

## HOUSE AMENDMENTS TO HOUSE BILL 2096

By COMMITTEE ON BUSINESS, LABOR AND CONSUMER AFFAIRS

April 5

- 1 On page 1 of the printed bill, line 3, delete “696.235, 696.320” and insert “696.241, 696.245,  
2 696.270, 696.280, 696.301, 696.320, 696.505”.
- 3 In line 4, delete “and 696.226” and insert “, 696.226 and 696.235”.
- 4 On page 2, delete lines 5 and 6.
- 5 In line 7, delete “(9)” and insert “(8)”.
- 6 In line 12, delete “(10)” and insert “(9)”.
- 7 In line 13, restore “and”.
- 8 In line 14, restore the bracketed material and delete the boldfaced material.
- 9 In lines 31 and 32, delete the boldfaced material.
- 10 In lines 33 through 40, restore the bracketed material and delete the boldfaced material.
- 11 In line 42, delete “(12)” and insert “(10)”.
- 12 In line 45, delete “(13)” and insert “(11)”.
- 13 On page 3, line 28, delete “(14)” and insert “(12)”.
- 14 In line 33, delete “(15)” and insert “(13)”.
- 15 In line 35, delete “(16)” and insert “(14)”.
- 16 In line 37, delete “(17)” and insert “(15)”.
- 17 In line 39, delete “(18)” and insert “(16)”.
- 18 After line 40, insert:
- 19 “(17) ‘Sole practitioner’ means a real estate broker conducting professional real estate activity  
20 not in conjunction with other real estate brokers or principal real estate brokers.”
- 21 On page 4, line 7, after “license” insert a period and delete the rest of the line and delete line  
22 8.
- 23 In line 10, after the period delete the rest of the line and delete lines 11 and 12.
- 24 In line 13, delete the boldfaced material and delete the period.
- 25 After line 19, insert:
- 26 “(c) A real estate broker may conduct professional real estate activities as a sole practitioner  
27 after:
- 28 “(A) The person has acquired three years of active experience as a real estate broker; or  
29 “(B) The person has acquired three years of active experience as a real estate salesperson as  
30 defined in ORS 696.025 (1999 Edition) and has successfully completed the real estate broker’s ex-  
31 amination required by rule of the agency.”
- 32 In line 22, delete “as a sole practitioner or”.
- 33 Delete lines 26 through 30 and insert:
- 34 “(b) In order to qualify for a principal real estate broker’s license, an applicant must meet the  
35 requirements of subsection (2)(b) of this section and must furnish proof satisfactory to the commis-

1 sioner that the applicant has successfully completed the brokerage administration and sales super-  
2 vision course, as required by agency rule, and has:

3 “(A) Three years of active experience as a licensed real estate broker; or

4 “(B) Three years of active experience as a real estate salesperson as defined in ORS 696.025  
5 (1999 Edition) and has successfully completed the real estate broker’s examination required by rule  
6 of the agency.”.

7 On page 5, line 22, delete “real estate broker” and insert “sole practitioner”.

8 In line 23, delete “acting as a sole practitioner”.

9 Delete line 45.

10 On page 6, delete lines 1 through 15.

11 In line 16, delete “(10)” and insert “(7)”.

12 On page 8, line 36, delete “removal from” and insert “vacating”.

13 In line 37, before “broker’s” insert “sign containing the”.

14 In line 39, delete “as such”.

15 On page 9, delete lines 24 through 33 and insert:

16 “**NOTE:** Section 8 was deleted by amendment. Subsequent sections were not renumbered.”.

17 In line 36, delete “automatically suspends” and insert “renders inactive”.

18 In line 38, delete “automatically suspended” and insert “rendered inactive”.

19 On page 15, delete line 6 and insert:

20 “**SECTION 18.** ORS 696.241 is amended to read:

21 “696.241. (1) Each [*real estate broker who is a*] **sole practitioner** and each principal real estate  
22 broker shall maintain in this state one or more separate bank accounts that shall be designated a  
23 Clients’ Trust Account in which all trust funds received or handled by the **sole practitioner or**  
24 broker and the real estate licensees subject to the supervision of the broker on behalf of any other  
25 person shall be deposited unless, pursuant to written agreement of all parties having an interest in  
26 the trust funds, the trust funds are immediately placed in a neutral escrow depository in this state.

27 “(2) Each [*real estate broker*] **sole practitioner** or principal real estate broker shall file with the  
28 Real Estate Agency, on forms approved by the Real Estate Commissioner, a statement identifying  
29 the name of the bank or banks, account number or account numbers, and name of account or ac-  
30 counts for each Clients’ Trust Account maintained.

