

CHAPTER 234

AN ACT

SB 67

Relating to activities regulated by the Real Estate Agency; creating new provisions; and amending ORS 696.010, 696.022, 696.026, 696.030, 696.125, 696.130, 696.174, 696.182, 696.200, 696.205, 696.232, 696.241, 696.243, 696.245, 696.280, 696.290, 696.301, 696.310, 696.385, 696.505, 696.520, 696.582, 696.710 and 696.800.

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

SECTION 1. Sections 2 and 7 of this 2017 Act are added to and made a part of ORS chapter 696.

SECTION 2. (1) A violation of a provision of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 or 696.890, or a rule adopted pursuant to those sections, by a real estate licensee is not cause for the suspension or revocation of the license of another real estate licensee who is associated with the real estate licensee who committed the violation unless the Real Estate Commissioner, in the commissioner's discretion, determines that the associated real estate licensee had knowledge of the violation by the real estate licensee.

(2) For purposes of a contested case hearing under ORS chapter 183, a persistent course of dealing by the real estate licensee who violated a provision of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 or 696.890, or a rule adopted pursuant to those sections, constitutes prima facie evidence that an associated real estate licensee had knowledge of the violation by the real estate licensee.

SECTION 3. 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 696.870, 696.990 and 696.995, unless the context requires otherwise:

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

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

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

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

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

(3)(a) "Branch office" means a business location, other than the main office designated under ORS 696.200 [(1)], where professional real estate activity is regularly conducted or that is advertised to the

public as a place where [such business] **professional real estate activity** may be regularly conducted.

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

(4) "Business day" means a day other than Saturday or Sunday or a federal or State of Oregon legal holiday.

(5) "Commingle" means the mixing of funds from any source, including personal funds, with trust funds as defined in ORS 696.241, by a licensed real estate property manager or principal real estate broker, except as specifically authorized by this chapter.

[(4)] (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.

[(5)] (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.

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

[(7)] (9) "Inactive" means, in the context of a real estate licensee, that the [license has been returned to the agency to be held until the licensee re-activates the license or the license expires or lapses.] **licensee is not authorized to engage in professional real estate activity. The inactive status of a license continues until the license is reactivated or the license expires or lapses.**

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

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

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

(13) "Main office" means the office designated by a principal real estate broker or li-

censed real estate property manager pursuant to ORS 696.200.

[(11)] (14) “Management of rental real estate” means:

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

- (A) Advertising the real estate for rent or lease;
- (B) Procuring prospective tenants to rent or lease the real estate;
- (C) Negotiating with prospective tenants;
- (D) Accepting deposits from prospective tenants;
- (E) Checking the qualifications and creditworthiness of prospective tenants;
- (F) Charging and collecting rent or lease payments;
- (G) Representing the owner in inspection or repair of the real estate;
- (H) Contracting for repair or remodeling of the real estate;
- (I) Holding trust funds or property received in managing the real estate and accounting to the owner for the funds or property;
- (J) Advising the owner regarding renting or leasing the real estate;
- (K) Providing staff and services to accommodate the tax reporting and other financial or accounting needs of the real estate;
- (L) Providing copies of records of acts performed on behalf of the owner of the real estate; and
- (M) Offering or attempting to do any of the acts described in this paragraph for the owner of the real estate; or

(b) Representing a tenant or prospective tenant when renting or leasing real estate **for which a real estate property manager has a property management agreement with the owner of the 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)] (15) “Nonlicensed individual” means an individual:

- (a) Who has not obtained a real estate license; or
- (b) Whose real estate license is lapsed, expired, inactive, suspended, surrendered or revoked.

