

Enrolled Senate Bill 206

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CHAPTER

AN ACT

Relating to real estate licensees; creating new provisions; and amending ORS 696.010, 696.022, 696.130, 696.200, 696.270, 696.301, 696.805, 696.810 and 696.845 and sections 1, 2, 3, 5 and 7, chapter 300, Oregon Laws 2001.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 1, chapter 300, Oregon Laws 2001, is amended to read:

Sec. 1. (1) A person who, on *[the effective date of this 2001 Act]* **June 30, 2002**, holds or is qualified to hold a real estate broker's license described in ORS 696.025 (1) *[(1999 Edition)]* shall receive a license under *[section 9 of this 2001 Act]* **ORS 696.022**. At the person's option and request, the person may receive either a real estate broker's license or a principal real estate broker's license.

(2) A person who, on *[the effective date of this 2001 Act]* **June 30, 2002**, holds or is qualified to hold a designated real estate broker's license described in ORS 696.025 (3) *[(1999 Edition)]* shall receive a license under *[section 9 of this 2001 Act]* **ORS 696.022**. At the person's option and request, the person may receive either a real estate broker's license or a principal real estate broker's license.

(3) A person who, on *[the effective date of this 2001 Act]* **June 30, 2002**, holds or is qualified to hold an associate real estate broker's license described in ORS 696.025 (4) *[(1999 Edition)]* shall receive a license under *[section 9 of this 2001 Act]* **ORS 696.022**. At the person's option and request, the person may receive either a real estate broker's license or a principal real estate broker's license.

SECTION 2. Section 2, chapter 300, Oregon Laws 2001, is amended to read:

Sec. 2. (1) Except as provided in subsection (4) of this section, a person who, on *[the effective date of this 2001 Act]* **June 30, 2002**, holds or is qualified to hold a real estate salesperson's license described in ORS 696.025 (6) *[(1999 Edition)]* may lawfully engage in all of the professional real estate activities of a real estate broker associated with a principal real estate broker under *[section 9 of this 2001 Act]* **ORS 696.022**.

(2) If a person who holds a real estate salesperson's license on *[the effective date of this 2001 Act]* **June 30, 2002**, successfully completes courses in contract law, trust accounting, property management and real estate closings, the Real Estate Commissioner shall issue a real estate broker's license under *[section 9 of this 2001 Act]* **ORS 696.022** to the person. The courses are subject to approval by the commissioner. The courses must be completed *[within three years after the effective date of this 2001 Act]* **by June 30, 2005**.

(3) If a person who holds a real estate salesperson's license fails to demonstrate successful completion of the required courses prior to the expiration of the period prescribed by the Real Estate Agency by rule, the real estate salesperson's license shall be canceled and a real estate broker's license may not be issued. Thereafter, the person may not engage in professional real estate activity unless a license is issued subsequently to the person under [section 9 of this 2001 Act] **ORS 696.022**.

(4) A person who holds a valid real estate salesperson's license may engage in all of the professional real estate activities of a real estate broker only if the person is associated with a principal real estate broker. A real estate salesperson may engage in professional real estate activities as a sole practitioner only if the person is licensed as a real estate broker or principal real estate broker under [section 9 of this 2001 Act] **ORS 696.022**.

(5) A person who, on [the effective date of this 2001 Act] **June 30, 2002**, holds or is qualified to hold a real estate salesperson's license described in ORS 696.025 (6) [(1999 Edition)] shall be designated a temporary associate broker.

SECTION 3. Section 3, chapter 300, Oregon Laws 2001, is amended to read:

Sec. 3. (1) A person who, on [the effective date of this 2001 Act] **June 30, 2002**, holds or is qualified to hold a real estate property manager's license described in ORS 696.025 (5) [(1999 Edition)] shall receive a temporary real estate property manager's license. A person who holds a valid temporary real estate property manager's license may lawfully engage in all of the professional property management activities of a person licensed as a real estate property manager under [section 9 of this 2001 Act] **ORS 696.022**.

(2) If a person who holds a temporary real estate property manager's license successfully completes courses in trust accounting, record keeping and basic accounting, the Real Estate Commissioner shall issue to the person a real estate property manager's license under [section 9 of this 2001 Act] **ORS 696.022**. The courses are subject to approval by the commissioner. The courses must be completed within a period prescribed by the Real Estate Agency by rule, but the period may not expire [less than one year from the effective date of this 2001 Act] **before July 1, 2003**.

