

Enrolled Senate Bill 167

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CHAPTER

AN ACT

Relating to real estate activity; creating new provisions; amending ORS 9.160, 31.350, 94.977, 270.120, 305.230, 446.676, 646.382, 646.605, 674.100, 696.010, 696.020, 696.022, 696.026, 696.030, 696.110, 696.205, 696.241, 696.280, 696.301, 696.315, 696.365, 696.375, 696.398, 696.511, 696.600, 696.609, 696.710, 696.730, 696.775, 696.800, 696.990 and 744.056; and declaring an emergency.

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

SECTION 1. 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) "Agency" means the Real Estate Agency.

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

(3) "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.

(4)(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 *[which]* **that** is advertised to the public as a place where such business 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 *[and dissemination]*, so long as the unit is at all times available for sale, lease, lease option or exchange.

(5) "Commissioner" means the Real Estate Commissioner.

(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.

(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.

(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.

(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 reactivates the license or the license expires or lapses.

(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.

[(8)] (11) “Letter opinion” [means a document that expresses a real estate licensee’s conclusion regarding a recommended listing, selling or purchase price or a rental or lease consideration of certain real estate and that results from the licensee’s competitive market analysis. The commissioner by rule shall specify the minimum contents of a letter opinion, including but not limited to the distinction between a letter opinion and a real estate appraisal] **has the meaning given that term in section 3 of this 2007 Act.**

[(9)] (12) “Management of rental real estate” means:

(a) Representing the owner of real estate 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 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.

(13) “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.

[(10)] (14) “Principal real estate broker” means an individual who [is licensed] holds an active license as a principal real estate broker and who employs, engages or supervises the professional real estate activity of another real estate licensee.

[(11)] **(15)** “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[. *Such*], **except when the activity is performed by a state certified appraiser or state licensed appraiser [is not professional real estate activity].;**
- (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 (1)(L), 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.

[(12)] **(16)** “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.

[(13)] **(17)** “Real estate broker” means [a person] **an individual** who engages in professional real estate activity and who [is licensed] **holds an active license** as a real estate broker.

[(14)] **(18)** “Real estate licensee” means **an individual who holds an active license** as a real estate broker, principal real estate broker or real estate property manager.

[(15)] **(19)** “Real estate property manager” means a real estate licensee who is authorized to engage in management of rental real estate.

[(16)] **(20)** “Registered business name” means a name registered with the Real Estate Agency under which the [person] **individual** registering the name engages in professional real estate activity.

[(17)] **(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.

SECTION 2. Section 3 of this 2007 Act is added to and made a part of ORS 696.010 to 696.495.

SECTION 3. (1) As used in this section, “letter opinion” means a document that expresses a real estate licensee’s conclusion regarding a recommended listing, selling or purchase price or a rental or lease consideration of certain real estate and that results from the licensee’s competitive market analysis.

(2) The Real Estate Commissioner by rule shall specify the minimum contents of a letter opinion, including but not limited to the distinction between a letter opinion and a real estate appraisal.

SECTION 4. ORS 696.020 is amended to read:

696.020. (1) **The Real Estate Agency may issue a real estate license only to an individual.**

~~[(1)]~~ (2) ~~[No person shall]~~ **An individual may not** engage in, carry on, advertise or purport to engage in or carry on professional real estate activity, or act in the capacity of[,] a real estate licensee, within this state ~~[without first obtaining a]~~ **unless the individual holds an active** license as provided for in this chapter.