31 “(3) Each [*real estate broker*] **sole practitioner** or principal real estate broker shall authorize  
32 the agency, by a form approved by the commissioner, to examine any Clients’ Trust Account, by a  
33 duly authorized representative of the agency. The examination shall be made at such times as the  
34 commissioner may direct.

35 “(4) If a [*real estate broker*] **sole practitioner** or principal real estate broker maintains a sepa-  
36 rate Clients’ Trust Account in a branch office, a separate bookkeeping system shall be maintained  
37 in the branch office, provided a copy of the records required by the provisions of ORS 696.280 are  
38 maintained in the main office of the **sole practitioner or** broker.

39 “(5) Trust funds received by a [*real estate broker*] **sole practitioner** or principal real estate  
40 broker may be placed by the **sole practitioner or** broker in a federally insured interest-bearing  
41 bank account, designated a Clients’ Trust Account, but only with the prior written approval of all  
42 parties having an interest in the trust funds. The earnings of such interest-bearing account shall not  
43 inure to the benefit of the [*real estate broker*] **sole practitioner** or principal real estate broker un-  
44 less expressly approved in writing before deposit of the trust funds by all parties having an interest  
45 in the trust funds.

1 “(6) With prior written notice to all parties who have an interest in the trust funds, a [*real estate*  
2 *broker*] **sole practitioner** or principal real estate broker may place trust funds received by the [*real*  
3 *estate broker*] **sole practitioner** or principal real estate broker in a federally insured interest-  
4 bearing bank account that is designated a Clients’ Trust Account and the earnings of which inure  
5 to the benefit of a public benefit corporation, as defined in ORS 65.001, for distribution to organ-  
6 izations and individuals for first-time homebuying assistance and for development of affordable  
7 housing. The [*real estate broker*] **sole practitioner** or principal real estate broker shall select a  
8 qualified public benefit corporation to receive the interest earnings.

9 “(7) A [*real estate broker*] **sole practitioner** or principal real estate broker is not entitled to any  
10 part of any interest earnings on trust funds deposited under subsection (5) of this section or to any  
11 part of the earnest money or other money paid to the **sole practitioner or** broker in connection  
12 with any real estate transaction as part or all of the **sole practitioner’s or** broker’s commission  
13 or fee until the transaction has been completed or terminated. The question of the disposition of  
14 forfeited earnest money shall be negotiated between the [*real estate broker*] **sole practitioner** or  
15 principal real estate broker and the seller at the time of executing any listing agreement or earnest  
16 money agreement. The result of such negotiation shall be filled in on the agreement form at the time  
17 of signing by the seller and either separately initialed by the seller or placed immediately above the  
18 signature of the seller.

19 “(8) Clients’ Trust Account funds are not subject to execution or attachment on any claim  
20 against a [*real estate broker*] **sole practitioner** or principal real estate broker.

21 “(9) No person shall knowingly keep or cause to be kept any funds or money in any bank under  
22 the heading of Clients’ Trust Account or any other name designating such funds or money as be-  
23 longing to the clients of any [*real estate broker*] **sole practitioner** or principal real estate broker,  
24 except actual trust funds deposited with the **sole practitioner or** broker.

25 “(10) The agency may provide by rules for other records to be maintained and for the manner  
26 in which trust funds are deposited, held and disbursed.

27 “**SECTION 19.** ORS 696.245 is amended to read:

28 “696.245. (1) Each [*real estate broker who is a*] sole practitioner and each principal real estate  
29 broker, at the time a Clients’ Trust Account is opened under ORS 696.241, shall provide the bank  
30 in which the account is opened with a notice in substantially the following form:

31 “ \_\_\_\_\_

32  
33 **NOTICE OF CLIENTS’ TRUST ACCOUNT**

34  
35 To: (name of bank) \_\_\_\_\_

36 Under the Oregon Real Estate License Law, I am the [*real estate broker*] **sole practitioner**,  
37 principal real estate broker or designated real estate appraiser for (licensed name of broker or  
38 business) \_\_\_\_\_.

39 Further, under ORS 696.241, I am required to maintain in Oregon a Clients’ Trust Account for  
40 the purpose of holding funds belonging to others.

41 With regard to the account(s) numbered \_\_\_\_\_ which is/are designated as a Clients’  
42 Trust Account, the account(s) is/are maintained with you as a depository for money belonging to  
43 persons other than myself and in my fiduciary capacity as a [*real estate broker*] **sole practitioner**  
44 or principal real estate broker established by client agreements in separate documents.

1 Dated: (insert date)

2 \_\_\_\_\_  
3 (signature of broker)

4  
5 ACKNOWLEDGMENT OF RECEIPT

6  
7 I, \_\_\_\_\_, a duly authorized representative of (bank)  
8 \_\_\_\_\_, do hereby acknowledge receipt of the above NOTICE OF CLI-  
9 ENTS' TRUST ACCOUNT on (date) \_\_\_\_\_.

