

Chapter 696

Real Estate and Business Brokers; Escrow Agents

Chapter 696

NOTES OF DECISIONS

Under former similar statute, an employe who by agreement with his employer procured a purchase for employer's business was not engaged in the business of dealing in business chances and was not subject to business chance broker's law. *Klarr v. Heckart*, (1955) 206 Or 178, 291 P2d 1016.

FURTHER CITATIONS: *Miller v. Ziedrich*, (1953) 199 Or 505, 263 P2d 611; *Sorenson v. Brice Realty Co.*, (1955) 204 Or 223, 282 P2d 1057; *State ex rel. Jensen v. Standridge*, (1960) 224 Or 334, 355 P2d 1114; *Widing v. Jensen*, (1962) 231 Or 541, 373 P2d 661; *City of Beaverton v. Harris*, (1970) 3 Or App 541, 474 P2d 771.

ATTY. GEN. OPINIONS: Necessity of nonresident maintaining a definite place of business in this state, 1948-50, p 433; splitting commissions with unlicensed nonresident broker, 1950-52, p 197; selling of cemetery plots, 1950-52, p 409; necessity for licensing of regular employe of corporation who buys, exchanges and sells real property regularly for a profit, 1954-56, p 217; applicability to special appraisers for Department of Veterans Affairs, 1958-60, p 40; as containing no apprenticeship requirement, 1958-60, p 288; scope of rulemaking power, 1960-62, p 40; necessity that real property be part of the business chance to require licensing, 1960-62, p 88; application to corporation performing appraisals and other services regarding real property, 1966-68, p 37; application to manager of rental properties, 1966-68, p 527; license required to auction real property, 1966-68, p 582.

696.010

NOTES OF DECISIONS

A person engaged in buying unimproved lots, improving them, and then selling them, is engaged in the real estate business. *Roberts v. Mariner*, (1952) 195 Or 311, 245 P2d 927.

Furnishing names of interested purchasers expecting to be paid constitutes assistance in procuring prospects. *Carnahan v. McCarver*, (1970) 255 Or 36, 463 P2d 857.

ATTY. GEN. OPINIONS: License for State Land Board's agent to sell state property, 1940-42, p 467; need for license for persons making appraisals of buildings of manufacturing plants, together with machinery and equipment therein, which appraisals are made in relation to insurance, taxation, probate of estates, and other matters not having to do with the sale or exchange of real property or interests therein, 1942-44, p 200; one who auctions or attempts to auction real estate for a fee or commission as required to be licensed as a real estate broker, 1944-46, p 78; license needed by company participating indirectly in sale of realty, 1948-50, p 418; sale of standing timber as a sale of "real estate" within this section, 1948-50, p 211; selling cemetery lots as within definitions of this section, 1950-52, p 409; regular employe of corporation which buys, exchanges and

sells real property regularly for a profit, 1954-56, p 217; real estate brokerage referral system as within subsection (8) (j), 1960-62, p 55; construing "associate broker," 1964-66, p 281; application of chapter to corporation performing appraisals and other services regarding real property, 1966-68, p 37; license required to auction real property, 1966-68, p 582.

696.020

NOTES OF DECISIONS

Under former similar statute, agreements entered into in violation of the statutes regulating real estate brokers were void. *Hunter v. Cunning*, (1945) 176 Or 250, 154 P2d 562, 157 P2d 510.

A contract to pay a broker's commission must be made in the name of the broker, not of a salesman, in order to be valid. *Miller v. Ziedrich*, (1953) 199 Or 505, 263 P2d 611.

Only licensed brokers may receive remuneration for aiding in sale of real property by furnishing names of interested purchasers. *Carnahan v. McCarver*, (1970) 255 Or 36, 463 P2d 859.

FURTHER CITATIONS: *Devereaux v. Cockerline*, (1946) 179 Or 229, 170 P2d 727; *Killam v. Tenney*, (1961) 229 Or 134, 366 P2d 739; *Certified Realty Co. v. Reddick*, (1969) 253 Or 617, 456 P2d 502; *Ferris v. Meeker Fertilizer Co.*, (1971) 258 Or 377, 482 P2d 523.