~~[(2)]~~ (3) A real estate licensee ~~[shall be]~~ **is** bound by and subject to the requirements of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and 696.995 ~~[in]~~ **while:**

(a) Engaging in ~~[any]~~ professional real estate activity; or

(b) ~~[while]~~ Acting ~~[in]~~ **on** the licensee's own behalf in the ~~[offer to, negotiations for, or]~~ sale, exchange, lease option or purchase of real estate **or in the offer or negotiations for the sale, exchange, lease option or purchase of real estate.**

(4) **The agency by rule may establish provisions for a nonlicensed individual whose license is inactive or suspended and who acts on the licensee's own behalf in the sale, exchange, lease option or purchase of real estate or in the offer or negotiations for the sale, exchange, lease option or purchase of real estate.**

SECTION 5. 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 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;

(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 ~~[all of the professional activities of a real estate broker described in this chapter]~~ **professional real estate activity.** A real estate broker may not employ, engage or ~~[otherwise]~~ supervise the professional real estate ~~[activities]~~ **activity** of another real estate ~~[broker or principal real estate broker]~~ **licensee.**

(b) In order to qualify for a real estate broker's license, an applicant must furnish proof satisfactory to the commissioner that the applicant has successfully completed the basic real estate broker's educational courses and the examination required by rule of the agency. Proof of completion of all required courses must be provided at the time of applying for the license.

(c) A real estate broker may conduct professional real estate ~~[activities]~~ **activity** as a sole practitioner after:

(A) The ~~[person]~~ **individual** has acquired three years of active experience as a real estate broker; or

(B) The ~~[person]~~ **individual** has acquired three years of active experience as a real estate salesperson as defined in ORS 696.025 (1999 Edition) and has successfully completed the real estate broker's examination required by rule of the agency.

(3)(a) A principal real estate broker may engage in ~~[all of the professional activities of a real estate broker described in this chapter]~~ **professional real estate activity.** A principal real estate broker may conduct professional real estate ~~[activities]~~ **activity** in conjunction with other real estate brokers or principal real estate brokers. In addition, a principal real estate broker ~~[may]~~ **must** employ, engage ~~[and otherwise]~~ **or** supervise the professional real estate ~~[activities of]~~ **activity of another** real estate ~~[brokers or principal real estate brokers]~~ **licensee.**

(b) In order to qualify for a principal real estate broker's license, an applicant must meet the requirements of subsection (2)(b) of this section and must furnish proof satisfactory to the commissioner that the applicant has successfully completed the brokerage administration and sales supervision course, as required by agency rule, and has:

(A) Three years of active experience as a licensed real estate broker; or

(B) Three years of active experience as a real estate salesperson as defined in ORS 696.025 (1999 Edition) and has successfully completed the real estate broker's examination required by rule of the agency.

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

(5)(a) A license for a real estate broker, principal real estate broker or real estate property manager shall be granted only to [*a person*] **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 [*such*] proof of competence and trustworthiness [*as*] **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 181.534.

(6) A license may be issued under this section only to [*persons who are*] **an individual who is** 18 years of age or older.

(7) 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.

(8) In order to satisfy the educational requirements under subsections (2) to (4) and (7) 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.

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

SECTION 6. ORS 696.026 is amended to read:

696.026. (1) A real estate broker or principal real estate broker may conduct professional real estate activity under the broker's name, a registered business name or a name prescribed by agency rule. The business name under which a broker conducts professional real estate activity has no license standing independent of the broker.

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

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

(4) A real estate broker or principal real estate broker may register two or more business names if the business names are for affiliated or subsidiary business organizations. If a real estate broker or principal real estate broker registers the business names for two or more affiliated or subsidiary business organizations, the broker may conduct professional real estate activity separately under

each business name. A real estate broker or principal real estate broker must supervise and control the professional real estate activity conducted under the broker's name or registered business name.

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

(6) A nonlicensed [person] **individual** may have an ownership interest in any business through which a real estate broker 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 broker or principal real estate broker licensed to control or supervise the professional real estate activity of such business.

(7) Two or more 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.

(8) 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 broker associated with a principal broker may create a corporation, limited liability company, limited liability partnership or any other lawfully constituted business organization for the purpose of receiving commission payments from the principal 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.

SECTION 7. ORS 696.030 is amended to read:

696.030. (1) 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[, and the term "real estate licensee" does not include]:

(a) A nonlicensed [regular] **individual who is a** full-time employee of a single owner of real estate whose real estate activity involves the real estate of the employer and:

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

(B) 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) A [nonlicensed person acting as attorney in fact under a duly executed power] **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 [person] **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.

