

Enrolled
House Bill 2096

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CHAPTER

AN ACT

Relating to professional real estate activity; amending ORS 696.010, 696.022, 696.026, 696.030, 696.200, 696.205, 696.232, 696.241, 696.245, 696.270, 696.280, 696.301, 696.320, 696.505, 696.511, 696.530, 696.775, 696.800, 696.820, 696.845 and 696.990; and repealing ORS 696.221, 696.226 and 696.235.

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

SECTION 1. 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)] (4)(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)] (5) "Commissioner" means the Real Estate Commissioner.

[(7)] (6) "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)] (7) "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)] (8) *“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)] (9) *“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) [*“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)] (10) *“Principal real estate broker” means [a real estate broker] an individual who is licensed as a principal real estate broker and who employs, engages or supervises another real estate [broker] licensee.*

[(13)] (11) *“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 per-

formed 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)(L), 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)] **(12)** “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)] **(13)** “Real estate broker” means a person who engages in professional real estate activity and who is licensed as a real estate broker.

[(16)] **(14)** “Real estate licensee” means a real estate broker, principal real estate broker or real estate property manager.

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

[(18)] **(16)** “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.

(17) “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.

SECTION 2. 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; **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 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 **real estate** 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.

(c) A real estate broker may conduct professional real estate activities as a sole practitioner after:

(A) The person has acquired three years of active experience as a real estate broker; or

(B) The person has acquired three years of active experience as a real estate salesperson as defined in ORS 696.025 (1999 Edition) and has successfully completed the real estate broker's examination required by rule of the agency.

(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 **real estate** 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.]

(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 the brokerage administration and sales supervision course, as required by agency rule, and has:

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

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

(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*] **shall** require fingerprints and criminal offender information of an applicant for initial licensing [*or*] **and may require fingerprints and criminal offender information of an applicant for** 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 **related to professional**

real estate activity that is equivalent to the experience required under [subsection] **subsection (2) or (3)** of this section.

SECTION 3. ORS 696.026 is amended to read:

696.026. (1) A real estate broker or principal real estate broker may conduct [business] **professional real estate activity** under the broker's name [or may register], a **registered** business name [with the Real Estate Agency] **or a name prescribed by agency rule.** [Registering a business name allows the real estate broker or principal real estate broker to conduct professional real estate activity in the registered business name. The registered] **The** business name **under which a broker conducts professional real estate activity** has no license standing independent of the broker [registering the business].

(2) The agency by rule shall adopt a registration system for business names. The system shall allow the registration of any branch office of either a [real estate broker] **sole practitioner** or a principal real estate broker [acting as a sole practitioner].

(3) A real estate broker or principal real estate broker operating under a business name registered by the broker need not be an owner or officer of any organization otherwise lawfully entitled to use the registered business name or have an ownership interest in the registered name. However, all professional real estate activity conducted by or on behalf of the broker must be conducted under the business name registered by the broker.

(4) A real estate broker or principal real estate broker may register two or more business names if the business names are for affiliated or subsidiary business organizations. If a real estate broker or principal real estate broker registers the business names for two or more affiliated or subsidiary business organizations, the broker may conduct professional real estate activity separately under each business name. A real estate broker or principal real estate broker must supervise and control the professional real estate activity conducted under the broker's name or registered business name.

(5) A real estate broker employed, engaged or supervised by a principal real estate broker for required training and supervision by the principal real estate broker may have an ownership interest in any business through which the principal broker conducts professional real estate activity, but may not control or supervise the professional real estate activity of the principal broker and may not interfere with or be responsible for the training and supervision of any other broker.

(6) A nonlicensed person may have an ownership interest in any business through which a real estate broker 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 broker or principal real estate broker licensed to control or supervise the professional real estate activity of such business.

