

House Bill 2096

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Real Estate Agency)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies provisions regulating real estate licensees and escrow agents.

A BILL FOR AN ACT

1
2 Relating to professional real estate activity; amending ORS 696.010, 696.022, 696.026, 696.030,
3 696.200, 696.205, 696.232, 696.235, 696.320, 696.511, 696.530, 696.775, 696.800, 696.820, 696.845 and
4 696.990; and repealing ORS 696.221 and 696.226.

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

6 **SECTION 1.** ORS 696.010 is amended to read:

7 696.010. As used in ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.855, 696.990 and
8 696.995, unless the context requires otherwise:

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

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

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

16 [(4) "Board" means the Real Estate Board.]

17 [(5)(a)] (4)(a) "Branch office" means a business location other than the main office designated
18 under ORS 696.200 (1), where professional real estate activity is regularly conducted or which is
19 advertised to the public as a place where such business may be regularly conducted.

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

25 [(6)] (5) "Commissioner" means the Real Estate Commissioner.

26 [(7)] (6) "Compensation" means any fee, commission, salary, money or valuable consideration for
27 services rendered or to be rendered as well as the promise thereof and whether contingent or oth-
28 erwise.

29 [(8)] (7) "Competitive market analysis" means a method or process used by a real estate licensee
30 in pursuing a listing agreement or in formulating an offer to acquire real estate in a transaction for
31 the sale, lease, lease-option or exchange of real estate. The objective of competitive market analysis

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 is a recommended listing, selling or purchase price or a lease or rental consideration. A competitive
 2 market analysis may be expressed as an opinion of the value of the real estate in a contemplated
 3 transaction. Competitive market analysis may include but is not limited to an analysis of market
 4 conditions, public records, past transactions and current listings of real estate.

5 [(9)] (8) “Inactive license” means a license [*which has been returned to the commissioner and is*
 6 *being held by*] **that** the commissioner **has placed** on an inactive status.

7 [(10)] (9) “Letter opinion” means a document that expresses a real estate licensee’s conclusion
 8 regarding a recommended listing, selling or purchase price or a rental or lease consideration of
 9 certain real estate and that results from the licensee’s competitive market analysis. The commis-
 10 sioner by rule shall specify the minimum contents of a letter opinion, including but not limited to
 11 the distinction between a letter opinion and a real estate appraisal.

12 [(11)(a)] (10) “Management of rental real estate” means:

13 (a) Representing the owner of real estate in the rental or lease of the real estate [*and*
 14 *includes*] **including**, but [*is*] not limited to, **rental or leasing activity related to**:

- 15 (A) Advertising the real estate for rent or lease;
- 16 (B) Procuring prospective tenants to rent or lease the real estate;
- 17 (C) Negotiating with prospective tenants;
- 18 (D) Accepting deposits from prospective tenants;
- 19 (E) Checking the qualifications and creditworthiness of prospective tenants;
- 20 (F) Charging and collecting rent or lease payments;
- 21 (G) Representing the owner in inspection or repair of the real estate;
- 22 (H) Contracting for repair or remodeling of the real estate;
- 23 (I) Holding trust funds or property received in managing the real estate and accounting to the
 24 owner for the funds or property;
- 25 (J) Advising the owner regarding renting or leasing the real estate;
- 26 (K) Providing staff and services to accommodate the tax reporting and other financial or ac-
 27 counting needs of the real estate;
- 28 (L) Providing copies of records of acts performed on behalf of the owner of the real estate; and
- 29 (M) Offering or attempting to do any of the acts described in this paragraph for the owner of
 30 the real estate[.]; **or**

31 (b) [*“Management of rental real estate” also means*] **Except for rental or leasing activity re-**
 32 **lated to negotiations**, representing a tenant or prospective tenant when renting or leasing real
 33 estate [*and includes but is not limited to*], **including rental or leasing activity related to**:

- 34 (A) Consulting with tenants or prospective tenants about renting or leasing real estate;
- 35 (B) Assisting prospective tenants in renting or leasing real estate;
- 36 (C) Assisting prospective tenants in qualifying for renting or leasing real estate;
- 37 (D) Accepting deposits or other funds from prospective tenants for renting or leasing real estate
 38 and holding the funds in trust for the prospective tenants; **and**

39 [(E) *Representing tenants or prospective tenants renting or leasing real estate; and*]

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

42 (12) “Principal real estate broker” means [*a real estate broker*] **an individual** who is licensed as
 43 a principal real estate broker and who employs, engages or supervises another real estate [*broker*]
 44 **licensee**.