(3) If a person who holds a temporary real estate property manager's license fails to demonstrate successful completion of the required courses prior to the expiration of the period prescribed by the agency, the temporary real estate property manager's license shall be canceled and a real estate property manager's license may not be issued. Thereafter, the person may not engage in professional real estate property management activity unless a real estate property manager's license is issued subsequently under [section 9 of this 2001 Act] **ORS 696.022**.

SECTION 4. Section 5, chapter 300, Oregon Laws 2001, is amended to read:

Sec. 5. Sections [1 to 4 of this 2001 Act] **1, 2, 3 and 4, chapter 300, Oregon Laws 2001**, are repealed on [January 1, 2005] **July 1, 2005**.

SECTION 5. Section 7, chapter 300, Oregon Laws 2001, is amended to read:

Sec. 7. (1) Upon the issuance by the Real Estate Commissioner of the licenses as provided in sections 1, 2, 3 and 4 [of this 2001 Act], **chapter 300, Oregon Laws 2001**, every outstanding real estate broker's license, designated real estate broker's license, associate real estate broker's license, real estate salesperson's license and real estate property manager's license issued under ORS 696.025 [(1999 Edition)] is void.

(2) The term of a license issued under section 1, 2 or 3 [of this 2001 Act], **chapter 300, Oregon Laws 2001**, does not extend beyond the term of the license being converted.

(3) All branch office licenses issued under ORS 696.200 [(1999 Edition)] are void.

(4) All real estate organization licenses issued under ORS 696.025 (2) and 696.080 [(both 1999 Edition)] are void.

SECTION 6. ORS 696.010 is amended to read:

696.010. As used in ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.855, 696.990 and 696.995, unless the context requires otherwise:

(1) "Agency" means the Real Estate Agency.

(2) “Associated with” means to be employed, engaged or otherwise supervised by, with respect to the relationship between a real estate broker and a principal real estate broker.

(3) “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.

(4) “Board” means the Real Estate Board.

(5)(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 which 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 distribution and dissemination, so long as the unit is at all times available for sale, lease, lease option or exchange.

(6) “Commissioner” means the Real Estate Commissioner.

(7) “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.

(8) “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.

(9) “Inactive license” means a license which has been returned to the commissioner and is being held by the commissioner on an inactive status.

(10) “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. The 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.

(11)(a) “Management of rental real estate” means 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) Consulting with prospective buyers regarding purchase of the real estate;*]

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

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

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

(b) "Management of rental real estate" also means 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) "Principal real estate broker" means a real estate broker who *[is qualified to employ, engage or otherwise supervise other real estate brokers and who]* is licensed as a principal real estate broker **and who employs, engages or supervises another real estate broker.**

(13) "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. Such activity performed by a state certified appraiser or state licensed appraiser is not professional real estate activity.

(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 (1)(k), 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.

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

(14) "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.

(15) "Real estate broker" means a person who engages in professional real estate activity and who is licensed as a real estate broker.

(16) "Real estate licensee" means a real estate broker, principal real estate broker or real estate property manager.

(17) “Real estate property manager” means a real estate licensee who is authorized to engage in management of rental real estate.

(18) “Registered business name” means a name registered with the Real Estate Agency under which the person registering the name engages in professional real estate activity.

SECTION 7. ORS 696.022 is amended to read:

696.022. (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; and

(d) The term of a license in each category.

(2)(a) A real estate broker may engage in all of the professional activities of a real estate broker described in this chapter. A real estate broker may conduct professional real estate activities as a sole practitioner or in conjunction with other real estate brokers or principal real estate brokers after the person has acquired three years of active experience as a real estate broker. A real estate broker may not employ, engage or otherwise supervise the professional activities of another real estate broker or principal real estate broker.

(b) In order to qualify for a real estate broker’s license, an applicant must furnish proof satisfactory to the Real Estate Commissioner that the applicant has successfully completed the basic real estate broker’s educational courses and the examination required by rule of the agency. Proof of completion of all required courses must be provided at the time of applying for the license.

