of actual damages claimed, excluding attorney fees, by the consumer is $1,000 or less.

(B) The consumer has first contacted the real estate marketing organization involved and, in writing, has made demand for payment of actual damages.

(C) The real estate marketing organization has had 30 calendar days from the date of the consumer's written demand to deal with the demand.

(D) The claim is only for actual damages sustained by the consumer.

(8) All claims against the deposit under subsection (3) or (4) of this section of a real estate marketing organization, other than those described in subsection (7) of this section, must be paid by the commissioner only upon the receipt of a final court judgment against the real estate marketing organization and only in the amount of actual damages as ordered by the court. [1995 c.217 §4; 1999 c.107 §12; 2005 c.730 §39; 2011 c.9 §89]

696.609 Exemptions from ORS 696.392, 696.600 to 696.785 and 696.995. ORS 696.392, 696.600 to 696.785 and 696.995 do not apply to an individual licensed under ORS 696.022 or to those persons exempt under ORS 696.030 from licensing under ORS 696.020. [1995 c.217 §5; 2001 c.300 §42; 2007 c.319 §17]

696.610 [Repealed by 1981 c.617 §41]

696.612 Grounds for disciplinary action. The Real Estate Commissioner may suspend or revoke the license of any real estate marketing organization or reprimand any licensee, or may deny the issuance or renewal of a license to an applicant who has done any of the following:

(1) Knowingly or negligently pursued a course of material misrepresentation in matters related to real estate marketing activity, whether or not damage or injury resulted, or

knowingly or negligently made any material misrepresentation or material false promise in a matter related to real estate marketing activity if the material misrepresentation or material false promise created a reasonable probability of damage or injury, whether or not damage or injury actually resulted.

(2) Failed, within a reasonable time, to account for or to remit any moneys or to surrender to the rightful owner any documents or other valuable property coming into the possession of the real estate marketing organization that belongs to others.

(3) Disregarded or violated any provision of this section, ORS 696.603 or 696.606 or any rule adopted pursuant thereto.

(4) Guaranteed, authorized or permitted any person to guarantee future profits that may result from the resale of real property.

(5) Failed or refused upon demand to produce or to supply true copies of any document, book or record in the possession or control of the real estate marketing organization for inspection by the commissioner or the commissioner's authorized representative.

(6) Failed to register and maintain the current and accurate names of, and information regarding, each real estate marketing employee of the real estate marketing organization.

(7) Procured or attempted to procure a real estate marketing license by fraud, misrepresentation or deceit or by making any material misstatement of fact in an application for a real estate marketing license.

(8) Failed to exercise supervision over the activities of real estate marketing employees. For the purposes of this subsection, "supervision" means that management by an organization that is reasonably designed and implemented to result in compliance by the employees of the organization with this section, ORS 696.603 or 696.606 or any rule adopted pursuant thereto.

(9) Engaged in any act or conduct, whether of the same or of a different character specified in this subsection, that constitutes or demonstrates bad faith, incompetence, untrustworthiness or dishonest, fraudulent or improper dealings.

(10) Failed to meet or maintain the deposit requirements of ORS 696.606 (3) or (4).

(11) Failed to pay in full any final judgment on claims adjudged by the commissioner or by a court of competent jurisdiction.

(12) Violated ORS 646.608. [1995 c.217 §6]

696.615 Publication of sanctions imposed for violations. The Real Estate Commissioner shall publish information in local newspapers pertaining to sanctions imposed for violations of ORS 696.603, 696.606 or 696.612 in a manner allowed under ORS 696.430 and 696.445 (3). [1995 c.217 §7]

696.618 Denial of right to court action for unlicensed real estate marketing organization. No person carrying on, conducting or transacting any real estate marketing activity may maintain any suit or action in any of the courts of this state to enforce any claim arising out of real estate marketing activity without alleging and proving that the person was licensed under ORS 696.606 at the time of performing such activities. [1995 c.217 §8]

696.620 [Amended by 1975 c.491 §7; repealed by 1981 c.617 §41]