45 (13) “Professional real estate activity” means any of the following actions, when engaged in for

1 another and for compensation or with the intention or in the expectation or upon the promise of
 2 receiving or collecting compensation, by any person who:

3 (a) Sells, exchanges, purchases, rents or leases real estate.

4 (b) Offers to sell, exchange, purchase, rent or lease real estate.

5 (c) Negotiates, offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or
 6 leasing of real estate.

7 (d) Lists, offers, attempts or agrees to list real estate for sale.

8 (e) Offers, attempts or agrees to perform or provide a competitive market analysis or letter
 9 opinion, to represent a taxpayer under ORS 305.230 or 309.100 or to give an opinion in any admin-
 10 istrative or judicial proceeding regarding the value of real estate for taxation. Such activity per-
 11 formed by a state certified appraiser or state licensed appraiser is not professional real estate
 12 activity.

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

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

15 (h) Engages in management of rental real estate.

16 (i) Purports to be engaged in the business of buying, selling, exchanging, renting or leasing real
 17 estate.

18 (j) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange,
 19 leasing or rental of real estate.

20 (k) Assists or directs in the negotiation or closing of any transaction calculated or intended to
 21 result in the sale, exchange, leasing or rental of real estate.

22 (L) Except as otherwise provided in ORS 696.030 (1)(L), advises, counsels, consults or analyzes
 23 in connection with real estate values, sales or dispositions, including dispositions through eminent
 24 domain procedures.

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

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

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

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

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

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

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

41 **SECTION 2.** ORS 696.022 is amended to read:

42 696.022. (1) The Real Estate Agency shall establish by rule a system for licensing real estate
 43 brokers, principal real estate brokers and real estate property managers. The system shall establish,
 44 at a minimum:

45 (a) The form and content of applications for licensing under each category of real estate pro-

1 fessional licensed by the agency;

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

3 (c) Schedules and procedures for issuing and renewing licenses; *[and]*

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

5 (e) **Terms and conditions under which the license of a real estate licensee must be re-**
 6 **turned or transferred to the Real Estate Commissioner for purposes including, but not lim-**
 7 **ited to, inactivation, suspension or termination of the license or for failure of the licensee**
 8 **to maintain a place of business.**

9 (2)(a) A real estate broker may engage in all of the professional activities of a real estate broker
 10 described in this chapter. A real estate broker may conduct professional real estate activities as a
 11 sole practitioner or in conjunction with other real estate brokers or principal real estate brokers
 12 after the person has acquired three years of active experience as a real estate broker **or as a real**
 13 **estate salesperson as defined in ORS 696.025 (1999 Edition)**. A real estate broker may not em-
 14 ploy, engage or otherwise supervise the professional **real estate** activities of another real estate
 15 broker or principal real estate broker.

16 (b) In order to qualify for a real estate broker's license, an applicant must furnish proof satis-
 17 factory to the *[Real Estate]* commissioner that the applicant has successfully completed the basic
 18 real estate broker's educational courses and the examination required by rule of the agency. Proof
 19 of completion of all required courses must be provided at the time of applying for the license.

20 (3)(a) A principal real estate broker may engage in all of the professional activities of a real
 21 estate broker described in this chapter. A principal real estate broker may conduct professional real
 22 estate activities as a sole practitioner or in conjunction with other real estate brokers or principal
 23 real estate brokers. In addition, a principal real estate broker may employ, engage and otherwise
 24 supervise the professional **real estate** activities of real estate brokers or principal real estate bro-
 25 kers.

26 (b) In order to qualify for a principal real estate broker's license, an applicant must meet the
 27 requirements of subsection (2)(b) of this section and must furnish proof satisfactory to the commis-
 28 sioner that the applicant has successfully completed courses in brokerage administration and sales
 29 supervision, as required by agency rule, and has three years of active experience as a licensed real
 30 estate broker **or as a real estate salesperson as defined in ORS 696.025 (1999 Edition)**.

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

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

42 (b) In implementing this subsection, the commissioner *[may]* **shall** require fingerprints and
 43 criminal offender information of an applicant for initial licensing *[or]* **and may require fingerprints**
 44 **and criminal offender information of an applicant for** license renewal. Fingerprints acquired
 45 under this subsection may be submitted to appropriate law enforcement agencies to determine any

1 previous unlawful activity of the applicant.