[*(7) A real estate business in which two or more real estate brokers engage in professional real estate activity may not have two or more principal real estate brokers who are jointly responsible for the supervision and control of the professional real estate activity conducted through the business, unless the principal brokers enter into a written agreement and have written office policies dividing control and supervision responsibilities.*]

[*(8) Two or more principal real estate brokers operating under the same registered business name who have engaged one or more real estate brokers for training or supervision or who have supervisory control over other principal real estate brokers may not be jointly responsible for the supervision and control of the real estate brokers engaged by them or the other principal real estate brokers under their supervision unless the principal brokers enter into a written agreement and have written office policies dividing control and supervision responsibilities.*]

[*(9) Two or more principal real estate brokers operating under the same registered business name who have engaged one or more real estate brokers to provide administrative or managerial services may not be jointly responsible for supervision and control of the real estate brokers providing administrative or managerial services unless the principal brokers enter into a written agreement and have written office policies dividing the responsibilities for control and supervision.*]

[(10)] (7) Two or more 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.

SECTION 4. ORS 696.030 is amended to read:

696.030. (1) 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, and the term "real estate licensee" does not include:

(a) A nonlicensed regular full-time employee of a single owner of real estate whose real estate activity involves the real estate of the employer and:

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

(B) 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) A nonlicensed person acting 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 person does not use the power of attorney as a device to engage in professional real estate activity without obtaining the necessary real estate license.

(c) A nonlicensed person acting 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.

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

(e) A person acting in the person'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.

(f) A person performing an act of professional real estate activity under order of a court.

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

(h) A registered professional engineer or architect rendering services in performance of duties as a professional engineer or architect.

(i) A nonlicensed individual employed by a real estate broker or principal real estate broker and acting as a manager for real estate if the real estate activity of the nonlicensed individual is limited to negotiating rental or lease agreements, checking tenant and credit references, physically maintaining the real estate, conducting tenant relations, collecting the rent, [and] supervising the premises' managers **and discussing financial matters relating to management of the real estate with the owner.**

(j) A person, or an employee of the person, selling or leasing 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.

(k) 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.

(L) A nonlicensed person, or a regular full-time employee of the person, analyzing or advising of permissible land use alternatives, environmental impact, building and use permit procedures or demographic market studies. This exclusion does not apply to the handling of transactional negotiations for transfer of an interest in real estate.

(m) 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.

(n) 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 paragraph, "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.

(o) 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 paragraph, "common carrier" means a person who transports or purports to be willing to transport persons from place to place by rail, motor vehicle, boat or aircraft for hire, compensation or consideration.

(p) 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 paragraph, "hotel representative" means a person who provides reservations or sale services to independent hotels, airlines, steamship companies and government tourist agencies.

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

(r) 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, transfer or management of the real estate of the limited partnership.

(s) A membership camping contract broker or salesperson registered with the Real Estate Agency selling membership camping contracts.

(t) A professional forester or farm manager engaging in property management activity on forest or farm land when the activity is incidental to the nonreal estate duties involving overall management of forest or farm resources.

(u) 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.

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

(w) A nonlicensed person giving 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.

(x) A nonlicensed person acting as a paid fiduciary whose real estate activity is limited to negotiating or closing a transaction to obtain the services of a real estate licensee.

(y) A nonlicensed person acting as a fiduciary under a court order, without regard to whether the court order specifically authorizes real estate activity.

(z) A financial institution or trust company, as those terms are defined in ORS 706.008, acting as 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.

(2) The vesting of title to real estate in more than one person by tenancy by the entirety, tenancy in common or by survivorship shall be construed as that of a single owner for the purposes of this section.

SECTION 5. 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*] **the** place of business by a sign [*which shall contain*] **that contains** the name under which [*such*] **the** broker is licensed.