(c) A [nonlicensed person acting as attorney in fact under a duly executed power] **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.

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

(e) A [person acting] **nonlicensed individual who acts** in the [person's] **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.

(f) A [person performing] **nonlicensed individual who performs** an act of professional real estate activity under order of a court.

(g) A nonlicensed **individual who is** a regular full-time employee of a single [*nonlicensed*] corporation, partnership, association or **nonlicensed individual owner** of real property acting for the corporation, partnership, association 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.

(h) **An individual who is** a registered professional engineer or architect rendering services in performance of duties as a professional engineer or architect.

(i) A nonlicensed individual **who is** employed by a real estate broker or principal real estate broker and [*acting*] **who acts** as a manager for real estate if the real estate activity of the nonlicensed individual is limited to negotiating rental or lease agreements, checking tenant and credit references, physically maintaining the real estate, conducting tenant relations, collecting the rent, supervising the premises' managers and discussing financial matters relating to management of the real estate with the owner.

(j) [*A person, or an employee of the person, selling or leasing*] **An 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.**

(k) **An 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.

(L) A nonlicensed [*person, or a regular full-time employee of the person, analyzing or advising of*] **individual who analyzes or provides advice regarding** permissible land use alternatives, environmental impact, building and use permit procedures or demographic market studies, **or a regular full-time employee of the nonlicensed individual performing similar activities.** This exclusion does not apply to the handling of transactional negotiations for transfer of an interest in real estate.

(m) **An 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.

(n) **An 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 paragraph, "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.

(o) **An 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 paragraph, "common carrier" means a person [*who*] **that** transports or purports to be willing to transport [*persons*] **individuals** from place to place by rail, motor vehicle, boat or aircraft for hire, compensation or consideration.

(p) **An 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 paragraph, "hotel representative" means a person [*who*] **that** provides reservations or sale services to independent hotels, airlines, steamship companies and government tourist agencies.

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

(r) **An 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.

(s) **An individual who is** a membership camping contract broker or salesperson registered with the Real Estate Agency selling membership camping contracts.

(t) **An individual who is** a professional forester or farm manager engaging in property management activity on [*forest or farm land*] **forestland or farmland** when the activity is incidental to the nonreal estate duties involving overall management of forest or farm resources.

(u) **An 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.

(v) A nonlicensed [*person referring*] **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 [*person*] **individual** resides in the building or facility or within six months after termination of the [*person's*] **individual's** tenancy.

(w) A nonlicensed [*person giving*] **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.

(x) A nonlicensed [*person*] **individual** acting as a paid fiduciary whose real estate activity is limited to negotiating or closing a transaction to obtain the services of a real estate licensee.

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

(z) **An individual who is a representative of** a financial institution or trust company, as those terms are defined in ORS 706.008, [*acting as*] **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.

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

SECTION 8. ORS 696.205 is amended to read:

696.205. (1) If a real estate licensee who is a sole practitioner or who is the sole principal real estate broker of a real estate business 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 [*person*] **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 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 [*a person*] **an individual** to transact or wind up real estate business on behalf of the deceased or incapacitated real estate licensee.

SECTION 9. 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]* **A sole practitioner or principal real estate broker may not** 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 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 disbursement pursuant to the procedure does not affect the claim of any other person to the funds.

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

SECTION 9a. ORS 696.280 is amended to read:

696.280. (1) A real estate broker or principal real estate broker shall maintain within this state, **except as provided in subsection (4) of this section**, complete and adequate records of all professional real estate activity conducted by or through the broker. The Real Estate Agency shall specify by rule the records required to establish complete and adequate records of a broker's professional real estate activity. The only documents the agency may require by rule a real estate broker or principal real estate broker to use or generate are documents that are otherwise required by law or are voluntarily generated during a real estate transaction.

