

Senate Bill 166

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for Real Estate Agency)

SUMMARY

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

Directs Real Estate Agency to establish optional procedure for specified real estate licensees to disburse from client trust accounts disputed funds held in relation to sale, exchange or purchase of real estate.

A BILL FOR AN ACT

1
2 Relating to client trust accounts maintained by real estate licensees; creating new provisions; and
3 amending ORS 696.241.

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

5 **SECTION 1.** ORS 696.241 is amended to read:

6 696.241. (1) Each sole practitioner and each principal real estate broker shall maintain in this
7 state one or more separate bank accounts that shall be designated a Clients' Trust Account in which
8 all trust funds received or handled by the sole practitioner or broker and the real estate licensees
9 subject to the supervision of the broker on behalf of any other person shall be deposited unless,
10 pursuant to written agreement of all parties having an interest in the trust funds, the trust funds
11 are immediately placed in a neutral escrow depository in this state.

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

16 (3) Each sole practitioner or principal real estate broker shall authorize the agency, by a form
17 approved by the commissioner, to examine any Clients' Trust Account, by a duly authorized repre-
18 sentative of the agency. The examination shall be made at such times as the commissioner may di-
19 rect.

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

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

30 (6) With prior written notice to all parties who have an interest in the trust funds, a sole

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

1 practitioner or principal real estate broker may place trust funds received by the sole practitioner
 2 or principal real estate broker in a federally insured interest-bearing bank account that is desig-
 3 nated a Clients' Trust Account and the earnings of which inure to the benefit of a public benefit
 4 corporation, as defined in ORS 65.001, for distribution to organizations and individuals for first-time
 5 homebuying assistance and for development of affordable housing. The sole practitioner or principal
 6 real estate broker shall select a qualified public benefit corporation to receive the interest earnings.

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

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

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

22 (10) The agency by rule shall establish [*a procedure for disbursal of disputed funds*] **an optional**
 23 **procedure by which a sole practitioner or a principal real estate broker may elect to disburse**
 24 **disputed funds held in relation to the sale, exchange or purchase of real estate** from a Clients'
 25 Trust Account to the person who delivered the funds to the sole practitioner or principal real estate
 26 broker. The procedure shall allow disbursal not more than 20 days after a request is made for the
 27 disbursal. [*Any*] **A** disbursal pursuant to the procedure does not affect the claim of any other person
 28 to the funds.

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

31 **SECTION 2. The Real Estate Agency shall adopt the rules required by the amendments**
 32 **to ORS 696.241 by section 1 of this 2007 Act within one year after the effective date of this**
 33 **2007 Act.**

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