(2) The place of business [*shall*] **must** 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]* **shall** 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]* **vacating** any **business** location, *[it shall be a broker's duty to see]* **the broker shall ensure** that the **sign containing the** broker's name or the name under which the broker has operated is removed from the location *[which]* **that** the broker has vacated. A broker *[shall]* **may** 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 6. ORS 696.205 is amended to read:

696.205. (1) *[In the event of the death or incapacity of a licensed broker]* **If a real estate licensee** who is a sole practitioner or **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 *[broker,]* **real estate licensee or** to the court-appointed fiduciary of the incapacitated *[broker]* **real estate licensee**, or to some other person designated by the commissioner, **in order** to continue to transact *[said]* **the real estate** business in the case of *[an]* **the** incapacitated *[broker]* **real estate licensee** or *[for the purpose of winding]* **to wind** up the affairs of the deceased or incapacitated *[broker.]* **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 *[upon]* **based on** sufficient cause *[being furnished]* **provided by the temporary licensee** to the commissioner *[by the temporary licensee, the term of a temporary license shall not exceed one year from the date of issuance].*

(2) **The Real Estate Agency may adopt administrative rules to administer this section or to authorize a person to transact or wind up real estate business on behalf of the deceased or incapacitated real estate licensee.**

SECTION 7. ORS 696.232 is amended to read:

696.232. (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 *[license shall be returned to the licensee]* **agency shall activate a license held in suspense** without payment of further fee, and *[shall expire]* **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 *[shall be]* **are** subject to the provisions of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.855 and 696.995.

NOTE: Section 8 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 9. ORS 696.320 is amended to read:

696.320. The suspension or revocation of a principal real estate broker's license *[shall suspend automatically]* **renders inactive** every license of **the** real estate brokers engaged by the principal real estate broker pending a transfer of the license. *[A license shall be transferred]* **The Real Estate Agency shall transfer a license rendered inactive under this section** if *[requested]* **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, *[upon payment of]* **and pays** a transfer fee *[and upon the receipt of the broker's original license].*

SECTION 10. ORS 696.511 is amended to read:

696.511. (1) A person may not directly or indirectly engage in or carry on, or purport to engage in or carry on, the business **of an escrow agent** or act in the capacity of an escrow agent without first obtaining a license as an escrow agent under the provisions of ORS 696.505 to 696.590.

(2)(a) Every escrow agent before engaging in the escrow business shall file in the office of the Real Estate Commissioner an application for a license, in writing, verified by the applicant and in the form prescribed by the commissioner. The application must include the location of the agent's [*principal*] **main** office and all branch offices in this state, the name or style of doing business, the names, resident and business addresses of all persons interested in the business as principals, partners, elected officers, trustees and directors, specifying as to each the person's capacity and title, the general plan and character of business and the length of time the agent has been engaged in business. Notification of changes in the information contained in the application or in the ownership of the business must be immediately filed with the commissioner.

(b) If the applicant 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) For the initial license or license renewal of an escrow agent, [*the commissioner may require additional information the commissioner considers necessary to protect the public including, but not limited to, the fingerprints and criminal offender information of the applicant*] **the commissioner shall require fingerprints and criminal offender information of an applicant for an initial license and may require fingerprints and criminal offender information of an applicant for license renewal. The commissioner may require additional information for an initial license or license renewal under this subsection that the commissioner considers necessary for protecting the public.** For purposes of requiring fingerprints and criminal offender information, "applicant" means a person who has more than five percent ownership interest in the escrow agency and the corporate officers in direct control of escrow operations.

(6) For license renewal, 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; and

(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.

(7) The commissioner, if satisfied that the applicant should not be refused a license under ORS 696.535, shall issue or renew an escrow agent license for an applicant that complies with the requirements of 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.

SECTION 11. ORS 696.530 is amended to read:

696.530. (1) The license of an escrow agent expires June 30 next after the date of issuance if it is not renewed by July 1 of such year. A license may be renewed by filing a renewal application in writing, verified by the applicant and in the form prescribed by the Real Estate Commissioner, and paying the annual license fee for the next succeeding fiscal year.

(2) The filing fees *[shall be]* **are:**

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

(b) For filing an application for a duplicate copy of *[any]* **a** license, upon satisfactory showing of *[such]* **loss of the license**, the sum of \$20.