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

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

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

9 (9) The Real Estate Board may determine that an applicant for a principal real estate broker's
10 license or a real estate broker's license has [*real estate related*] experience **related to professional**
11 **real estate activity** that is equivalent to the experience required under [*subsection*] **subsection (2)**
12 **or (3)** of this section.

13 **SECTION 3.** ORS 696.026 is amended to read:

14 696.026. (1) A real estate broker or principal real estate broker may conduct [*business*] **profes-**
15 **sional real estate activity** under the broker's name [*or may register*], a **registered** business name
16 [*with the Real Estate Agency*] **or a name prescribed by agency rule.** [*Registering a business name*
17 *allows the real estate broker or principal real estate broker to conduct professional real estate activity*
18 *in the registered business name. The registered*] **The business name under which a broker conducts**
19 **professional real estate activity** has no license standing independent of the broker [*registering the*
20 *business*].

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

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

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

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

40 (6) A nonlicensed person may have an ownership interest in any business through which a real
41 estate broker or principal real estate broker engages in professional real estate activity, but may
42 not control or supervise the professional real estate activity of any real estate broker or principal
43 real estate broker licensed to control or supervise the professional real estate activity of such
44 business.

45 (7) A real estate business in which two or more real estate brokers engage in professional real

1 estate activity may not have two or more principal real estate brokers who are jointly responsible
 2 for the supervision and control of the professional real estate activity conducted through the busi-
 3 ness, unless the principal brokers enter into a written agreement and have written office policies
 4 dividing control and supervision responsibilities.

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

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

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

19 **SECTION 4.** ORS 696.030 is amended to read:

20 696.030. (1) ORS 696.010 to 696.375, 696.392, 696.395 to 696.430, 696.490, 696.600 to 696.785,
 21 696.990 and 696.995 do not apply to, and the term “real estate licensee” does not include:

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

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

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

27 (b) A nonlicensed person acting as attorney in fact under a duly executed power of attorney
 28 from the owner or purchaser authorizing the supervision of the closing of or supervision of the
 29 performance of a contract for the sale, leasing or exchanging of real estate if the power of attorney
 30 was executed prior to July 1, 2002, in compliance with the requirements of law at the time of exe-
 31 cution or if:

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

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

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

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

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

43 (e) A person acting in the person’s official capacity as a receiver, a conservator, a trustee in
 44 bankruptcy, a personal representative or a trustee, or a regular salaried employee of the trustee,
 45 acting under a trust agreement, deed of trust or will.

- 1 (f) A person performing an act of professional real estate activity under order of a court.
- 2 (g) A nonlicensed regular full-time employee of a single nonlicensed corporation, partnership,
3 association or individual owner of real property acting for the corporation, partnership, association
4 or individual in the rental or management of the real property, but not in the sale, exchange, lease
5 option or purchase of the real property.
- 6 (h) A registered professional engineer or architect rendering services in performance of duties
7 as a professional engineer or architect.
- 8 (i) A nonlicensed individual employed by a real estate broker or principal real estate broker and
9 acting as a manager for real estate if the real estate activity of the nonlicensed individual is limited
10 to negotiating rental or lease agreements, checking tenant and credit references, physically main-
11 taining the real estate, conducting tenant relations, collecting the rent, [and] supervising the prem-
12 ises' managers **and discussing financial matters relating to management of the real estate**
13 **with the owner.**
- 14 (j) A person, or an employee of the person, selling or leasing cemetery lots, parcels or units
15 while engaged in the disposition of human bodies under ORS 97.010 to 97.040, 97.110 to 97.450, 97.510
16 to 97.730, 97.810 to 97.920 and 97.990.
- 17 (k) A salaried employee of the State of Oregon, or any of its political subdivisions, engaging in
18 professional real estate activity as a part of such employment.
- 19 (L) A nonlicensed person, or a regular full-time employee of the person, analyzing or advising
20 of permissible land use alternatives, environmental impact, building and use permit procedures or
21 demographic market studies. This exclusion does not apply to the handling of transactional negoti-
22 ations for transfer of an interest in real estate.
- 23 (m) A hotelkeeper or innkeeper as defined by ORS 699.005 arranging the rental of transient
24 lodging at a hotel or inn in the course of business as a hotelkeeper or innkeeper.
- 25 (n) A travel agent arranging the rental of transient lodging at a hotel or inn as defined in ORS
26 699.005 in the course of business as a travel agent for compensation. For the purpose of this para-
27 graph, "travel agent" means a person, and employees of the person, regularly representing and
28 selling travel services to the public directly or indirectly through other travel agents.
- 29 (o) A common carrier arranging the rental of transient lodging at a hotel or inn as defined in
30 ORS 699.005 in the course of business as a common carrier. For the purpose of this paragraph,
31 "common carrier" means a person who transports or purports to be willing to transport persons
32 from place to place by rail, motor vehicle, boat or aircraft for hire, compensation or consideration.
- 33 (p) A hotel representative arranging the rental of transient lodging at a hotel or inn as defined
34 in ORS 699.005 in the course of business as a hotel representative. For the purpose of this para-
35 graph, "hotel representative" means a person who provides reservations or sale services to inde-
36 pendent hotels, airlines, steamship companies and government tourist agencies.
- 37 (q) A nonlicensed person transferring or acquiring an interest in real estate owned or to be
38 owned by the person.
- 39 (r) A general partner for a domestic or foreign limited partnership duly registered and operating
40 within this state under ORS chapter 70 engaging in the sale of limited partnership interests and the
41 acquisition, sale, exchange, lease, transfer or management of the real estate of the limited partner-
42 ship.
- 43 (s) A membership camping contract broker or salesperson registered with the Real Estate
44 Agency selling membership camping contracts.
- 45 (t) A professional forester or farm manager engaging in property management activity on forest