(3)(a) A principal real estate broker may engage in all of the professional activities of a real estate broker described in this chapter. A principal real estate broker may conduct professional real estate activities as a sole practitioner or in conjunction with other real estate brokers or principal real estate brokers. In addition, a principal real estate broker may employ, engage and otherwise supervise the professional activities of real estate brokers or principal real estate brokers.

(b) In order to qualify for a principal real estate broker’s license, an applicant must meet the requirements of subsection (2)(b) of this section and must furnish proof satisfactory to the commissioner that the applicant has successfully completed courses in brokerage administration and sales supervision, as required by agency rule, and has three years of active experience as a licensed real estate broker.

(4) In order to qualify for a real estate property manager’s license, an applicant must furnish proof satisfactory to the commissioner that the applicant has successfully completed courses in the legal aspects of real estate, real estate property management and accounting, bookkeeping and trust accounting practices. The applicant also must have successfully completed a real estate property manager’s license examination prescribed by rule of the agency. Proof of completion of all required courses must be provided at the time of applying for the license.

(5)(a) A license for a real estate broker, principal real estate broker or real estate property manager shall be granted only to a person 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 such proof of competence and trustworthiness as the commissioner deems necessary **to protect the public interest.**

(b) In implementing this subsection, the commissioner may require fingerprints and criminal offender information of an applicant for initial licensing or license renewal. Fingerprints acquired under this subsection may be submitted to appropriate law enforcement agencies to determine any previous unlawful activity of the applicant.

(6) A license may be issued under this section only to persons who are 18 years of age or older.

(7) 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.

(8) In order to satisfy the educational requirements under subsections (2) to (4) and (7) 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.

(9) The Real Estate Board may determine that an applicant for a principal real estate broker's license **or a real estate broker's license** has real estate related experience that is equivalent to the experience required under subsection (3) of this section.

SECTION 8. ORS 696.130 is amended to read:

696.130. (1) If the license of any real estate broker or principal real estate broker is revoked by the Real Estate Commissioner, **the commissioner may not issue** a new license [*shall not be issued*] until the [*person*] **individual** complies with the provisions of ORS 696.010 to 696.495, 696.600 to 696.785[,] **and** 696.800 to 696.855 [*and 696.995 unless the commissioner authorizes the issuance of a limited license*].

(2) [*A limited license issued under subsection (1) of this section as the commissioner in the commissioner's discretion finds advisable in the public interest may be limited*] **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.

SECTION 9. ORS 696.200 is amended to read:

696.200. (1) Except for real estate brokers associated with a principal real estate broker, every real estate broker and principal real estate broker shall maintain in this state a place of business to be designated as the broker's main office and designate such place of business by a sign which shall contain the name under which such broker is licensed.

(2) The place of business shall be specified in the application for a real estate license, and designated in the license. Prior to the change of a business location, the broker shall notify the Real Estate Commissioner in writing of the new location. The change of a business location without notification to the commissioner is grounds for revocation of licenses previously issued.

(3) A real estate broker or principal real estate broker may establish one or more branch offices as separate business locations under the management of the broker. A broker may conduct and supervise the business of more than one office, whether main or branch. The broker must register each branch office with the commissioner **and designate each branch office by a sign that contains the name under which the broker is licensed.**

(4) Upon removal from any location it shall be a broker's duty to see that the broker's name or the name under which the broker has operated is removed from the location which the broker has vacated. A broker shall not display any name as such at the designated places of business named in the broker's license or licenses other than the name under which the broker is licensed.

SECTION 10. ORS 696.270 is amended to read:

696.270. The maximum fees described in this section may be charged by and paid to 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 or, for each licensing examination applied for under ORS 696.235, \$40.

(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 *[status]* **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.

SECTION 10a. ORS 696.301 is amended to read:

696.301. 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) Knowingly or negligently pursued a continued course of material misrepresentation in matters related to professional real estate activity, whether or not damage or injury resulted, or knowingly or negligently made any material misrepresentation or false promise in a matter related to professional real estate 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) Accepted a commission or other valuable consideration as a real estate licensee for the performance of any professional real estate activity from any person, except the principal real estate broker with whom the licensee is associated. Nothing in this subsection is intended to prevent a real estate broker from directly compensating a licensed personal assistant if permitted by the terms, conditions and requirements of a licensed personal assistant agreement under ORS 696.028.