ATTY. GEN. OPINIONS: Splitting commissions with unlicensed nonresident broker, 1950-52, p 197; applicability to special appraisers for Department of Veterans Affairs, 1958-60, p 40.

696.030

ATTY. GEN. OPINIONS: Authority of shareholders to sell realty of corporation, 1924-26, p 392; when attorneys for the State Land Board must be licensed, 1936-38, p 340; sale of standing timber, 1948-50, p 212; splitting commissions with unlicensed nonresident broker, 1950-52, p 197; licensing of nonresident salesmen by reciprocity, 1950-52, p 351; selling of cemetery plots, 1950-52, p 409; regular employe of corporation which buys, exchanges and sells real property regularly for a profit, 1954-56, p 217; application of chapter to corporation performing appraisals and other services regarding real property, 1966-68, p 37; application to manager of residential properties, 1966-68, p 527.

696.040

NOTES OF DECISIONS

Under former similar statute, an employe who by agreement with his employer procures a purchaser for employer's business is not engaged in the business of dealing in business chances and is not subject to business chance broker's law. *Klarr v. Heckart*, (1956) 206 Or 178, 291 P2d 1016.

FURTHER CITATIONS: Carnahan v. McCarver, (1970) 255 Or 36, 463 P2d 657.

ATTY. GEN. OPINIONS: Applicability to special appraisers for Department of Veterans Affairs, 1958-60, p 40; application of chapter to corporation performing appraisals and other services regarding real property, 1966-68, p 37.

696.050

ATTY. GEN. OPINIONS: United States citizenship status of applicant for real estate license who has served sentence in state penitentiary, 1950-52, p 263; applicant charged with income tax evasion, 1966-68, p 536.

696.060

ATTY. GEN. OPINIONS: License issued to married woman in surname of husband, 1938-40, p 609; right of brokers to establish branch offices, 1950-52, p 115; authority to require fingerprints, 1950-52, p 185.

696.080

ATTY. GEN. OPINIONS: Application of chapter to corporation performing appraisals and other services regarding real property, 1966-68, p 37.

696.090

ATTY. GEN. OPINIONS: Application of chapter to corporation performing appraisals and other services regarding real property, 1966-68, p 37.

696.110

NOTES OF DECISIONS

Taxation of real estate businesses under a city ordinance was for no regulatory purpose and not within the prohibition of subsection (1). City of Beaverton v. Harris, (1970) 3 Or App 541, 474 P2d 771.

ATTY. GEN. OPINIONS: City license fee on real estate brokers and salesmen, 1956-58, p 204; application to accountants, 1956-58, p 215; application to engineers, 1956-58, p 221; city license fee imposed on state licensed occupations, (1970) Vol 34, p 1089.

LAW REVIEW CITATIONS: 4 WLJ 476.

696.120

ATTY. GEN. OPINIONS: Power of Real Estate Commissioner to require fingerprints, 1950-52, p 185.

696.130

ATTY. GEN. OPINIONS: Licensing of nonresident salesmen by reciprocity, 1950-52, p 351; purpose of temporary license, 1958-60, p 288.

696.140

ATTY. GEN. OPINIONS: Effect of temporary license issued before 1947 amendment of this section, 1958-60, p 288.

696.160

ATTY. GEN. OPINIONS: Issuing of more than one license to brokers with branch offices, 1952-54, p 28.

696.165

ATTY. GEN. OPINIONS: Disposition of associate brokers' fees prior to 1965, 1964-66, p 281.

696.180

ATTY. GEN. OPINIONS: Right of brokers to establish branch offices, 1950-52, p 115; authority to issue branch office license in name other than the name appearing on the original license of the licensee, 1952-54, p 27.

696.200

ATTY. GEN. OPINIONS: Necessity of nonresident maintaining a definite place of business in this state, 1948-50, p 433; licensing of branch office to be operated by a real estate salesman, 1950-52, p 116; issuing of more than one license to brokers with branch offices, 1952-54, p 28.

696.221

ATTY. GEN. OPINIONS: Authority for rule for not charging salesman's reactivation fee, 1966-68, p 158.

696.224

ATTY. GEN. OPINIONS: Authority for rule for not charging salesman's reactivation fee, 1966-68, p 158.