1 or farm land when the activity is incidental to the nonreal estate duties involving overall manage-
 2 ment of forest or farm resources.

3 (u) A registered investment adviser under the Investment Advisers Act of 1940, 15 U.S.C. §80b-1
 4 et seq., rendering real estate investment services for the office of the State Treasurer or the Oregon
 5 Investment Council.

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

9 (w) A nonlicensed person giving an opinion in an administrative or judicial proceeding regarding
 10 the value of real estate for taxation or representing a taxpayer under ORS 305.230 or 309.100.

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

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

15 (z) A financial institution or trust company, as those terms are defined in ORS 706.008, acting
 16 as attorney in fact under a duly executed power of attorney from the owner or purchaser authoriz-
 17 ing real estate activity, if the power of attorney is recorded in the office of the county clerk for the
 18 county in which the real estate to be sold, leased or exchanged is located.

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

22 **SECTION 5.** ORS 696.200 is amended to read:

23 696.200. (1) Except for real estate brokers associated with a principal real estate broker, every
 24 real estate broker and principal real estate broker shall maintain in this state a place of business
 25 to be designated as the broker’s main office and designate *[such]* **the** place of business by a sign
 26 *[which shall contain]* **that contains** the name under which *[such]* **the** broker is licensed.

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

31 (3) A real estate broker or principal real estate broker may establish one or more branch offices
 32 as separate business locations under the management of the broker. A broker may conduct and su-
 33 pervise the business of more than one office, whether main or branch. The broker *[must]* **shall** reg-
 34 ister each branch office with the commissioner and designate each branch office by a sign that
 35 contains the name under which the broker is licensed.

36 (4) Upon removal from any **business** location, *[it shall be a broker’s duty to see]* **the broker**
 37 **shall ensure** that the broker’s name or the name under which the broker has operated is removed
 38 from the location *[which]* **that** the broker has vacated. A broker *[shall]* **may** not display any name
 39 as such at the designated places of business named in the broker’s license or licenses other than the
 40 name under which the broker is licensed.

41 **SECTION 6.** ORS 696.205 is amended to read:

42 696.205. (1) *[In the event of the death or incapacity of a licensed broker]* **If a real estate licensee**
 43 **who is a sole practitioner or who is the sole principal real estate broker of a real estate business**
 44 **dies or becomes incapacitated**, the Real Estate Commissioner may issue a temporary license to the
 45 executor, administrator or personal representative of the estate of the deceased *[broker,]* **real estate**

1 **licensee or** to the court-appointed fiduciary of the incapacitated [*broker*] **real estate licensee**, or
 2 to some other person designated by the commissioner, **in order** to continue to transact [*said*] **the**
 3 **real estate** business in the case of [*an*] **the** incapacitated [*broker*] **real estate licensee** or [*for the*
 4 *purpose of winding*] **to wind** up the affairs of the deceased or incapacitated [*broker.*] **real estate**
 5 **licensee. The term of a temporary license issued under this section may not exceed one year**
 6 **from the date of issuance** unless the commissioner, in the discretion of the commissioner, extends
 7 the term of the temporary license [*upon*] **based on** sufficient cause [*being furnished*] **provided by**
 8 **the temporary licensee** to the commissioner [*by the temporary licensee, the term of a temporary li-*
 9 *cence shall not exceed one year from the date of issuance*].