(2)(a) The records of a principal real estate broker or a sole practitioner shall include records of attendance in continuing education courses by the sole practitioner or broker. The records of attendance shall state the name of the sole practitioner or broker and the date of the sole practitioner's or broker's attendance, and shall be the basis for self-certification under ORS 696.174.

(b) A principal real estate broker's records shall include records of attendance in continuing education courses by **real estate** licensees associated with the principal broker. The record of attendance shall state the name of the licensee and the date of the licensee's attendance, and shall be the basis for the certificate of attendance submitted under ORS 696.174.

(3) The records shall at all times be open for inspection by the Real Estate Commissioner or the commissioner's authorized representatives. The records of each transaction shall be maintained by the licensee for a period of not less than six years after the date the transaction closed or failed. The records may be maintained in any format that allows for inspection and copying by the commissioner or the commissioner's representatives, as determined by the commissioner by rule.

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

SECTION 10. 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 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 a commission or other 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 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 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 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 licensee had an undisclosed interest.

(10) Failed to ensure, in any real estate transaction in which the 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 licensee's trustworthiness or competence to engage in professional real estate activity.

(12) Demonstrated incompetence or untrustworthiness in performing any act for which the 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 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 *[persons]* **individuals** engaged in the practice of professional real estate activity in Oregon.

SECTION 11. ORS 696.315 is amended to read:

696.315. *[No]* **A** real estate licensee *[shall]* **may not** knowingly permit *[any person whose license has been revoked or suspended]* **a nonlicensed individual** to engage in professional real estate activity, with or on behalf of the licensee.

SECTION 12. ORS 696.365 is amended to read:

696.365. (1) A city or county *[shall]* **may not impose a business license tax on** or collect a business license tax from *[a person]* **an individual** licensed as a real estate broker who engages in professional real estate activity only as an agent of a principal real estate broker.

(2) As used in this section, “business license tax” has the meaning given that term in ORS 701.015.

SECTION 13. ORS 696.375 is amended to read:

696.375. (1) The Real Estate Agency is established.

(2) The Real Estate Agency shall be under the supervision and control of an administrator who shall be known as the Real Estate Commissioner. The Governor shall appoint the Real Estate Commissioner who shall have been, before the date of appointment, for five years a real estate broker or principal real estate broker actively engaged in business as such in this state. The Governor also may appoint *[a person]* **an individual** who has been actively connected with the administration of the agency for at least one year as acting or temporary commissioner. The commissioner shall hold office at the pleasure of the Governor and shall be responsible for the performance of the duties imposed upon the agency. The Real Estate Commissioner shall receive such salary as may be provided by law.

(3) The appointment of the commissioner is subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(4) Before entering upon the duties of office the commissioner shall give to the state a fidelity bond with one or more corporate sureties authorized to do business in this state, or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, in either case in the sum fixed by the Governor. The premium for the bond or the fee for the letter of credit shall be paid by the agency.

SECTION 14. ORS 696.398 is amended to read:

696.398. (1) The Real Estate Commissioner may delegate to any of the officers and employees of the Real Estate Agency to exercise or discharge in the commissioner’s name any power, duty or function vested in or imposed upon the commissioner under this chapter. The power to administer oaths and affirmations, subpoena witnesses, take evidence and require the production of books, papers, correspondence, memoranda, agreements or other documents or records, and to sign notices and orders may be exercised by an officer or employee of the agency only when specified in writing by the commissioner and filed in the records of the Real Estate Agency.

(2) An official act of *[a person]* **an individual** acting in the commissioner’s name and by authority of the commissioner shall be deemed to be an official act of the commissioner.