10 \_\_\_\_\_  
11 (signature)

12 \_\_\_\_\_  
13 (title)

14 " \_\_\_\_\_  
15

16 "(2) The acknowledged copy of the notice described in subsection (1) of this section shall be  
17 retained by the [real estate broker] **sole practitioner** or principal real estate broker as provided in  
18 ORS 696.241 for the retention of trust account records, subject to inspection by the Real Estate  
19 Commissioner or the commissioner's authorized representative.

20 "**SECTION 20.** ORS 696.270 is amended to read:

21 "696.270. The maximum fees described in this section may be charged by and paid to the Real  
22 Estate Agency. Actual fees shall be prescribed by the Real Estate Commissioner with approval of  
23 the Oregon Department of Administrative Services. This section applies to the following fees:

24 "(1) For each licensing examination applied for, \$75 [or, for each licensing examination applied  
25 for under ORS 696.235, \$40].

26 "(2) For each real estate broker's, principal real estate broker's or real estate property manag-  
27 er's license, \$230.

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

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

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

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

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

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

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

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

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

44 "(12) For initial registration of a business name, \$230.

45 "**SECTION 21.** ORS 696.280 is amended to read:

1 “696.280. (1) A real estate broker or principal real estate broker shall maintain within this state  
2 complete and adequate records of all professional real estate activity conducted by or through the  
3 broker. The Real Estate Agency shall specify by rule the records required to establish complete and  
4 adequate records of a broker’s professional real estate activity. The **only documents the** agency  
5 may [not] require by rule [*the use or generation of*] **a real estate broker or principal real estate**  
6 **broker to use or generate are** documents [not] **that are** otherwise required by law or **are** volun-  
7 tarily generated during a real estate transaction.

8 “(2)(a) The records of a principal real estate broker or a [*real estate broker who is a*] sole  
9 practitioner shall include records of attendance in continuing education courses by the **sole prac-**  
10 **titioner or** broker. The records of attendance shall state the name of the **sole practitioner or**  
11 broker and the date of the **sole practitioner’s or** broker’s attendance, and shall be the basis for  
12 self-certification under ORS 696.174.

13 “(b) A principal real estate broker’s records shall include records of attendance in continuing  
14 education courses by licensees associated with the principal broker. The record of attendance shall  
15 state the name of the licensee and the date of the licensee’s attendance, and shall be the basis for  
16 the certificate of attendance submitted under ORS 696.174.

17 “(3) The records shall at all times be open for inspection by the Real Estate Commissioner or  
18 the commissioner’s authorized representatives. The records of each transaction shall be maintained  
19 by the licensee for a period of not less than six years after the date [*of*] the transaction **closed or**  
20 **failed**. The records may be maintained in any format that allows for inspection and copying by the  
21 commissioner or the commissioner’s representatives, as determined by the commissioner by rule.

22 “**SECTION 22.** ORS 696.301 is amended to read:

23 “696.301. The Real Estate Commissioner may suspend or revoke the real estate license of any  
24 real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an ap-  
25 plicant who has done any of the following:

26 “(1) Knowingly or negligently pursued a continued course of material misrepresentation in  
27 matters related to professional real estate activity, whether or not damage or injury resulted, or  
28 knowingly or negligently made any material misrepresentation or false promise in a matter related  
29 to professional real estate activity, if the material misrepresentation or material false promise cre-  
30 ated a reasonable probability of damage or injury, whether or not damage or injury actually re-  
31 sulted.

32 “(2) Accepted a commission or other valuable consideration as a real estate licensee for the  
33 performance of any professional real estate activity from any person, except the principal real estate  
34 broker with whom the licensee is associated. Nothing in this subsection is intended to prevent a real  
35 estate broker from directly compensating a licensed personal assistant if permitted by the terms,  
36 conditions and requirements of a licensed personal assistant agreement under ORS 696.028.

37 “(3) Represented or attempted to represent a principal real estate broker other than the princi-  
38 pal real estate broker with whom the real estate broker is associated.

39 “(4) Failed, within a reasonable time, to account for or to remit any moneys or to surrender to  
40 the rightful owner any documents or other valuable property coming into the licensee’s possession  
41 which belongs to others.

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

44 “(6) Knowingly or negligently authorized, directed, made, printed, distributed, circulated or  
45 published, in the course of the licensee’s business, materially misleading or untruthful advertising,

1 descriptions, statements, representations or promises of such character as reasonably to induce a  
2 person to act in a manner that may lead to damage or injury to the person, whether or not damage  
3 or injury actually occurred.