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

13 **SECTION 7.** ORS 696.232 is amended to read:

14 696.232. (1) An employee or officer of the Real Estate Agency licensed as a real estate licensee
 15 under this chapter shall return the employee's or officer's license to the agency at the time of
 16 commencing employment. The agency shall hold the license as an active license held in suspense.
 17 At the termination of an employee's or officer's employment, the license may be returned to the
 18 licensee as an active or inactive license. The [*license shall be returned to the licensee*] **agency shall**
 19 **activate a license held in suspense** without payment of further fee, and [*shall expire*] **the license**
 20 **expires** on the date on which it would have expired if the license had not been held in suspense.

21 (2) Except as stated in subsection (1) of this section, the return of the license to the licensee
 22 and all renewals [*shall be*] **are** subject to the provisions of ORS 696.010 to 696.495, 696.600 to
 23 696.785, 696.800 to 696.855 and 696.995.

24 **SECTION 8.** ORS 696.235 is amended to read:

25 696.235. (1) An inactive real estate license may be renewed as an inactive license for a period
 26 of two years.

27 (2) To reactivate a license [*which*] **that** has been renewed as an inactive license, the **real estate**
 28 licensee, during the [*year in which the licensee wishes to reactivate the license and*] **12 months** prior
 29 to the issuance of the active license, [*must*] **shall**:

30 (a) Complete the continuing education requirements of ORS 696.174; and

31 (b) If the license has been inactive for two consecutive years preceding the request to reactivate
 32 the license, complete successfully an examination to be conducted by the Real Estate Agency to
 33 exhibit knowledge on current real estate matters.

34 **SECTION 9.** ORS 696.320 is amended to read:

35 696.320. The suspension or revocation of a principal real estate broker's license [*shall suspend*]
 36 automatically **suspends** every license of **the** real estate brokers engaged by the principal real estate
 37 broker pending a transfer of the license. [*A license shall be transferred*] **The Real Estate Agency**
 38 **shall transfer a license automatically suspended under this section** if [*requested*] **the real es-**
 39 **tate licensee requests a transfer** within 30 days after the effective date of the suspension or re-
 40 vocation of the principal real estate broker's license[, *upon payment of*] **and pays** a transfer fee [*and*
 41 *upon the receipt of the broker's original license*].

42 **SECTION 10.** ORS 696.511 is amended to read:

43 696.511. (1) A person may not directly or indirectly engage in or carry on, or purport to engage
 44 in or carry on, the business **of an escrow agent** or act in the capacity of an escrow agent without
 45 first obtaining a license as an escrow agent under the provisions of ORS 696.505 to 696.590.

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

10 (b) If the applicant is an individual, the applicant must be 18 years of age or older.

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

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

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

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

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

35 (6) For license renewal, an escrow agent shall provide:

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

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

42 (7) The commissioner, if satisfied that the applicant should not be refused a license under ORS
 43 696.535, shall issue or renew an escrow agent license for an applicant that complies with the re-
 44 quirements of ORS 696.505 to 696.590.

45 (8) To qualify for issuance or renewal of an escrow agent license, an applicant shall pay any

1 outstanding civil penalties or other moneys due and owing to the Real Estate Agency except civil
 2 penalties or other moneys due that are the subject of judicial or administrative review on the date
 3 of the application for license or license renewal.

4 **SECTION 11.** ORS 696.530 is amended to read:

5 696.530. (1) The license of an escrow agent expires June 30 next after the date of issuance if it
 6 is not renewed by July 1 of such year. A license may be renewed by filing a renewal application in
 7 writing, verified by the applicant and in the form prescribed by the Real Estate Commissioner, and
 8 paying the annual license fee for the next succeeding fiscal year.