[(13)] (16) “Principal real estate broker” means[:]

[(a)] an individual who holds an active license as a principal real estate broker **issued under ORS 696.022.;** or]

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

[(14)] (17) “Professional real estate activity” means any of the following actions, when engaged in for another and for compensation or with the intention or in the expectation or upon the promise of receiving or collecting compensation, by any person who:

- (a) Sells, exchanges, purchases, rents or leases real estate;
- (b) Offers to sell, exchange, purchase, rent or lease real estate;
- (c) Negotiates, offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate;
- (d) Lists, offers, attempts or agrees to list real estate for sale;
- (e) Offers, attempts or agrees to perform or provide a competitive market analysis or letter opinion, to represent a taxpayer under ORS 305.230 or 309.100 or to give an opinion in any administrative or judicial proceeding regarding the value of real estate for taxation, except when the activity is performed by a state certified appraiser or state licensed appraiser;
- (f) Auctions, offers, attempts or agrees to auction real estate;
- (g) Buys, sells, offers to buy or sell or otherwise deals in options on real estate;
- (h) Engages in management of rental real estate;
- (i) Purports to be engaged in the business of buying, selling, exchanging, renting or leasing real estate;
- (j) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, leasing or rental of real estate;
- (k) Assists or directs in the negotiation or closing of any transaction calculated or intended to result in the sale, exchange, leasing or rental of real estate;

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

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

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

[(15)] (18) “Property management agreement” means a written contract for the management of rental real estate between a real estate property manager and the owner of the rental real estate.

[(16)] (19) “Real estate” includes leaseholds and licenses to use including, but not limited to, timeshare estates and timeshare licenses as defined in ORS 94.803, as well as any and every interest or

estate in real property, whether corporeal or incorporeal, whether freehold or nonfreehold, whether held separately or in common with others and whether the real property is situated in this state or elsewhere.

[(17)] (20) "Real estate broker" means an individual *[who engages in professional real estate activity and]* who holds an active license as a real estate broker **issued under ORS 696.022**.

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

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

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

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

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

[(b) Acquired three years of active experience as a real estate salesperson as defined in ORS 696.025 (1999 Edition) and successfully completed the real estate broker's examination required by rule of the agency.]

SECTION 4. 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 **licensed** 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[;], **including limited licenses under ORS 696.125; 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 professional real estate activity only if the broker is associated with and supervised by a principal real estate broker. Except as provided in paragraph (c) of this

subsection, a real estate broker may not employ, engage or supervise the professional real estate activity of another real estate licensee.

(b) **For an applicant** to qualify for a real estate broker's license, *[an applicant must furnish to]* the **Real Estate Commissioner** *[at the time of application for the license]* **must receive:**

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

(B) Proof that the applicant:

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

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

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

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

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

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

[(b)] (c) **For an applicant** to qualify for a principal real estate broker's license, *[an applicant must furnish to]* the commissioner *[at the time of application for the license]* **must receive:**

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

(B) Proof that the applicant:

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

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

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

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

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

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

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

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

(B) Proof that the applicant:

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

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

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

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

(b) In implementing this subsection, the commissioner shall require fingerprints and criminal offender information of an applicant for initial licensing and may require fingerprints and criminal offender information of an applicant for license renewal. Fingerprints acquired under this subsection may be used for the purpose of requesting a state or nationwide criminal records check under ORS 181A.195.

(6) *[In order to qualify for a real estate broker's license, a real estate salesperson licensed in another state or country must successfully complete a course of study and pass a real estate broker's license examination, both as prescribed by agency rule.]* **An individual licensed to engage in professional real estate activity in another state or country may qualify for a principal real estate broker license, real estate broker license or real estate property manager license if the individual successfully**

completes the course of study for and passes the license examination corresponding to the license for which the individual applies, both as prescribed by agency rule, and if the individual meets the other requirements for licensure in this chapter.

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

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

SECTION 5. ORS 696.026 is amended to read:

696.026. (1) The Real Estate Agency shall establish by rule *[a system]* **systems** for the registration **and renewal** of business names.

(2)*[(a)]* The **registration** system must *[require]*:

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

[(B)] **(b) Require** the registered business name to be:

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

(B) The name under which the principal real estate broker or licensed real estate property manager license was issued;

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

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

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

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

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

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

(c) *[The system must]* Allow a principal real estate broker or licensed real estate property manager to register one or more branch offices under the registered business name of the main office*[,]*; **and**

(d) Require the name of the principal real estate broker or licensed real estate property manager who is responsible for:

(A) Maintaining the registration of the business name;

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

(C) Registering any additional business names, as described in subsection (14) of this section;

(D) Maintaining the information described in ORS 696.245 for each clients' trust account opened, closed or transferred by a principal real estate broker or licensed real estate property manager who conducts professional real estate activity under the registered business name;

(E) Renewing the registration of the business name;

(F) Changing the registered business name, including the associated branch offices;

(G) Maintaining the business address of the main office and any associated branch offices of the registered business name as required by ORS 696.200; and

(H) Inactivating or reactivating the registration of the business name and associated branch offices.