(c) For *[each]* **a** name change *[of an escrow agent]* or **a** change of address of *[a principal or branch office in the records of the agency]* **an escrow agent, \$10 for the main office plus \$10 for each affected branch office.**

SECTION 12. ORS 696.775 is amended to read:

696.775. *[The lapsing or suspension of a license by operation of law or by order of the Real Estate Commissioner or decision of a court of law, or the voluntary surrender of a license by a licensee shall not deprive the commissioner of jurisdiction to proceed with any investigation of or any action or disciplinary proceedings against such licensee, or to revise or render null and void an order suspending or revoking such license]* **The lapsing or suspension of a license, whether by operation of law, order of the Real Estate Commissioner, decision of a court of law, inactive status of the license or voluntary surrender of the license by the 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 (1); or

(4) Revise or render null and void an order suspending or revoking a license.

SECTION 13. ORS 696.800 is amended to read:

696.800. As used in ORS 696.392, 696.600 to 696.785, 696.800 to 696.855 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) A person 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's 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 mobile home or manufactured dwelling owned by the same person who owns the land upon which the mobile **home** or manufactured [*home*] **dwelling** 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.

SECTION 14. ORS 696.800, as amended by section 84, chapter 655, Oregon Laws 2003, is amended to read:

696.800. As used in ORS 696.392, 696.600 to 696.785, 696.800 to 696.855 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) A person 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's 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.

SECTION 15. ORS 696.820 is amended to read:

696.820. (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 [*represented*] 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.

SECTION 16. ORS 696.845 is amended to read:

696.845. [*At the time of*] **When** signing an offer to purchase, each buyer shall acknowledge the existing agency relationships, if any. [*At the time*] **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.

SECTION 17. ORS 696.990 is amended to read:

696.990. (1) Violation of any provision of ORS 696.010 to 696.130, 696.200 [to 696.226], **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 [to 696.226], **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 who violates ORS 696.020 (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 \$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 who 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 which violates ORS 696.020.

(6) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(7) The civil penalty provisions of subsections (4) and (5) 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.

SECTION 18. ORS 696.241 is amended to read:

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

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

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

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

(5) Trust funds received by a [*real estate broker*] **sole practitioner** or principal real estate broker may be placed by the **sole practitioner or broker** in a federally insured interest-bearing bank account, designated a Clients' Trust Account, but only with the prior written approval of all parties having an interest in the trust funds. The earnings of such interest-bearing account shall not inure to the benefit of the [*real estate broker*] **sole practitioner** or principal real estate broker unless

expressly approved in writing before deposit of the trust funds by all parties having an interest in the trust funds.

(6) With prior written notice to all parties who have an interest in the trust funds, a [*real estate broker*] **sole practitioner** or principal real estate broker may place trust funds received by the [*real estate broker*] **sole practitioner** or principal real estate broker in a federally insured interest-bearing bank account that is designated a Clients' 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 [*real estate broker*] **sole practitioner** or principal real estate broker shall select a qualified public benefit corporation to receive the interest earnings.

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

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

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

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

SECTION 19. ORS 696.245 is amended to read:

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

NOTICE OF CLIENTS' TRUST ACCOUNT

To: (name of bank) _____

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

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

With regard to the account(s) numbered _____ which is/are designated as a Clients' Trust Account, 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 [*real estate broker*] **sole practitioner** or principal real estate broker established by client agreements in separate documents.

Dated: (insert date)

(signature of broker)

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)

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

SECTION 20. 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 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 21. ORS 696.280 is amended to read:

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

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

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

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

SECTION 22. 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 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 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 23. ORS 696.505 is amended to read:

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

(1) "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.

(2) "Commissioner" means the Real Estate Commissioner.

(3) "Escrow" means any transaction wherein 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.

(4) "Escrow agent" means any person who engages in the business of receiving escrows for deposit or delivery and who receives or is promised any fee, commission, salary or other valuable consideration, whether contingent or otherwise, for or in anticipation of performance.

(5) "Principal" means:

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

(b) The borrower in an escrow transaction involving the refinancing of real 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 such refinancing.

(6) "Real estate closing escrow" means an escrow where the escrow fee is paid in whole or in part by the principals to a real estate transaction and wherein 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.

(7) "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.

SECTION 24. ORS 696.221, 696.226 and 696.235 are repealed.

Passed by House April 11, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate May 17, 2005

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President of Senate

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2005

.....
Secretary of State