(3) Represented or attempted to represent a principal real estate broker other than the principal real estate broker with whom the real estate broker is associated.

(4) 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 licensee's possession which belongs to others.

(5) Disregarded or violated any provisions of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.855 and 696.995.

(6) Knowingly or negligently authorized, directed, made, printed, distributed, circulated or published, in the course of the licensee's business, materially misleading or untruthful advertising, descriptions, statements, representations or promises of such character as reasonably to induce a person to act in a manner that may lead to damage or injury to the person, whether or not damage or injury actually occurred.

(7) Guaranteed, authorized or permitted any person to guarantee future profits which may result in the resale of real property.

(8) Placed a sign on any property offering it for sale or for rent without the written authority of the owner or the owner's authorized agent.

(9) Failed for any reason to pay to the commissioner the license registration or renewal fee as specified in ORS 696.270 within the time specified in that section.

(10) Commingled the money or other property of the principal or client with the licensee's own.

(11) Failed or refused upon demand to produce or to supply true copies of any document, book or record in the licensee's possession or control, or required pursuant to ORS 696.280 concerning

any real estate business transacted by the licensee, for inspection by the Real Estate Commissioner or the commissioner's authorized representative.

(12) Failed to maintain at all times a complete record as required under ORS 696.280 and rules of the Real Estate Agency of every transaction which comes within the provisions of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.855 and 696.995.

(13) Violated ORS 659A.421.

(14) Acted for more than one party in a transaction, in the negotiation of a transaction, without the knowledge and written permission of all parties for whom the licensee acted.

(15) Acted in the dual capacity of agent and undisclosed principal in any transaction.

(16) Induced or attempted to induce any party to an employment agreement, contract, sale or lease to break such contract for the purpose of substituting in lieu thereof a new contract with the same principal or different principal.

(17) Offered real estate for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent.

(18) Negotiated or attempted to negotiate a purchase, sale, exchange, lease option or lease of real estate directly with an owner, purchaser or lessor knowing that such owner, purchaser or lessor had a written outstanding contract for exclusive representation with another real estate broker or principal real estate broker to represent the owner, purchaser, or lessor in negotiations in connection with such property without the prior written consent of the other broker.

(19) Accepted employment or compensation for:

(a) The preparation of a competitive market analysis or letter opinion, the representation of a taxpayer under ORS 305.230, 306.115 or 309.100 or the giving of an opinion in any administrative or judicial proceeding regarding the value of real estate for taxation contingent upon the reporting of a predetermined value; or

(b) The preparation of a competitive market analysis or letter opinion, the representation of a taxpayer under ORS 305.230, 306.115 or 309.100 or the giving of an opinion in any administrative or judicial proceeding regarding the value of real estate for taxation for real estate in which the licensee had an undisclosed interest.

(20) Failed to maintain on deposit in a bank account or neutral escrow depository funds entrusted to the licensee as a real estate broker or principal real estate broker by the principal or other as required by ORS 696.241 and rules of the Real Estate Agency.

(21) Paid a commission or compensation to any person[,] performing professional real estate activity who has not first secured a license under this chapter or is a nonresident real estate broker licensed in another state or country and not licensed in this state, except as permitted by ORS 696.290.

(22) Failed to deliver within a reasonable time a completed copy of any purchase agreement or offer to buy or sell real estate to the purchaser and to the seller.

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

(24) Failed, as a real estate broker associated with a principal real estate broker, to place, as soon after receipt as practicable, in the custody of the principal real estate broker, any deposit money or other money or funds entrusted to the real estate broker by any person dealing with the real estate broker as a representative of the principal real estate broker.

(25) Procured or attempted to procure a real estate license for personal use or use of any other person by fraud, misrepresentation or deceit or by making any material misstatement of fact in an application for a real estate license.

(26) Entered a plea of nolo contendere, or has been found guilty of, or been convicted of, a felony or misdemeanor [*substantially*] related to the licensee's trustworthiness or competence to engage in professional real estate activity.

(27) Violated or disregarded any rule of the Real Estate Agency.