(3) The renewal system must establish:

(a) The form and content of the renewal application;

(b) The schedule for annual renewals of registered business names, including the date of the registered business name expiration; and

(c) The procedures for renewing a registered business name.

(4) Failure to renew a registered business name and pay any required fees by the expiration date of the registration will result in:

(a) The expiration of the registered business name;

(b) The inactivation of all associated licenses; and

(c) The inactivation of all associated branch offices.

(5) The Real Estate Commissioner may by rule provide an opportunity for the late renewal of an expired registered business name.

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

[(4)] (7) Only a principal real estate broker or licensed real estate property manager may control and supervise the professional real estate activity conducted under the registered business name.

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

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

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

[(b) A registered business name.]

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

[(a)] (9) All professional real estate activity conducted by the principal real estate broker [or], licensed real estate property manager or real estate licensees associated with a principal real estate broker or licensed real estate property manager must be conducted under [the] an active registered business name[; and].

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

[(8)] (10) A principal real estate broker or licensed real estate property manager who registers a business name need not be an owner or officer of any entity lawfully entitled to use or have an ownership interest in the registered business name. However, only a principal real estate broker or licensed real estate property manager may control and supervise the professional real estate activity conducted under the registered business name.

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

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

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

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

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

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

[(13) Notwithstanding any other provision of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to

696.870, 696.990 and 696.995, a principal real estate broker or real estate broker associated with a principal real estate broker may create a corporation, limited liability company, limited liability partnership or any other lawfully constituted business organization for the purpose of receiving compensation. A real estate broker associated with a principal real estate broker may receive compensation only from a principal real estate broker. A business organization created under this subsection may not be licensed under ORS 696.022 or conduct in its own name professional real estate activity requiring a real estate license.]

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

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

(15) The agency shall establish by rule procedures to allow a real estate broker or principal real estate broker who becomes associated with a different registered business name to continue to engage in professional real estate activity on transactions that began while the real estate broker or principal real estate broker was associated with the original registered business name.

SECTION 6. ORS 696.030 is amended to read:

696.030. ORS 696.010 to 696.375, 696.392, 696.395 to 696.430, 696.490, 696.600 to 696.785, 696.990 and 696.995 do not apply to:

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

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

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

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

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

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

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

(2) A nonlicensed individual who acts as attorney in fact under a duly executed power of attorney from the owner or purchaser authorizing the supervision of the closing of or supervision of the performance of a contract for the sale, leasing or

exchanging of real estate if the power of attorney was executed prior to July 1, 2002, in compliance with the requirements of law at the time of execution or if:

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

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

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

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

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

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

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

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

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

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

(a) Negotiating rental or lease agreements;

(b) Checking tenant and credit references;

(c) Physically maintaining the real estate;

(d) Conducting tenant relations;

(e) Collecting the rent;

- (f) Supervising the premises' managers;
- (g) Discussing financial matters relating to the management of the real estate with the owner; and
- (h) Receiving and disbursing trust funds in a clients' trust account under ORS 696.241.

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

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

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

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

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

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

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

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

(18) [An] **A nonlicensed** individual who is a general partner for a domestic or foreign limited

partnership duly registered and operating within this state under ORS chapter 70 engaging in the sale of limited partnership interests and the acquisition, sale, exchange, lease, transfer or management of the real estate of the limited partnership.

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

(20) [An] **A nonlicensed** individual who is a professional forester or farm manager engaging in property management activity on forestland or farmland when the activity is incidental to the non-real estate duties involving overall management of forest or farm resources.

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

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

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

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

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

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

(27) [An] **A nonlicensed** individual who is *[the sole]* a member *[or a managing member]* of a domestic or foreign limited liability company duly registered and operating within this state under ORS chapter 63 and who is engaging in the acquisition, sale, exchange, lease, transfer or management of the real estate of the limited liability company **if:**

(a) **The limited liability company is member-managed; or**

(b) **The limited liability company is manager-managed, and the nonlicensed individual is a manager.**

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

(29) [An] **A nonlicensed** individual who is an officer or director of a domestic or foreign corporation duly registered and operating within this state under ORS chapter 60 and who is engaging in the acquisition, sale, exchange, lease, transfer or management of the real estate of the corporation.