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

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

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

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

17 **SECTION 12.** ORS 696.775 is amended to read:

18 696.775. *[The lapsing or suspension of a license by operation of law or by order of the Real Estate*
 19 *Commissioner or decision of a court of law, or the voluntary surrender of a license by a licensee shall*
 20 *not deprive the commissioner of jurisdiction to proceed with any investigation of or any action or dis-*
 21 *ciplinary proceedings against such licensee, or to revise or render null and void an order suspending*
 22 *or revoking such license]* **The lapsing or suspension of a license, whether by operation of law,**
 23 **order of the Real Estate Commissioner, decision of a court of law, inactive status of the li-**
 24 **cence or voluntary surrender of the license by the licensee, does not deprive the commis-**
 25 **sioner of jurisdiction to:**

26 (1) **Proceed with an investigation of the licensee;**

27 (2) **Conduct disciplinary proceedings relating to the licensee;**

28 (3) **Take action against a licensee, including assessment of a civil penalty against the**
 29 **licensee for a violation of ORS 696.020 (1); or**

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

31 **SECTION 13.** ORS 696.800 is amended to read:

32 696.800. As used in ORS 696.392, 696.600 to 696.785, 696.800 to 696.855 and 696.995, unless the
 33 context requires otherwise:

34 (1) "Agent" means:

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

36 (A) A listing agreement with a seller;

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

38 (C) A disclosed limited agency agreement; or

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

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

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

45 (b) Enters into an exclusive representation contract or buyer's service agreement with a real

1 estate broker or principal real estate broker, whether or not a sale or transfer of property results.

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

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

9 (b) The licensee or the licensee's agent knows or should know failure to disclose would consti-
 10 tute fraudulent representation.

11 (4) "Disclosed limited agency" means a real property transaction in which the representation
 12 of a buyer and seller or the representation of two **or more** buyers occurs within the same real es-
 13 tate business.

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

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

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

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

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

24 (10) "Real property" means any estate in real property, including a condominium as defined in
 25 ORS 100.005, a timeshare property as defined in ORS 94.803 and the granting of an option or right
 26 of first refusal. "Real property" also includes a mobile home or manufactured dwelling owned by the
 27 same person who owns the land upon which the mobile **home** or manufactured [*home*] **dwelling** is
 28 situated. "Real property" does not include a leasehold in real property.

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

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

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

36 (b) Land sales contracts.

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

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

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

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

44 696.800. As used in ORS 696.392, 696.600 to 696.785, 696.800 to 696.855 and 696.995, unless the
 45 context requires otherwise:

- 1 (1) "Agent" means:
- 2 (a) A real estate broker or principal real estate broker who has entered into:
- 3 (A) A listing agreement with a seller;
- 4 (B) A service contract with a buyer to represent the buyer; or
- 5 (C) A disclosed limited agency agreement; or
- 6 (b) A person licensed under ORS 696.022 who has entered into a written contract with a real
- 7 estate broker or principal real estate broker to act as the broker's agent in connection with acts
- 8 requiring a real estate license and to function under the broker's supervision.
- 9 (2) "Buyer" means a potential transferee in a real property transaction, and includes a person
- 10 who:
- 11 (a) Executes an offer to purchase real property from a seller through an agent; or
- 12 (b) Enters into an exclusive representation contract or buyer's service agreement with a real
- 13 estate broker or principal real estate broker, whether or not a sale or transfer of property results.
- 14 (3) "Confidential information" means information communicated to a real estate licensee or the
- 15 licensee's agent by the buyer or seller of one to four residential units regarding the real property
- 16 transaction, including but not limited to price, terms, financial qualifications or motivation to buy
- 17 or sell. "Confidential information" does not mean information that:
- 18 (a) The buyer instructs the licensee or the licensee's agent to disclose about the buyer to the
- 19 seller or the seller instructs the licensee or the licensee's agent to disclose about the seller to the
- 20 buyer; and
- 21 (b) The licensee or the licensee's agent knows or should know failure to disclose would consti-
- 22 tute fraudulent representation.
- 23 (4) "Disclosed limited agency" means a real property transaction in which the representation
- 24 of a buyer and seller or the representation of two **or more** buyers occurs within the same real es-
- 25 tate business.
- 26 (5) "Listing agreement" means a contract between a seller of real property and a real estate
- 27 broker or principal real estate broker by which the broker has been authorized to act as an agent
- 28 of the seller for compensation to offer the real property for sale or to find and obtain a buyer.
- 29 (6) "Listing price" means the amount expressed in dollars, specified in the listing agreement, for
- 30 which the seller is willing to sell the real property through the listing agent.
- 31 (7) "Offer" means a written proposal executed by a buyer for the sale or lease of real property.
- 32 (8) "Offering price" is the amount expressed in dollars specified in an offer to purchase for
- 33 which the buyer is willing to buy the real property.
- 34 (9) "Principal" means the person who has permitted or directed an agent to act on the princi-
- 35 pal's behalf. In a real property transaction, this generally means the buyer or the seller.
- 36 (10) "Real property" means any estate in real property, including a condominium as defined in
- 37 ORS 100.005, a timeshare property as defined in ORS 94.803 and the granting of an option or right
- 38 of first refusal. "Real property" also includes a manufactured structure, as defined in ORS 446.561,
- 39 owned by the same person who owns the land upon which the manufactured structure is situated.
- 40 "Real property" does not include a leasehold in real property.
- 41 (11) "Real property transaction" means a transaction regarding real property in which an agent
- 42 is employed by one or more of the principals to act in that transaction and includes but is not lim-
- 43 ited to listing agreements, buyer's service agreements, exclusive representation contracts and offers
- 44 to purchase.
- 45 (12) "Sale" or "sold" refers to a transaction for the transfer of real property from the seller to