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

(29) Failed, as a principal real estate broker, to exercise supervision over the activities of real estate brokers or employees. For the purposes of this subsection, "supervision" means management by a principal real estate broker that is reasonably designed to result in compliance by the broker's real estate brokers and employees with ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.855 and 696.995 and any administrative rules adopted thereunder. Written agreements and office policies described in ORS 696.026 and 696.310 (1) that are established and implemented by the principal real estate broker, and the reasonableness of the principal real estate broker's actions taken to carry out the agreements and policies, shall be the bases for determining whether the principal real estate broker's supervision was adequate under the circumstances.

(30) Violated any of the terms, conditions, restrictions and limitations contained in any order issued by the commissioner.

[(31) Committed any act or conduct, whether of the same or of a different character, specified in this section which constitutes or demonstrates bad faith or dishonest or fraudulent dealings.]

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

(32) Violated, as a reciprocal real estate broker or principal real estate broker, any of the terms, conditions or requirements of this section, ORS 696.200 and 696.255 or rules adopted under ORS 696.265.

(33) Failed to comply with ORS 696.805, 696.810, 696.815, 696.820, 696.845 or 696.870.

SECTION 11. ORS 696.805 is amended to read:

696.805. (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 exercise reasonable care and diligence;]

[(b)] (a) To deal honestly and in good faith;

[(c)] (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

[(d)] (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;

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

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

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

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

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

[(j)] (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.

[(3)] (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.

[(4)] (5) Except as provided in subsection [(2)(j)] (3)(g) of this section, an affirmative duty may not be waived.

[(5)] (6) 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 or the licensee's agent agrees in writing to investigate a matter.

SECTION 12. ORS 696.810 is amended to read:

696.810. (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 exercise reasonable care and diligence;*

[(b)] (a) To deal honestly and in good faith;

[(c)] (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**

[(d)] (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;

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

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

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

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

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

[(j)] (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.

[(3)] (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.

[(4)] (5) Except as provided in subsection [(2)(j)] (3)(g) of this section, an affirmative duty may not be waived.

[(5)] (6) 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 or the licensee's agent agrees in writing to investigate a matter.

SECTION 13. ORS 696.845 is amended to read:

696.845. At the time of signing an offer to purchase, each buyer shall acknowledge the existing agency relationships, if any. At the time a seller accepts an offer to purchase, 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 ex-**

isting agency relationships. [The acknowledgment shall be printed in substantially the following form:]

[_____]

*TO BE COMPLETED
AT TIME OF CONTRACT*

_____ (subject property address or legal description)

The following agency relationship(s) in this transaction is (are) hereby consented to and acknowledged:

(a) _____ (selling real estate licensee) is the agent of (check one):

_____ the buyer exclusively as an agent of the buyer.

_____ the seller exclusively as an agent of the seller.

_____ both the seller and the buyer as set out in the disclosed limited agency agreement.

(b) _____ (listing agent if not the same as selling agent) is the agent of (check one):

_____ the seller exclusively as seller's agent.

_____ both the seller and the buyer as set out in the disclosed limited agency agreement.

Both the buyer and the seller acknowledge having received the initial agency disclosure pamphlet required by ORS 696.820.

ACKNOWLEDGED

Buyer: _____ Dated: _____

Buyer: _____ Dated: _____

Seller: _____ Dated: _____

Seller: _____ Dated: _____

[_____]

SECTION 14. (1) The amendments to sections 1, 2, 3 and 7, chapter 300, Oregon Laws 2001, by sections 1, 2, 3 and 5 of this 2003 Act apply to licensing activity of the Real Estate Agency on or after January 1, 2002.

(2) Notwithstanding subsection (1) of this section and the amendments to sections 1, 2, 3 and 7, chapter 300, Oregon Laws 2001, by sections 1, 2, 3 and 5 of this 2003 Act, a person who held or was qualified to hold a real estate license under ORS 696.025 on January 1, 2002, and who was approved for conversion of the license under section 1, 2 or 3, chapter 300, Oregon Laws 2001, on or before the effective date of this 2003 Act retains the converted license issued by the Real Estate Agency.

Passed by Senate April 29, 2003

Repassed by Senate May 27, 2003

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Secretary of Senate

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President of Senate

Passed by House May 19, 2003

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Speaker of House

Received by Governor:

.....M.,....., 2003

Approved:

.....M.,....., 2003

.....
Governor

Filed in Office of Secretary of State:

.....M.,....., 2003

.....
Secretary of State