SECTION 7. An individual listed in ORS 696.030 may not make a demand for the compensation of a real estate licensee under ORS 696.290.

SECTION 8. ORS 696.125 is amended to read:

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

- (a) By term;
- (b) To acts subject to the supervision of a specific principal real estate broker;
- (c) By conditions to be observed in the exercise and the privileges granted; or
- (d) In other ways determined by the commissioner as necessary or appropriate to protect the public.

(2) A limited license issued under this section *[does not confer any property right in the privileges to be exercised under the license, and the holder of a limited license does not have the right to renewal of the limited license.]* **may be renewed as provided by the commissioner by rule.** A limited license may be suspended or revoked, or the real estate licensee may be reprimanded, by the commissioner on the grounds set out in ORS 696.301 or for failure to comply with the limitations of the license.

SECTION 9. ORS 696.130 is amended to read:

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

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

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

- (a) By term;
- (b) To acts subject to the supervision of a specific principal real estate broker; or
- (c) By conditions to be observed in the exercise and the privileges granted.

(3) A limited license issued under this section *[does not confer any property right in the privileges to be exercised thereunder, and the holder of a limited license does not have the right to renewal of such license]* **may be renewed as provided by the commissioner by rule.** A limited license may be suspended or revoked, or the licensee may be reprimanded, by the commissioner on the grounds set out in ORS 696.301.

SECTION 10. ORS 696.174 is amended to read:

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

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

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

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

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

- (a) The date, name and length of time of each course attended;
- (b) The name of the real estate continuing education provider that offered the course;
- (c) The name of the instructor who taught the course; and
- (d) Any other information that the agency requires by rule.

(3) The agency may waive any portion of the requirements of this section for a **real estate** licensee who submits satisfactory evidence that poor health or other circumstances beyond the **real estate** licensee's control prevented the **real estate** licensee from attending part or all of the continuing education courses required by subsection (1) of this section.

SECTION 11. ORS 696.182 is amended to read:

696.182. (1) The Real Estate Agency, with advice from real estate professionals and educators, shall *[prescribe rules for certifying]* **establish by rule a system for certification and renewal of** real estate continuing education providers.

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

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

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

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

(d) A real estate multiple listing service;

(e) An attorney *[admitted to practice in this state]* **who is an active member of the Oregon State Bar;**

(f) **A law firm, in which at least one of the attorneys associated with the law firm is an active member of the Oregon State Bar;**

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

[(g)] (h) An accredited community college, an accredited public university listed in ORS 352.002 or a private and independent institution of higher education as defined in ORS 350.635;

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

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

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

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

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

(b) Learning objectives for each course topic.

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

(6) The minimum length of each course is one hour. A continuing education provider or course instructor may allow a break of no more than 10 minutes for each hour of instruction.

SECTION 12. ORS 696.200 is amended to read:

696.200. (1) A licensed real estate property manager or principal real estate broker shall:

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

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

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

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

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

(3) The place of business of a **principal** real estate *[licensee]* **broker or licensed real estate property manager** must be specified in the application for a *[real estate license and stated on the license]* **registered business name or branch office.**

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

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

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

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

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

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

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

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

(7) A licensed real estate property manager or principal real estate broker may not display any name at a main **office** or branch office other than the **registered business** name under which the real estate licensee conducts professional real estate activity.

SECTION 13. ORS 696.205 is amended to read:

696.205. (1) If a real estate licensee who is the sole principal real estate broker **or sole licensed real estate property manager** of a *[real estate]* **registered business name** dies or becomes incapacitated, the Real Estate Commissioner may issue a temporary license to the executor, administrator or personal representative of the estate of the deceased real estate licensee or to the court-appointed fiduciary of the incapacitated real estate licensee, or to some other individual designated by the

commissioner[, *in order to continue to transact the real estate business in the case of the incapacitated real estate licensee or to wind up the affairs of the deceased or incapacitated real estate licensee*]. **The commissioner shall determine whether the temporary licensee may continue to conduct the professional real estate activity of the real estate licensee or may wind up the affairs of the real estate licensee.** The term of a temporary license issued under this section may not exceed one year from the date of issuance unless the commissioner, in the discretion of the commissioner, extends the term of the temporary license based on sufficient cause provided by the temporary licensee to the commissioner.