696.621 Real Estate Marketing Account. The Real Estate Marketing Account is established as an account in the General Fund of the State Treasury. All moneys received by the Real Estate Agency pursuant to ORS 696.392, 696.600 to 696.785 and 696.995 shall be paid into the State Treasury and credited to the account. All moneys in the account are appropriated continuously to the Real Estate Agency to carry out the provisions of ORS 696.392, 696.600 to 696.785 and 696.995. [1995 c.217 §9; 2001 c.300 §67]

696.624 Consent by nonresident real estate marketing organization to service of summons or process required. (1) Every nonresident real estate marketing organization, at the time of licensing, shall file with the Real Estate Commissioner an irrevocable consent that if, in any suit or action commenced against the nonresident organization in this state arising out of a violation of any provision of ORS 696.603, 696.606 or 696.612, personal service of summons or process upon the nonresident organization cannot be made in this state after the exercise of due diligence, a valid service may be made upon the nonresident organization by service on the commissioner.

(2) The consent shall be in writing, executed and verified by an officer of the real estate marketing organization and shall set forth:

(a) The name of the real estate marketing organization.

(b) The address to which documents served upon the commissioner are to be forwarded.

(c) If the real estate marketing organization is a corporation or unincorporated association, that the consent signed by such officer was authorized by resolution duly adopted by the board of directors.

(3) The address for forwarding documents served under this section may be changed by filing a new consent in the form prescribed in subsection (2) of this section.

(4) Service on the commissioner of any summons or process shall be made by delivery to the commissioner or a clerk on duty in any office of the commissioner, and shall include duplicate copies of such summons or process, together with duplicate copies of any papers required by law to be delivered in connection with such service.

(5) When the commissioner is served with any such summons or process, the commissioner shall immediately cause one of the copies thereof, with any accompanying papers, to be forwarded by registered or certified mail, return receipt requested, to the real estate marketing organization at the address set forth in the consent.

(6) The commissioner shall keep a record of all summonses and processes, notices and demands served upon the commissioner under this section, and shall record therein the time of such service and the action with reference thereto. [1995 c.217 §11]

696.627 On-site inspection allowed; deposit. (1) The Real Estate Commissioner may make an on-site inspection of any real estate marketing organization.

(2) When an on-site inspection under subsection (1) of this section is to be made, the commissioner may require the organization to advance a deposit not to exceed $200 per day, in addition to any other fee, for making the on-site inspection. Any unexpended portion of the deposit shall be refunded to the organization. [1995 c.217 §12]

696.630 [Repealed by 1981 c.617 §41]

696.640 [Repealed by 1981 c.617 §41]

ACTIONS AND REMEDIES

696.710 Necessity of alleging license in action to collect compensation. (1) An individual engaged in the business of, or acting in the capacity of, a real estate broker or principal real estate broker within this state may not bring or maintain any action in the courts for the collection of compensation without alleging and proving that the individual was a licensed broker when the alleged cause of action arose.

(2) An action in the courts for collection of compensation for an individual engaged in the business of, or acting in the capacity of, a real estate broker associated with a principal real estate broker may not be brought or maintained except by the principal real estate broker with whom the real estate broker was associated when the alleged cause of action arose. [Amended by 1981 c.617 §32; 1991 c.5 §44; 2001 c.300 §43; 2007 c.319 §18]

696.720 Remedies are concurrent. The remedies provided for in ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.995 are in addition to and not exclusive of any other remedies provided by law.