696.226

CASE CITATIONS: Ferris v. Meecker Fertilizer Co., (1971) 258 Or 377, 482 P2d 523.

ATTY. GEN. OPINIONS: Authority for rule for not charging salesman's reactivation fee, 1966-68, p 158.

696.240

CASE CITATIONS: Medaz v. DePrez, (1963) 236 Or 31, 386 P2d 805.

696.250

CASE CITATIONS: Hartford Acc. and Ind. Co. v. Ankeny, (1953) 199 Or 310, 261 P2d 387.

ATTY. GEN. OPINIONS: Necessity of nonresident maintaining a definite place of business in this state, 1948-50, p 433; splitting commissions with unlicensed nonresident broker, 1950-52, p 197; licensing of nonresident salesmen by reciprocity, 1950-52, p 351; application of chapter to corporation performing appraisals and other services regarding real property, 1966-68, p 37.

696.260

ATTY. GEN. OPINIONS: Splitting commissions with unlicensed nonresident broker, 1950-52, p 197; licensing of nonresident salesmen by reciprocity, 1950-52, p 351.

LAW REVIEW CITATIONS: 46 OLR 194.

696.270

CASE CITATIONS: City of Beaverton v. Harris, (1970) 3 Or App 541, 474 P2d 771.

ATTY. GEN. OPINIONS: Right of brokers to establish branch offices, 1950-52, p 115; city license fees on real estate brokers and salesmen, 1956-58, p 204, 1958-60, p 59; compar-

able provisions relating to insurance agents, 1958-60, p 77; disposition of collected funds, 1960-62, p 320; disposition of associate brokers' fees prior to 1965, 1964-66, p 281; authority for rule for not charging salesman's reactivation fee, 1966-68, p 158.

696.290

NOTES OF DECISIONS

Real estate salesman can deal only with a broker even though the owner of property is an officer of the broker company. *Sorenson v. Brice Realty Co.*, (1955) 204 Or 223, 282 P2d 1057.

Payment to an agent (salesman) having authority to receive payment is generally considered payment to the principal (broker). *Jensen v. Pitman*, (1963) 236 Or 59, 386 P2d 803.

A factual manual transfer of the commission from the broker to the salesman is not essential if the broker determines the distribution. *Id.*

FURTHER CITATIONS: *Rahoutis v. State Unemp. Comp. Comm.*, (1943) 171 Or 93, 136 P2d 426.

ATTY. GEN. OPINIONS: Licensing of branch office to be operated by a real estate salesman, 1950-52, p 115; splitting commissions with unlicensed nonresident broker, 1950-52, p 197; real estate brokerage referral system charging apparently flat fee, 1960-62, p 55.

696.300

NOTES OF DECISIONS

Paragraph (q) of subsection (1) embodies a statement of the common law rule of the fiduciary relationship of a real estate broker to his principal. *Widing v. Jensen*, (1962) 231 Or 541, 373 P2d 661.

If the facts found by the commissioner are supported by substantial evidence, they are binding upon the appellate court. *Miesen v. Dept. of Commerce*, (1970) 3 Or App 251, 473 P2d 691.

There was substantial evidence to support the findings of the commissioner. *Id.*

FURTHER CITATIONS: *Hartford Acc. and Ind. Co. v. Ankeny*, (1953) 199 Or 310, 261 P2d 387; *Jensen v. Pitman*, (1963) 236 Or 59, 386 P2d 803.

ATTY. GEN. OPINIONS: Licensing of branch office to be operated by a real estate salesman, 1950-52, p 116; splitting commissions with unlicensed nonresident broker, 1950-52, p 197; authority to determine denial of broker's license, 1958-60, p 26; authority of board to discipline licensees using "bait advertising," 1960-62, p 40; construing "crime of moral turpitude," 1966-68, p 536; broker's use of third party for collections, (1970) Vol 35, p 87.

696.375

ATTY. GEN. OPINIONS: Civil service status of positions in Department of Commerce, 1964-66, p 51; use of blanket position bond in lieu of individual surety bond, 1966-68, p 83.

696.385

ATTY. GEN. OPINIONS: Scope of rule-making power, 1960-62, p 40.