(2) The Real Estate Agency may adopt administrative rules to administer this section or to authorize an individual to [*transact*] **conduct** or wind up [*real estate business*] **the professional real estate activity** on behalf of the deceased or incapacitated [*real estate licensee*] **principal real estate broker or licensed real estate property manager.**

SECTION 14. 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.*] **The license status of a real estate licensee employed by the Real Estate Agency shall be placed on hold at the time that the real estate licensee commences employment with the agency.** At the termination of [*an employee's or officer's*] **the** employment, the license may be returned to the **real estate licensee** as an active or inactive license. The agency shall activate a license [*held in suspense*] **placed on hold** without payment of further fee, and the license expires on the date on which it would have expired if the license had not been [*held in suspense*] **placed on hold.**

(2) **During the time of employment at the agency, the employee may not conduct professional real estate activity.**

[(2)] (3) Except as stated in subsection (1) of this section, the [*return of the license to the licensee and all renewals are*] **real estate licensee is** subject to the provisions of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.995.

SECTION 15. ORS 696.241 is amended to read:

696.241. (1) As used in this section, "trust funds" means money belonging to others that is received or handled by a licensed real estate property manager or principal real estate broker in the course of conducting professional real estate activity and in the real estate licensee's fiduciary capacity.

(2) A licensed real estate property manager, or a principal real estate broker who engages in the management of rental real estate, shall open and maintain in this state one or more separate federally insured bank accounts that are designated clients'

trust accounts under ORS 696.245. A principal real estate broker who engages in the management of rental real estate or a licensed real estate property manager shall deposit in a [*client's*] **clients'** trust account all trust funds received or handled by the principal real estate broker, licensed real estate property manager or real estate licensees subject to the supervision of the principal real estate broker.

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

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

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

[(a) *The name of the bank;*]

[(b) *The account number;*]

[(c) *The name of the account;*]

[(d) *The date the account was opened; and*]

[(e) *A statement by the licensed real estate property manager or principal real estate broker authorizing the Real Estate Commissioner or the commissioner's representative to examine the clients' trust account at such times as the commissioner may direct.*]

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

[(6) *A licensed real estate property manager or principal real estate broker who closes a clients' trust account, or to whom ownership of a client's trust account is transferred as authorized by the agency by rule, shall notify the agency, within 10 business days after the date the account is closed or transferred, on a form approved by the agency.*]

(5) **A principal real estate broker or licensed real estate property manager may not commingle any other funds with the trust funds held in a clients' trust account, except for:**

[(7)] (a) [*Except for*] Earned interest on a clients' trust account as provided in subsections [(9) and (10)] (7) and (8) of this section[, *a licensed real estate property manager or principal real estate broker may*

not commingle any other funds with the trust funds held in a clients' trust account.]; and

(b) Earned compensation as provided in subsection (9) of this section.

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

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

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

[(11)] **(9)** In connection with a real estate sales, purchase or exchange transaction, a principal real estate broker is not entitled to any part of any interest earnings on trust funds deposited under subsection [(9)] **(7)** of this section or to any part of the earnest money or other money paid to the principal real estate broker as part or all of the principal real estate broker's compensation until the transaction has been completed or terminated. The principal real estate broker and the seller shall negotiate and agree in writing to the disposition of forfeited earnest money at the time of execution by the seller of any listing agreement or earnest money agreement. An agreement about the disposition of forfeited earnest money must be initiated by the seller or immediately precede the seller's signature.

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

[(13)] **(11)** The **Real Estate** Agency by rule shall establish an optional procedure by which a principal

real estate broker may elect to disburse disputed funds held in relation to the sale, exchange or purchase of real estate from a clients' trust account to the person who delivered the funds to the principal real estate broker. The procedure must allow disbursement not more than 20 days after a request is made for the disbursement. A disbursement pursuant to the procedure does not affect the claim of any other person to the funds.