696.730 Jurisdiction of courts for violations; revoking license upon conviction; copy of order to commissioner. Any court of competent jurisdiction, including a justice court, has full power to hear any violation of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.995 by an individual licensed under ORS 696.022, and, upon finding a violation, the court may, at its discretion and in addition to the other penalties imposed, revoke the license of the individual found to have violated any provision of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.995. The clerk of the court shall forward a copy of any order revoking a real estate license to the Real Estate Commissioner. [Amended by 1987 c.468 §5; 2001 c.300 §79; 2007 c.319 §19]

696.740 [1971 c.734 §161; repealed by 1981 c.617 §41]

696.745 [1975 c.746 §33; 1977 c.649 §56; repealed by 1981 c.617 §41]

696.775 Authority of commissioner when license lapsed, expired, revoked, suspended or surrendered. 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. [1977 c.649 §3; 1981 c.617 §32a; 2005 c.116 §12; 2007 c.319 §20]

696.785 Commissioner duties when illegal commingling of funds found; receivership procedure. (1) When the Real Estate Commissioner ascertains by audit, investigation or otherwise that a real estate licensee has commingled trust funds with personal funds or has embezzled trust funds and that such activity is likely to cause significant financial loss to others as a result of professional real estate activity engaged in by such licensee, the commissioner may communicate such fact to the Attorney General, whereupon it shall become the duty of the Attorney General to forthwith assist the

commissioner in instituting such proceedings as may be necessary to carry out the purposes of this section.

(2) Pursuant to subsection (1) of this section, the commissioner may apply to the circuit court of the county in which the licensee's principal place of business is located for an order directing the licensee to show cause why a receiver should not be appointed to take charge of and manage or liquidate if necessary the assets of the licensee utilized in professional real estate activity in such a manner as to prevent or minimize such financial loss to others.

(3) If the court is satisfied from reading the commissioner's petition that the facts therein alleged, if established, warrant such receivership action, the court shall issue such order to show cause. The court may at such time, without notice, issue a temporary injunction restraining such licensee, or any of the licensee's officers, directors, stockholders, members, agents or employees, from the transaction of any professional real estate activity, or the waste or disposition of any such assets until further order of the court. Should such an injunction be issued, a hearing on whether the injunction shall be continued shall be held within five business days of its service.

(4) On return of the order to show cause, and after a full hearing, the court shall either deny the application or grant the same, together with such other relief as the court may deem necessary.

(5) Notwithstanding any other provision of law, no bond shall be required of the commissioner or the commissioner's authorized representatives as a prerequisite for the issuance of any injunction or other order pursuant to this section.

(6) At any time during such proceedings, the licensee may satisfy the court that the activity which prompted such proceedings has been rectified or that financial loss to others no longer will likely occur, in which case the court may dismiss such proceedings.

(7) The expenses of the receiver, compensation of the legal counsel of the receiver, as well as all expenditures of the receiver required in such proceedings shall be fixed by the court and shall be paid out of funds in the hands of the receiver or entered as a judgment against such licensee. [1977 c.649 §8; 1981 c.617 §33]

MISCELLANEOUS

696.790 Authority of commissioner to require fingerprints. For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the Real Estate Commissioner may require the fingerprints of an individual who:

(1) Is applying for a license, or renewal of a license, under this chapter; or

(2)(a)(A) Is employed or applying for employment by the Real Estate Agency; or

(B) Provides services or seeks to provide services to the Real Estate Agency as a contractor or volunteer; and

(b) Is, or will be, working or providing services in a position:

(A) In which the individual is providing information technology services and has control over, or access to, information technology systems that would allow the individual to harm the information technology systems or the information contained in the systems;

(B) In which the individual has access to information that state or federal laws, rules or regulations prohibit disclosing or define as confidential;

(C) That has payroll functions or in which the individual has responsibility for receiving, receipting or depositing money or negotiable instruments, for billing, collections or other financial transactions or for purchasing or selling property or has access to property held in trust or to private property in the temporary custody of the state;

(D) That has mailroom duties as a primary duty or job function;

(E) That has personnel or human resources functions as a primary responsibility;

(F) In which the individual has access to Social Security numbers, dates of birth or criminal background information of employees or members of the public; or

(G) In which the individual has access to tax or financial information about individuals or business entities. [1989 c.724 §14; 2005 c.730 §40; 2007 c.619 §4]

696.793 [1989 c.724 §15; repealed by 2005 c.730 §77]

696.795 Authority of commissioner to conduct investigations and proceedings. (1) For the purpose of an investigation or proceeding under this chapter, the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of books, papers, correspondence, memoranda, agreements or other documents or records which the commissioner deems relevant or material to the inquiry. Each witness who appears before the commissioner under a subpoena shall receive the fees and mileage provided for witnesses in civil cases.