4 “(7) Guaranteed, authorized or permitted any person to guarantee future profits which may re-  
5 sult in the resale of real property.

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

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

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

11 “(11) Failed or refused upon demand to produce or to supply true copies of any document, book  
12 or record in the licensee’s possession or control, or required pursuant to ORS 696.280 concerning  
13 any real estate business transacted by the licensee, for inspection by the Real Estate Commissioner  
14 or the commissioner’s authorized representative.

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

18 “(13) Violated ORS 659A.421.

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

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

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

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

28 “(18) Negotiated or attempted to negotiate a purchase, sale, exchange, lease option or lease of  
29 real estate directly with an owner, purchaser or lessor knowing that such owner, purchaser or les-  
30 sor had a written outstanding contract for exclusive representation with another real estate broker  
31 or principal real estate broker to represent the owner, purchaser, or lessor in negotiations in con-  
32 nection with such property without the prior written consent of the other broker.

33 “(19) Accepted employment or compensation for:

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

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

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

45 “(21) Paid a commission or compensation to any person performing professional real estate ac-

1 tivity who has not first secured a license under this chapter or is a nonresident real estate broker  
2 licensed in another state or country and not licensed in this state, except as permitted by ORS  
3 696.290.

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

6 “(23) Failed to ensure, in any real estate transaction in which such real estate broker or prin-  
7 cipal real estate broker performed the closing, that the buyer and seller each received a complete  
8 detailed closing statement showing the amount and purpose of all receipts, adjustments and dis-  
9 bursements.

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

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

17 “(26) Entered a plea of nolo contendere, or has been found guilty of, or been convicted of, a  
18 felony or misdemeanor related to the licensee’s trustworthiness or competence to engage in profes-  
19 sional real estate activity.

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

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

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

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

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

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

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

42 “**SECTION 23.** ORS 696.505 is amended to read:

43 “696.505. As used in ORS 696.505 to 696.590, unless the context requires otherwise:

44 “(1) ‘Collection escrow’ means an escrow in which the escrow agent:

45 “(a) Receives:

1       “(A) Installment payments;[,]  
2       “(B) Instruments evidencing or securing an obligation; or  
3       “(C) Instruments discharging the security interest; and  
4       “(b) Disburses the payments or delivers the instruments upon specified conditions pursuant to  
5 the written instructions of an obligor and obligee.  
6       “(2) ‘Commissioner’ means the Real Estate Commissioner.  
7       “(3) ‘Escrow’ means any transaction wherein any written instrument, money, evidence of title  
8 to real or personal property or other thing of value is delivered, for the purpose of paying an obli-  
9 gation or effecting the sale, transfer, encumbrance or lease of real or personal property, to a person  
10 not otherwise having any right, title or interest therein, to be held by that person as a neutral third  
11 party until the happening of a specified event or the performance of a prescribed condition, when  
12 it is then to be delivered by the neutral third party to a grantee, grantor, promisee, promisor,  
13 obligee, obligor, bailee, bailor or any agent or employee of any of them pursuant to the written in-  
14 structions of the principals to the transaction.  
15       “(4) ‘Escrow agent’ means any person who engages in the business of receiving escrows for de-  
16 posit or delivery and who receives or is promised any fee, commission, salary or other valuable  
17 consideration, whether contingent or otherwise, for or in anticipation of performance.  
18       “(5) ‘Principal’ means:  
19       “(a) The buyer and seller, lessor and lessee and the exchanging parties in an escrow transaction  
20 involving the sale, lease, lease-option or exchange of real property or personal property; and  
21       “(b) The borrower in an escrow transaction involving the refinancing of real or personal prop-  
22 erty, including but not limited to the refinancing of an obligation secured by a land sale contract  
23 requiring a deed to be delivered as part of such refinancing.  
24       “(6) ‘Real estate closing escrow’ means an escrow where the escrow fee is paid in whole or in  
25 part by the principals to a real estate transaction and wherein the unpaid purchase price is deliv-  
26 ered to an escrow agent for disbursement pursuant to the written instructions of the principals to the  
27 transaction simultaneously on the transfer of specified title to the real property.  
28       “(7) ‘Subservicer’ means an escrow agent, a financial institution or a trust company, as those  
29 terms are defined in ORS 706.008, or a collection agency registered under ORS 697.015 when pro-  
30 viding, pursuant to written instructions, a portion of the escrow services for an escrow to an escrow  
31 agent, or a person in the business of receiving escrows under the laws of another state, that would  
32 otherwise provide the escrow services directly to the principals.  
33       “**SECTION 24. ORS 696.221, 696.226 and 696.235 are repealed.**”  
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