SECTION 15. ORS 696.511 is amended to read:

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

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

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

(3) For the initial license of an escrow agent, the commissioner may require information and evidence the commissioner considers necessary to demonstrate the applicant’s qualifications to transact escrow business including, but not limited to, information regarding the applicant’s finan-

cial resources, the applicant's escrow business in another state or the experience or training of employees in escrow business, or a testimonial of an escrow agent licensed in this state. Subject to subsection (4) of this section, an applicant:

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

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

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

(5) For the initial license or license renewal of an escrow agent, the commissioner shall require fingerprints and a state or nationwide criminal records check under ORS 181.534 of an applicant for an initial license and may require fingerprints and a state or nationwide criminal records check under ORS 181.534 of an applicant for license renewal. The commissioner may require additional information for an initial license or license renewal under this subsection that the commissioner considers necessary for protecting the public. For purposes of requiring fingerprints and a criminal records check, "applicant" means [*a person*] **an individual** who has more than five percent ownership interest in the escrow agency and the corporate officers in direct control of escrow operations.

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

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

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

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

(8) To qualify for issuance or renewal of an escrow agent license, an applicant shall pay any outstanding civil penalties or other moneys due and owing to the Real Estate Agency except civil penalties or other moneys due that are the subject of judicial or administrative review on the date of the application for license or license renewal.

SECTION 16. ORS 696.600 is amended to read:

696.600. As used in ORS 696.392, 696.600 to 696.785 and 696.995:

(1) "Employee" includes an individual who has an independent contractual relationship with a real estate marketing organization and performs real estate marketing activity.

(2) "Real estate marketing activity" means procuring or offering to procure prospects to purchase, sell, lease or rent real estate by telemarketing, mail or otherwise.

(3) "Real estate marketing organization" means any person, including a partnership, association, corporation, limited liability company or other organization, other than a real estate marketing employee, that engages in real estate marketing activity and is licensed under ORS 696.606.

(4)(a) "Real estate marketing employee" means an individual who receives compensation from a real estate marketing organization for performing real estate marketing activity.

(b) "Real estate marketing employee" does not [*include a person*] **mean an individual** licensed under ORS 696.022.

SECTION 17. ORS 696.609 is amended to read:

696.609. ORS 696.392, 696.600 to 696.785 and 696.995 do not apply to [*a person*] **an individual** licensed under ORS 696.022 or to those persons exempt under ORS 696.030 from licensing under ORS 696.020.

SECTION 18. ORS 696.710 is amended to read:

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

(2) An action in the courts for collection of compensation for an individual engaged in the business of, or acting in the capacity of, 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 [at the time] **when** the alleged cause of action arose.

SECTION 19. ORS 696.730 is amended to read:

696.730. Any court of competent jurisdiction, including a justice court, has full power to hear any violation of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.995 by [persons] **an individual** licensed under ORS 696.022, and, upon finding [such] a violation, the court may, at its discretion and in addition to the other penalties imposed, revoke the license of the [person or persons] **individual** found to have violated any provision of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.995. The clerk of the court shall forward a copy of any order revoking a real estate license to the Real Estate Commissioner.

SECTION 20. ORS 696.775 is amended to read:

696.775. The lapsing, **expiration, revocation** or suspension of a **real estate** license, whether by operation of law, order of the Real Estate Commissioner[,] **or** decision of a court of law, **or the** inactive status of the license or voluntary surrender of the license by the **real estate** licensee, does not deprive the commissioner of jurisdiction to:

- (1) Proceed with an investigation of the licensee;
- (2) Conduct disciplinary proceedings relating to the licensee;
- (3) Take action against a licensee, including assessment of a civil penalty against the licensee for a violation of ORS 696.020 [(1)] **(2)**; or
- (4) Revise or render null and void an order suspending or revoking a license.

SECTION 21. 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) [A *person*] **An individual** licensed under ORS 696.022 who has entered into a written contract with a real estate broker or principal real estate broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the 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, 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 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's 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 a seller of real property and a real estate broker or principal real estate broker by which the broker has been authorized to act as an agent of the seller for compensation to offer the real property for sale or to find and obtain 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, whether or not a transfer results; or

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

SECTION 22. ORS 696.110 is amended to read:

696.110. The provisions of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.995 shall be exclusive and no political subdivision or agency of this state shall require or issue any license or charge any fee for licensing or regulation of *[persons]* **individuals** licensed under ORS 696.022. Nothing in this section shall limit the authority of a county, city or town to levy and collect a general and nondiscriminatory license fee upon all businesses in the county, city or town or to levy a tax based upon the business conducted by any licensee or firm within the county, city or town.