(2) If a person fails to comply with a subpoena so issued or a party or witness refuses to testify on any matters, the judge of

the circuit court or of any county, on the application of the commissioner, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. [1989 c.724 §16]

AGENTS' OBLIGATIONS

696.800 Definitions. As used in ORS 696.392, 696.600 to 696.785, 696.800 to 696.870 and 696.995, unless the context requires otherwise:

(1) "Agent" means:

(a) A real estate broker or principal real estate broker who has entered into:

(A) A listing agreement with a seller;

(B) A service contract with a buyer to represent the buyer; or

(C) A disclosed limited agency agreement; or

(b) An individual licensed under ORS 696.022 who has entered into a written contract with a real estate broker or principal real estate broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision.

(2) "Buyer" means a potential transferee in a real property transaction, and includes a person who:

(a) Executes an offer to purchase real property from a seller through an agent; or

(b) Enters into an exclusive representation contract or buyer's service agreement with a real estate broker or principal real estate broker, whether or not a sale or transfer of property results.

(3) "Confidential information" means information communicated to a real estate licensee or the licensee's agent by the buyer or seller of one to four residential units regarding the real property transaction, including but not limited to price, terms, financial qualifications or motivation to buy or sell. "Confidential information" does not mean information that:

(a) The buyer instructs the licensee or the licensee's agent to disclose about the buyer to the seller or the seller instructs the licensee or the licensee' agent to disclose about the seller to the buyer; and

(b) The licensee or the licensee's agent knows or should know failure to disclose would constitute fraudulent representation.

(4) "Disclosed limited agency" means a real property transaction in which the representation of a buyer and seller or the representation of two or more buyers occurs within the same real estate business.

(5) "Listing agreement" means a contract between a seller of real property and a real estate broker or principal real estate broker by which the broker has been authorized to act as an agent of the seller for compensation to offer the real property for sale or to find and obtain a buyer.

(6) "Listing price" means the amount expressed in dollars, specified in the listing agreement, for which the seller is willing to sell the real property through the listing agent.

(7) "Offer" means a written proposal executed by a buyer for the sale or lease of real property.

(8) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property.

(9) "Principal" means the person who has permitted or directed an agent to act on the principal's behalf. In a real property transaction, this generally means the buyer or the seller.

(10) "Real property" means any estate in real property, including a condominium as defined in ORS 100.005, a timeshare property as defined in ORS 94.803 and the granting of an option or right of first refusal. "Real property" also includes a manufactured structure, as defined in ORS 446.561, owned by the same person who owns the land upon which the manufactured structure is situated. "Real property" does not include a leasehold in real property.

(11) "Real property transaction" means a transaction regarding real property in which an agent is employed by one or more of the principals to act in that transaction and includes but is not limited to listing agreements, buyer's service agreements, exclusive representation contracts and offers to purchase.

(12) "Sale" or "sold" refers to a transaction for the transfer of real property from the seller to the buyer and includes:

(a) Exchanges of real property between the seller and the buyer and third parties; and

(b) Land sales contracts.

(13) "Seller" means a potential transferor in a real property transaction and includes an owner:

(a) Who enters into a listing agreement with a real estate broker or principal real estate broker, whether or not a transfer results; or

(b) Who receives an offer to purchase real property, of which the seller is the owner, from an agent acting on behalf of a

buyer. [1993 c.570 §2; 2001 c.300 §44; 2003 c.655 §84; 2005 c.116 §§13,14; 2007 c.319 §21]

Note: Section 351, chapter 79, Oregon Laws 1995, provides:

Sec. 351. The provisions of ORS 696.800 to 696.855 [series became 696.800 to 696.870] apply to ORS 696.010 to 696.495. [1995 c.79 §351]

696.805 Real estate licensee as seller's agent; obligations. (1) A real estate licensee who acts under a listing agreement with the seller acts as the seller's agent only.