696.425

ATTY. GEN. OPINIONS: Delegation of duty to grade ex-

amination papers, 1958-60, p 253; authority of board to discipline licensees using "bait advertising," 1960-62, p 40.

696.480

ATTY. GEN. OPINIONS: Licensing of nonresident salesmen by reciprocity, 1950-52, p 351.

696.490

ATTY. GEN. OPINIONS: Tithing from Real Estate Educational Account, 1960-62, p 320; disposition of associate brokers' fees prior to 1965, 1964-66, p 281.

696.505 to 696.580

ATTY. GEN. OPINIONS: Authority of commissioner to suspend or revoke escrow agency license for alleged unauthorized practice of law, 1966-68, p 43; application to title insurance company's escrow service at branch office, (1970) Vol 35, p 133.

696.505

ATTY. GEN. OPINIONS: Construing "person," (1970) Vol 35, p 133.

696.520

ATTY. GEN. OPINIONS: Application to title insurance company's escrow service at branch office, (1970) Vol 35, p 133.

696.535

ATTY. GEN. OPINIONS: Authority of commissioner to suspend or revoke escrow agency license for alleged unauthorized practice of law, 1966-68, p 43.

696.555

CASE CITATIONS: *United States Nat. Bank v. Am. Escrow, Inc.*, (1965) 250 F Supp 302.

696.560

NOTES OF DECISIONS

Funds deposited under this section are held by the bank in trust. *United States Nat. Bank v. Am. Escrow, Inc.*, (1965) 250 F Supp 302.

696.565

NOTES OF DECISIONS

The burden is on the attaching creditor to show what part, if any, of the fund is not fiduciary in character. *United States Nat. Bank v. Am. Escrow, Inc.*, (1965) 250 F Supp 302.

696.810

CASE CITATIONS: *Klarr v. Heckart*, (1959) 218 Or 1, 341 P2d 535.

ATTY. GEN. OPINIONS: Necessity for real property to be a part of the business chance, 1960-62, p 88.

696.620

NOTES OF DECISIONS

Under former similar statute, an employee who by agreement with his employer procures a purchaser for employer's

business is not engaged in the business of dealing in business chances and is not subject to business chance broker's law. Klarr v. Heckart, (1956) 206 Or 178, 291 P2d 1016.

696.710

NOTES OF DECISIONS

"At the time the alleged action arose" means at the time or throughout the period when the broker performed the services which culminated in the accrual of his cause of action. Hunter v. Cuning, (1945) 176 Or 250, 154 P2d 562, 157 P2d 510.

A contract to pay a broker's commission must be made in the name of the broker, not of a salesman, in order to be valid. Miller v. Ziedrich, (1953) 199 Or 505, 263 P2d 611.

Only licensed brokers may receive remuneration for aiding in sale of real property by furnishing names of interested purchasers. Carnahan v. McCarver, (1970) 255 Or 36, 463 P2d 857.

This section does not preclude recovery merely because the broker's agent was on an inactive license for part of the period of the listing agreement. Ferris v. Meeker Fertilizer Co., (1971) 258 Or 377, 482 P2d 523.

FURTHER CITATIONS: Devereaux v. Cockerline, (1946) 179 Or 229, 170 P2d 727; Pedersen v. Pete Wilson Realty, Inc., (1970) 256 Or 622, 475 P2d 413; Wells v. Davis, (1970) 258 Or 93, 480 P2d 699.

696.740

NOTES OF DECISIONS

Jurisdiction for judicial review provided by a former similar statute was excepted from the Administratives Procedures Act. State v. Standridge, (1960) 224 Or 334, 355 P2d 1114.

ATTY. GEN. OPINIONS: Power of commissioner to reinstate license after cancellation or revocation for cause, 1924-26, p 582; one licensed as a broker as entitled to a hearing before his license is canceled or revoked, even if the licensee has been found guilty of misconduct in court in a civil suit brought against him for the recovery of a secret profit made by him, 1944-46, p 195; hearing on denial, cancellation or revocation of broker's license, 1958-60, p 26.

LAW REVIEW CITATIONS: 40 OLR 253; 41 OLR 119.