[(14)] **(12)** The agency may provide by rule for other records to be maintained and for the manner in which trust funds are deposited, held and disbursed. **The rules adopted under this subsection may include requirements for interest or compensation held in a clients' trust account pursuant to subsection (5) of this section to be disbursed from the clients' trust account to a licensed real estate property manager or principal real estate broker.**

(13) A real estate licensee who, for the purpose of transmitting a check, receives the check from a buyer or tenant that is payable to a property owner or seller is exempt from the deposit requirements of subsections (2) and (3) of this section. The agency may determine by rule the records that must be maintained for checks received as described in this subsection and the manner in which the checks must be transmitted.

SECTION 16. ORS 696.243 is amended to read:

696.243. (1) Any [real estate broker,] principal real estate broker, **licensed** real estate property manager or escrow agent who is required by the Real Estate Commissioner to maintain the canceled checks used to disburse moneys from the **real estate** licensee's clients' trust account may substitute a copy of the original canceled check, if the copy is provided by a bank and is produced by optical imaging or other process that accurately reproduces the original or forms a durable medium for reproducing the original, and the copy is at least 300 dots per inch in quality.

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

(3) As used in subsection (2) of this section, "electronic fund transfer" has the meaning set forth in section 903 of the Electronic Transfer Act (P.L. 90-321, 15 U.S.C. 1693a).

SECTION 17. ORS 696.245 is amended to read:

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

NOTICE OF CLIENTS' TRUST ACCOUNT AND AUTHORIZATION TO EXAMINE

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

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

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

I hereby authorize you to furnish information requested by the Real Estate Commissioner and/or authorized representative concerning the account listed above as required by ORS 696.245.

Dated: _____ (insert date)

 (signature of real estate licensee)

ACKNOWLEDGMENT OF RECEIPT

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

 (signature)

 (title)

(2) Within 10 business days from the date a clients' trust account is opened, a licensed real estate property manager or principal real estate broker shall notify the Real Estate Agency that the account has been opened. The notice must include information about the clients' trust account, including but not limited to:

- (a) The name of the bank where the account is located;**
- (b) The account number;**
- (c) The name of the account;**
- (d) The date the account was opened; and**
- (e) An acknowledged copy of the notice described in subsection (1) of this section.**

(3) Within 10 business days from the date a clients' trust account is closed or transferred, a licensed real estate property manager or principal real estate broker shall notify the agency that the account has been closed or transferred and shall include in the notice the date on which the account was closed or transferred.

(4) Notification to the agency under subsections (2) and (3) of this section must be made in the manner established by the agency by rule.

[*(2)*] **(5) The [real estate licensee] principal real estate broker or licensed real estate property manager shall retain the acknowledged copy of the notice described in subsection (1) of this section for at least six years following the closing of the account as provided in ORS 696.280.**

SECTION 18. ORS 696.280 is amended to read:

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

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

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

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

- (a) For a notice of clients' trust account and authorization to examine under ORS 696.245, the date the account was closed;**
- (b) For real estate transactions, the date a transaction closed or failed, whichever is later;**
- (c) For management of rental real estate, the date on which the record expired, was superseded or terminated, or otherwise ceased to be in effect; and**
- (d) For all other records, the date the record was created or received, whichever is later.**

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

(6) The agency may prescribe by rule terms and conditions under which a licensed real estate property manager or principal real estate broker may maintain records outside this state.

SECTION 19. ORS 696.290 is amended to read:

696.290. (1)(a) Except as provided in paragraph (b) of this subsection, a real estate licensee may not offer, promise, allow, give, pay or rebate, directly or indirectly, any part or share of the licensee's compensation arising or accruing from any real estate transaction or pay a finder's fee to any person who is not a real estate licensee licensed under ORS 696.022, **including a nonlicensed individual described in ORS 696.030.**

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

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

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

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

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

(4) **Notwithstanding ORS 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870, a principal real estate broker or a real estate broker associated with a principal real estate broker may create a corporation, limited liability company, limited liability partnership or other lawfully constituted business organization for the purpose of receiving compensation. The real estate licensee may not conduct professional real estate activity under a business organization created pursuant to this subsection.**

[(4)] (5) Nothing in this section prevents payment of compensation earned by a real estate broker or principal real estate broker while licensed because of the real estate broker's or principal real estate broker's association with a different principal real estate broker or because of inactivation of the real estate broker's or principal real estate broker's license. **The compensation may be paid directly to the real estate licensee by the principal real**

estate broker with whom the real estate licensee was associated at the time the professional real estate activity for which the compensation was earned was conducted.