(2) A seller's agent owes the seller, other principals and the principals' agents involved in a real estate transaction the following affirmative duties:

(a) To deal honestly and in good faith;

(b) To present all written offers, written notices and other written communications to and from the parties in a timely manner without regard to whether the property is subject to a contract for sale or the buyer is already a party to a contract to purchase; and

(c) To disclose material facts known by the seller's agent and not apparent or readily ascertainable to a party.

(3) A seller's agent owes the seller involved in a real estate transaction the following affirmative duties:

(a) To exercise reasonable care and diligence;

(b) To account in a timely manner for money and property received from or on behalf of the seller;

(c) To be loyal to the seller by not taking action that is adverse or detrimental to the seller's interest in a transaction;

(d) To disclose in a timely manner to the seller any conflict of interest, existing or contemplated;

(e) To advise the seller to seek expert advice on matters related to the transaction that are beyond the agent's expertise;

(f) To maintain confidential information from or about the seller except under subpoena or court order, even after termination of the agency relationship; and

(g) Unless agreed otherwise in writing, to make a continuous, good faith effort to find a buyer for the property, except that a seller's agent is not required to seek additional offers to purchase the property while the property is subject to a contract for sale.

(4) A seller's agent may show properties owned by another seller to a prospective buyer and may list competing properties for sale without breaching any affirmative duty to the seller.

(5) Except as provided in subsection (3)(g) of this section, an affirmative duty may not be waived.

(6) Nothing in this section implies a duty to investigate matters that are outside the scope of the real estate licensee's expertise, including but not limited to investigation of the condition of property, the legal status of the title or the owner's past conformance with law, unless the licensee or the licensee's agent agrees in writing to investigate a matter. [1993 c.570 §3; 2001 c.300 §45; 2003 c.398 §11; 2005 c.393 §6]

Note: See note under 696.800.

696.810 Real estate licensee as buyer's agent; obligations. (1) A real estate licensee other than the seller's agent may agree with the buyer to act as the buyer's agent only. The buyer's agent is not representing the seller, even if the buyer's agent is receiving compensation for services rendered, either in full or in part, from the seller or through the seller's agent.

(2) A buyer's agent owes the buyer, other principals and the principals' agents involved in a real estate transaction the following affirmative duties:

(a) To deal honestly and in good faith;

(b) To present all written offers, written notices and other written communications to and from the parties in a timely manner without regard to whether the property is subject to a contract for sale or the buyer is already a party to a contract to purchase; and

(c) To disclose material facts known by the buyer's agent and not apparent or readily ascertainable to a party.

(3) A buyer's agent owes the buyer involved in a real estate transaction the following affirmative duties:

(a) To exercise reasonable care and diligence;

(b) To account in a timely manner for money and property received from or on behalf of the buyer;

(c) To be loyal to the buyer by not taking action that is adverse or detrimental to the buyer's interest in a transaction;

(d) To disclose in a timely manner to the buyer any conflict of interest, existing or contemplated;

(e) To advise the buyer to seek expert advice on matters related to the transaction that are beyond the agent's expertise;

(f) To maintain confidential information from or about the buyer except under subpoena or court order, even after termination of the agency relationship; and

(g) Unless agreed otherwise in writing, to make a continuous, good faith effort to find property for the buyer, except that a buyer's agent is not required to seek additional properties for the buyer while the buyer is subject to a contract for purchase or to show properties for which there is no written agreement to pay compensation to the buyer's agent.

(4) A buyer's agent may show properties in which the buyer is interested to other prospective buyers without breaching an affirmative duty to the buyer.

(5) Except as provided in subsection (3)(g) of this section, an affirmative duty may not be waived.

(6) Nothing in this section implies a duty to investigate matters that are outside the scope of the real estate licensee's expertise, including but not limited to investigation of the condition of property, the legal status of the title or the owner's past conformance with law, unless the licensee or the licensee's agent agrees in writing to investigate a matter. [1993 c.570 §4; 2001 c.300 §46; 2003 c.398 §12; 2005 c.393 §7]

Note: See note under 696.800.

