

Enrolled
Senate Bill 166

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CHAPTER

AN ACT

Relating to client trust accounts maintained by real estate licensees; creating new provisions; and amending ORS 696.241.

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

SECTION 1. ORS 696.241 is amended to read:

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

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

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

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

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

(6) With prior written notice to all parties who have an interest in the trust funds, a sole practitioner or principal real estate broker may place trust funds received by the sole practitioner or principal real estate broker in a federally insured interest-bearing bank account that is designated a Clients' Trust Account and the earnings of which inure to the benefit of a public benefit

corporation, as defined in ORS 65.001, for distribution to organizations and individuals for first-time homebuying assistance and for development of affordable housing. The sole practitioner or principal real estate broker shall select a qualified public benefit corporation to receive the interest earnings.

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

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

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

(10) The agency by rule shall establish [*a procedure for disbursement of disputed funds*] **an optional procedure by which a sole practitioner or 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 sole practitioner or principal real estate broker. The procedure shall allow disbursement not more than 20 days after a request is made for the disbursement. [*Any*] **A** disbursement pursuant to the procedure does not affect the claim of any other person to the funds.

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

SECTION 2. The Real Estate Agency shall adopt the rules required by the amendments to ORS 696.241 by section 1 of this 2007 Act within one year after the effective date of this 2007 Act.

Passed by Senate February 12, 2007

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Secretary of Senate

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President of Senate

Passed by House May 7, 2007

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Speaker of House

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State