[(5)] (6) Nothing in subsection (1) of this section prohibits a [real estate licensee] **principal real estate broker or licensed real estate property manager** who has a property management agreement with the owner of a residential building or facility from authorizing the payment of a referral fee, rent credit or other compensation to an existing tenant of the owner or **real estate** licensee, or a former tenant if the former tenant resided in the building or facility within the previous six months, as compensation for referring new tenants to the **real estate** licensee.

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

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

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

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

(b) As used in this subsection, "nonresidential real estate" means real property that is improved or available for improvement by commercial structures or five or more residential dwelling units.

SECTION 20. ORS 696.301 is amended to read:

696.301. Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any **real estate** licensee or deny the issuance or renewal of a license to an applicant who has [done any of the following]:

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

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

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 [and], 696.800 to 696.870 **and 696.890** or any rule of the Real Estate Agency.

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

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

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

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

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

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

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

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

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

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

(14) Committed an act of fraud or engaged in dishonest conduct substantially related to the fitness of the applicant or **real estate** licensee to conduct professional real estate activity, without regard to whether the act or conduct occurred in the course of professional real estate activity.

(15) Engaged in any conduct that is below the standard of care for the practice of professional real estate activity in Oregon as established by the community of individuals engaged in the practice of professional real estate activity in Oregon.

SECTION 21. ORS 696.310 is amended to read:

696.310. *(1) If two or more principal real estate brokers are in business together, the brokers may have equal supervisory control over and shall be equally responsible for the conduct of other principal real estate brokers or real estate brokers associated with the principal real estate brokers, or other employees employed by the principal real estate brokers. The principal real estate brokers shall execute a written agreement between them and establish office policies specifying the supervisory control and responsibility*

for each principal real estate broker who is a party to the agreement.]

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

(1) If two or more principal real estate brokers are associated with the same registered business name, the principal real estate brokers shall:

(a) Execute one or more written supervisory agreements between them that:

(A) Fully allocate the supervisory control and responsibility for the professional real estate activities of all real estate brokers associated with the registered business name;

(B) Include a default allocation of supervisory control and responsibility for any real estate brokers who associate with the registered business name in the future or who are otherwise omitted from the written supervisory agreement; and

(C) Include any supervisory control and responsibility of one principal real estate broker over another principal real estate broker;

(b) Update the written supervisory agreement if the disassociation of a principal real estate broker occurs that affects the allocation of supervisory control or responsibility; and

(c) Share equal supervisory control and responsibility for any professional real estate activity conducted by real estate brokers associated with the registered business name that is not otherwise covered by the written supervisory agreement.

(2) If a licensed real estate property manager is associated with the same registered business name as any combination of licensed real estate property managers and principal real estate brokers, the licensed real estate property managers and principal real estate brokers shall:

(a) Execute one or more written supervisory agreements between them that:

(A) Fully allocates supervisory control and responsibility for management of rental real estate conducted by all principal real estate brokers and licensed real estate property managers associated with the registered business name; and

(B) Includes any arrangement for supervisory control and responsibility over the management of rental real estate conducted by the

licensed real estate property managers and principal real estate brokers;

(b) Update the written supervisory agreement if another licensed real estate property manager or principal real estate broker associates with the registered business name; and

(c) Update the written supervisory agreement if the disassociation of a licensed real estate property manager or principal real estate broker occurs that affects the allocation of supervisory control or responsibility over management of rental real estate.

(3) Licensed real estate property managers and principal real estate brokers who do not exercise administrative or supervisory control over one another are each responsible for their own management of rental real estate.

SECTION 22. ORS 696.385 is amended to read: 696.385. The Real Estate Agency shall have the power to:

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

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

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

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

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

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

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

(5) Subsection (4) of this section does not apply to a temporary rule that is adopted, amended or suspended pursuant to ORS 183.335 (5). However, the agency shall submit to the board a copy of any proposed temporary rule as soon as practicable and, to the extent possible under the circumstances, consider any recommendations that the board may make by majority vote regarding the temporary rule.