696.815 Representation of both buyer and seller; obligations. (1) A real estate licensee may represent both the seller and the buyer in a real estate transaction under a disclosed limited agency agreement, with full disclosure of the relationship under the agreement.

(2) A real estate licensee acting pursuant to a disclosed limited agency agreement has the following duties and obligations:

(a) To the seller, the duties under ORS 696.805;

(b) To the buyer, the duties under ORS 696.810; and

(c) To both seller and buyer, except with express written permission of the respective person, the duty not to disclose to the other person:

(A) That the seller will accept a price lower or terms less favorable than the listing price or terms;

(B) That the buyer will pay a price greater or terms more favorable than the offering price or terms; or

(C) Specific confidential information as defined in ORS 696.800 (3).

(3) Nothing in this section implies a duty to investigate matters that are outside the scope of the real estate licensee's expertise unless the licensee agrees in writing to investigate a matter.

(4) In a real estate transaction in which different real estate brokers associated with the same principal real estate broker establish agency relationships with different parties to the real estate transaction, the principal real estate broker shall be the only broker acting as a disclosed limited agent representing both seller and buyer. Other brokers shall continue to represent only the party with whom the broker has an agency relationship unless all parties agree otherwise in writing.

(5) The principal real estate broker and the real estate licensees representing either seller or buyer shall owe the following duties to the seller and buyer:

(a) To disclose a conflict of interest in writing to all parties;

(b) To take no action that is adverse or detrimental to either party's interest in the transaction; and

(c) To obey the lawful instructions of both parties. [1993 c.570 §5; 2001 c.300 §47]

Note: See note under 696.800.

696.820 Agency disclosure pamphlet; rules. (1) The Real Estate Commissioner shall prescribe by rule the format and content of an initial agency disclosure pamphlet. The rules must provide that the initial agency disclosure pamphlet is informational only and may not be construed to be evidence of intent to create an agency relationship.

(2) An agent shall provide a copy of the initial agency disclosure pamphlet at the first contact with each party to a real property transaction, including but not limited to contacts in person, by telephone, over the Internet or the World Wide Web, or by electronic mail, electronic bulletin board or a similar electronic method. [1993 c.570 §6; 2001 c.300 §48; 2005 c.116 §15]

Note: See note under 696.800.

696.822 Liability of principal for act, error or omission of agent or subagent. (1) A principal is not liable for an act, error or omission by an agent or subagent of the principal arising out of an agency relationship established under ORS 696.805, 696.810, 696.815 or 696.820:

(a) Unless the principal participates in or authorizes the act, error or omission; and

(b) Only to the extent that:

(A) The principal benefited from the act, error or omission; and

(B) A court or arbitrator determines that it is highly probable that the claimant would be unable to enforce a judgment against the agent or subagent of the principal.

(2) A real estate licensee is not liable for an act, error or omission by a principal or an agent of a principal that is not related to

the licensee unless the licensee participates in or authorizes the act, error or omission. This subsection does not limit the liability of a principal real estate broker for an act, error or omission by a real estate licensee under the principal broker's supervision.

(3) Unless acknowledged by a principal in writing, facts known by an agent or subagent of the principal may not be imputed to the principal if the principal does not have actual knowledge.

(4) Unless acknowledged by a real estate licensee in writing, facts known by a principal or an agent of the principal may not be imputed to the licensee if the licensee does not have actual knowledge. This subsection does not limit the knowledge imputed to a principal real estate broker of facts known by a real estate licensee under the supervision of the principal real estate broker. [2001 c.300 §52]

Note: See note under 696.800.

696.825 [1993 c.570 §7; repealed by 2001 c.300 §84]

696.830 [1993 c.570 §8; repealed by 2001 c.300 §84]

696.835 Buyer and seller responsibilities. None of the affirmative obligations of a real estate licensee or agent in a real estate transaction under ORS 696.805, 696.810 or 696.815 relieves a seller or a buyer from the responsibility to protect the seller's or buyer's own interests respectively. [1993 c.570 §9]

Note: See note under 696.800.