1 the buyer and includes:

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

3 (b) Land sales contracts.

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

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

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

9 **SECTION 15.** ORS 696.820 is amended to read:

10 696.820. (1) The Real Estate Commissioner shall prescribe by rule the format and content of an
11 initial agency disclosure pamphlet. The rules must provide that the initial agency disclosure pam-
12 phlet is informational only and may not be construed to be evidence of intent to create an agency
13 relationship.

14 (2) An agent shall provide a copy of the initial agency disclosure pamphlet at the first contact
15 with each [*represented*] party to a real property transaction, including but not limited to contacts
16 in person, by telephone, over the Internet or the World Wide Web, or by electronic mail, electronic
17 bulletin board or a similar electronic method.

18 **SECTION 16.** ORS 696.845 is amended to read:

19 696.845. [*At the time of*] **When** signing an offer to purchase, each buyer shall acknowledge the
20 existing agency relationships, if any. [*At the time*] **When** a seller accepts **or rejects** an offer to
21 purchase **in writing**, each seller shall acknowledge the existing agency relationships, if any. An
22 agent to the real property transaction shall obtain the signatures of the buyers and the sellers to
23 the acknowledgment, which shall be incorporated into or attached as an addendum to the offer to
24 purchase or to the acceptance. The Real Estate Agency shall prescribe by rule the form and content
25 of the acknowledgment of existing agency relationships.

26 **SECTION 17.** ORS 696.990 is amended to read:

27 696.990. (1) Violation of any provision of ORS 696.010 to 696.130, 696.200 [*to 696.226*], **696.205**,
28 696.241 to 696.375, 696.392, 696.395 to 696.430, 696.490, 696.600 to 696.785 and 696.995 is a Class A
29 misdemeanor.

30 (2) Any officer, director or shareholder or agent of a corporation, or member or agent of a
31 partnership or association, who personally participates in or is an accessory to any violation of ORS
32 696.010 to 696.130, 696.200 [*to 696.226*], **696.205**, 696.241 to 696.375, 696.392, 696.395 to 696.430,
33 696.490, 696.600 to 696.785 and 696.995 by the partnership, association or corporation, is subject to
34 the penalties prescribed in subsection (1) of this section.

35 (3) A violation of any one of the provisions of ORS 696.505 to 696.590 is a Class A misdemeanor.

36 (4) Any person who violates ORS 696.020 (1) may be required by the Real Estate Commissioner
37 to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined
38 by the commissioner of:

39 (a) Not less than \$100 nor more than \$500 for the first offense of unlicensed professional real
40 estate activity; and

41 (b) Not less than \$500 nor more than \$1,000 for the second and subsequent offenses of unlicensed
42 professional real estate activity.

43 (5) In addition to the civil penalty set forth in subsection (4) of this section, any person who
44 violates ORS 696.020 may be required by the commissioner to forfeit and pay to the General Fund
45 of the State Treasury a civil penalty in an amount determined by the commissioner but not to ex-

1 ceed the amount by which such person profited in any transaction which violates ORS 696.020.

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

3 (7) The civil penalty provisions of subsections (4) and (5) of this section are in addition to and
4 not in lieu of the criminal penalties for unlicensed professional real estate activity in subsections
5 (1) and (2) of this section.

6 **SECTION 18. ORS 696.221 and 696.226 are repealed.**

7