SECTION 23. ORS 696.505 is amended to read: 696.505. As used in ORS 696.505 to 696.590:

(1) “Business day” means a day other than Saturday or Sunday or a federal or State of Oregon legal holiday.

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

[(2)] (3) “Collection escrow” means an escrow in which the escrow agent:

(a) Receives:

(A) Installment payments;

(B) Instruments evidencing or securing an obligation; or

(C) Instruments discharging the security interest; and

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

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

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

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

[(6)] (7) “Escrow trust account” means a bank account that *[meets all of the following requirements]* **is**:

(a) *[Is]* Kept separate, distinct and apart from funds belonging to the escrow agent;

(b) *[Is]* Designated as an escrow trust account; and

(c) *[Is]* Used to deposit trust funds received by an escrow agent on behalf of a principal.

[(7)] (8) “Principal” means:

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

(b) The borrower in an escrow transaction involving the refinancing of real property or personal property, including but not limited to the refinanc-

ing of an obligation secured by a land sale contract requiring a deed to be delivered as part of the refinancing;

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

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

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

(f) A subservicer.

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

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

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

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

[(10)] (11) "Trust funds" means funds held by an escrow agent on behalf of a principal.

SECTION 24. ORS 696.520 is amended to read: 696.520. The provisions of ORS 696.505 to 696.590 do not apply to and the term "escrow agent" does not include:

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

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

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

(4) Any person doing any of the acts specified in ORS 696.505 [(4)] (5) under order of any court.

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

(6) Any collection agency registered under ORS 697.015 that is engaged in any collection or billing activity without holding documents relating to the debt.

SECTION 25. ORS 696.582 is amended to read: 696.582. (1) An escrow agent shall hold, as provided in subsection (3) of this section, the amount of money or other property agreed to as compensation in a written real estate broker's or principal real estate broker's compensation agreement, if the escrow agent has at the office at which the escrow is being closed, before the date of closing:

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

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

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

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

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

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

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

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

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

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

(4) If the filing of a notice of compensation with an escrow agent under subsection (1) of this section is made more than 10 days prior to the scheduled closing date, the real estate broker or principal real estate broker filing the notice shall deliver a copy of the notice to the principal identified in the notice. If the notice is filed within 10 days of the scheduled closing date, [a copy of the notice shall be provided by] the escrow agent **shall provide a copy of the notice** to the principal identified in the notice at the time of closing.

SECTION 26. ORS 696.710 is amended to read:

696.710. (1) [An individual engaged in the business of, or acting in the capacity of,] A real estate broker or principal real estate broker **conducting professional real estate activity** within this state may not bring or maintain any action [in the courts] for the collection of compensation without alleging and proving that the individual was a [licensed broker] **real estate licensee** when the alleged cause of action arose.

(2) An action [in the courts] for collection of compensation **from a client** for [an individual engaged in the business of, or acting in the capacity of,] **professional real estate activity conducted by** a real estate broker associated with a principal real estate broker may not be brought or maintained except by the principal real estate broker with whom the real estate broker was associated when the alleged cause of action arose.

SECTION 27. ORS 696.800 is amended to read:

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

(1) "Agent" means:

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

(A) A listing agreement with a seller;

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

(C) A disclosed limited agency agreement; or

(b) [An individual licensed under ORS 696.022 who has entered into a written contract with] A real estate broker [or] **associated with a principal real estate broker** to act as the **principal real estate broker's agent** in connection with acts requiring a real estate license and to function under the **principal real estate 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] **an agent**, 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] **an agent** by the buyer or seller of one to four residential units regarding the real property transaction, including but not limited to price, terms, financial qualifications or motivation to buy or sell. "Confidential information" does not mean information that:

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

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

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

(5) "Listing agreement" means a contract between **an agent and a seller** of real property [and a real estate broker or principal real estate broker by which the broker has been authorized] **that authorizes the agent, in exchange for compensation, to act [as an agent] on behalf of the seller [for compensation to offer] in offering the real property for sale or [to find and obtain] in finding and obtaining** 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*] **an agent**, whether or not a transfer results; or

(b) Who receives an offer to purchase real property[, *of which the seller is the owner,*] **that the seller owns** from an agent acting on behalf of a buyer.

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