696.840 Compensation and agency relationships. The payment of compensation or the obligation to pay compensation to a real estate licensee by the seller or the buyer is not necessarily determinative of a particular agency relationship between a real estate licensee and the seller or the buyer. After full disclosure of agency relationships, a listing agent, a selling agent or a real estate licensee or any combination of the three may agree to share any compensation paid, or any right to any compensation for which an obligation arises as the result of a real property transaction, and the terms of the agreement shall not necessarily be determinative of a particular relationship. Nothing in this section shall prevent the parties from selecting a relationship not specifically prohibited by ORS 696.301, 696.392, 696.600 to 696.785, 696.800 to 696.870 and 696.995. [1993 c.570 §10; 2007 c.337 §8]

Note: See note under 696.800.

696.845 Acknowledgment of existing agency relationships form; rules. When signing an offer to purchase, each buyer shall acknowledge the existing agency relationships, if any. When a seller accepts or rejects an offer to purchase in writing, each seller shall acknowledge the existing agency relationships, if any. An agent to the real property transaction shall obtain the signatures of the buyers and the sellers to the acknowledgment, which shall be incorporated into or attached as an addendum to the offer to purchase or to the acceptance. The Real Estate Agency shall prescribe by rule the form and content of the acknowledgment of existing agency relationships. [1993 c.570 §11; 2001 c.300 §49; 2003 c.398 §13; 2005 c.116 §16]

Note: See note under 696.800.

696.855 Common law application to statutory obligations and remedies. (1) ORS 696.301, 696.392, 696.600 to 696.785, 696.890 and 696.995 do not directly, indirectly or by implication limit or alter any preexisting common law or statutory right or remedy including actions for fraud, negligence or equitable relief.

(2) Common law and statutory remedies are not affected by ORS 696.301, 696.392, 696.600 to 696.785, 696.890 and 696.995. [1993 c.570 §12; 2001 c.300 §49a; 2011 c.158 §2]

Note: See note under 696.800.

696.870 Duties of real estate licensee under ORS 105.462 to 105.490, 696.301 and 696.870. (1)(a) A real estate licensee representing a seller of real property has a duty to inform each represented seller of the seller's duties created by this section and ORS 105.462 to 105.490 and 696.301.

(b) A real estate licensee representing a buyer of real property has a duty to inform each represented buyer of the buyer's rights under this section and ORS 105.462 to 105.490 and 696.301.

(2) If a real estate licensee performs the duties set forth in subsection (1) of this section, the real estate licensee shall have no further duties under this section.

(3) Notwithstanding subsections (1) and (2) of this section, for the purposes of ORS 696.301, a real estate licensee:

(a) Representing a seller by written agreement or course of conduct is bound by the standards of conduct and duties created under ORS 696.805;

(b) Representing a buyer by written agreement or course of conduct is bound by the standards of conduct and duties created under ORS 696.810; and

(c) Acting as a disclosed limited agent by a written agreement or course of conduct is bound by the standards of conduct and duties created under ORS 696.815. [1993 c.547 §6; 2001 c.300 §50]

Note: See note under 696.800.

696.880 Licensee not required to disclose proximity of registered sex offender. Nothing in ORS 181.800 to 181.845, 696.301, 696.805, 696.810, 696.815 or 696.855

creates an obligation on the part of a person licensed under this chapter to disclose to a potential purchaser of residential property that a sex offender registered under ORS 181.806, 181.807, 181.808 or 181.809 resides in the area. [1999 c.732 §2; 2001 c.300 §73; 2011 c.271 §24; 2013 c.708 §28]

Note: 696.880 was added to and made a part of ORS chapter 696 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

DUTIES OF REAL ESTATE PROPERTY MANAGERS

696.890 Duties of real estate property managers. (1) As used in this section:

(a) "Management of rental real estate" has the meaning given that term in ORS 696.010.

(b) "Property management agreement" has the meaning given that term in ORS 696.010.

(c) "Real estate property manager" has the meaning given that term in ORS 696.010.

(2) A real estate property manager who represents a property owner, for compensation, in the management of rental real estate is the property owner's agent.

(3) A real estate property manager may engage in the management of rental real estate for an owner of rental real estate only pursuant to a property management agreement.

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

(a) To deal honestly and in good faith;

(b) To disclose material facts known by the property manager and not apparent or readily ascertainable to the owner;

(c) To exercise reasonable care and diligence;

(d) To account in a timely manner for all funds received from or on behalf of the owner;

(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;

(g) To disclose in a timely manner to the owner any existing or contemplated conflict of interest;

(h) To advise the owner to seek expert advice on matters that are beyond the property manager's expertise; and

(i) To maintain as confidential all information from or about the owner, except under subpoena or court order, even after the agency relationship ends.

(5) The affirmative duties listed in subsection (4) of this section may not be waived.

(6) Nothing in this section implies a duty beyond or in addition to those activities that are reasonably within the scope of the management of rental real estate. [2011 c.158 §1; 2013 c.145 §2]

Note: 696.890 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 696 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PENALTIES

696.990 Penalties. (1) Violation of any provision of ORS 696.010 to 696.130, 696.200, 696.205, 696.241 to 696.375, 696.392, 696.395 to 696.430, 696.490, 696.600 to 696.785 and 696.995 is a Class A misdemeanor.

(2) Any officer, director or shareholder or agent of a corporation, or member or agent of a partnership or association, who personally participates in or is an accessory to any violation of ORS 696.010 to 696.130, 696.200, 696.205, 696.241 to 696.375, 696.392, 696.395 to 696.430, 696.490, 696.600 to 696.785 and 696.995 by the partnership, association or corporation, is subject to the penalties prescribed in subsection (1) of this section.

(3) A violation of any one of the provisions of ORS 696.505 to 696.590 is a Class A misdemeanor.

(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.

(5) In addition to the civil penalty set forth in subsection (4) of this section, any person that violates ORS 696.020 may be required by the commissioner to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the commissioner but not to exceed the amount by which such person profited in any transaction that violates ORS 696.020.

(6)(a) Except as provided in paragraph (b) of this subsection, a real estate licensee who is a real estate property manager or principal real estate broker and who is engaging in or who has engaged in the management of rental real estate may be required to forfeit and pay to the General Fund of the State Treasury a civil penalty of up to $1,000 per

day of violation, or a lesser penalty in an amount determined by the commissioner, if the licensee fails to comply with rules that require the licensee to produce for inspection records related to the management of rental real estate that are maintained by the licensee as provided by ORS 696.280.

(b) A civil penalty imposed under this subsection may not exceed $10,000.

(7) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(8) The civil penalty provisions of subsections (4) to (6) of this section are in addition to and not in lieu of the criminal penalties for unlicensed professional real estate activity in subsections (1) and (2) of this section.

(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.

(10) Subsection (5) of this section does not apply to 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. [Subsection (3) enacted as 1963 c.440 §18; 1977 c.649 §50; 1981 c.617 §34; 1989 c.724 §11; 1991 c.734 §86; 2001 c.300 §68; 2005 c.116 §17; 2005 c.393 §8; 2007 c.319 §23; 2009 c.224 §7]

696.995 Civil penalties for violation of ORS 696.603, 696.606 or 696.612. (1) Any person who violates ORS 696.603, 696.606 or 696.612 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 violation of ORS 696.603, 696.606 or 696.612 or a rule adopted pursuant thereto; or

(b) Not less than $500 nor more than $1,000 for the second and subsequent violations of ORS 696.603, 696.606 or 696.612 or a rule adopted pursuant thereto.

(2) In addition to the civil penalty set forth in subsection (1) of this section, any person who violates ORS 696.603 may be required by the commissioner to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the commissioner but not to exceed the amount by which such person profited from the transaction in violation of ORS 696.603.

(3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(4) The civil penalty provisions of this section are in addition to and not in lieu of other administrative sanctions. [1995 c.217 §10]