SECTION 23. ORS 696.990 is amended to read:

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

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

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

(4) Any person *[who]* **that** violates ORS 696.020 *[(1)]* **(2)** may be required by the Real Estate Commissioner to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the commissioner of:

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

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

(5) In addition to the civil penalty set forth in subsection (4) of this section, any person *[who]* **that** violates ORS 696.020 may be required by the commissioner to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the commissioner but not to exceed the amount by which such person profited in any transaction *[which]* **that** violates ORS 696.020.

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

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

(8) For the purposes of subsection (4) of this section, any violation of ORS 696.020 *[(1)]* **(2)** that results from a failure of a real estate licensee to renew a license within the time allowed by law constitutes a single offense of unlicensed professional real estate activity for each 30-day period after expiration of the license during which the *[person]* **individual** engages in professional real estate *[activities]* **activity**. A civil penalty imposed for a violation of ORS 696.020 *[(1)]* **(2)** that results from a failure of a real estate licensee to renew a license within the time allowed by law is not subject to the minimum dollar amounts specified in subsection (4) of this section.

(9) Subsection (5) of this section does not apply to a violation of ORS 696.020 *[(1)]* **(2)** that results from a failure of a real estate licensee to renew a license within the time allowed by law.

SECTION 24. ORS 9.160 is amended to read:

9.160. (1) Except as provided in this section, a person may not practice law or represent that person as qualified to practice law unless that person is an active member of the Oregon State Bar.

(2) Subsection (1) of this section does not affect the right to prosecute or defend a cause in person as provided in ORS 9.320.

(3) *[A person]* **An individual** licensed under ORS 696.022 acting in the scope of the *[person's]* **individual's** license to arrange a real estate transaction, including the sale, purchase, exchange, option or lease coupled with an option to purchase, lease for a term of one year or longer or rental of real property, is not engaged in the practice of law in violation of subsection (1) of this section.

(4) A title insurer authorized to do business in this state, a title insurance agent licensed under the laws of this state or an escrow agent licensed under the laws of this state is not engaged in the practice of law in violation of subsection (1) of this section if, for the purposes of a transaction in which the insurer or agent provides title insurance or escrow services, the insurer or agent:

(a) Prepares any satisfaction, reconveyance, release, discharge, termination or cancellation of a lien, encumbrance or obligation;

(b) Acts pursuant to the instructions of the principals to the transaction as scrivener to fill in blanks in any document selected by the principals;

(c) Presents to the principals to the transaction for their selection any blank form prescribed by statute, rule, ordinance or other law; or

(d) Presents to the principals to the transaction for their selection a blank form prepared or approved by a lawyer licensed to practice law in this state for one or more of the following:

(A) A mortgage.

(B) A trust deed.

(C) A promissory note.

(D) An assignment of a mortgagee's interest under a mortgage.

(E) An assignment of a beneficial interest under a trust deed.

(F) An assignment of a seller's or buyer's interest under a land sale contract.

(G) A power of attorney.

(H) A subordination agreement.

(I) A memorandum of an instrument that is to be recorded in place of the instrument that is the subject of the memorandum.

(5) In performing the services permitted in subsection (4) of this section, a title insurer, a title insurance agent or an escrow agent may not draft, select or give advice regarding any real estate document if those activities require the exercise of informed or trained discretion.

(6) The exemption provided by subsection (4) of this section does not apply to any acts relating to a document or form that are performed by an escrow agent under subsection (4)(b), (c) or (d) of this section unless the escrow agent provides to the principals to the transaction a notice in at least 12-point type as follows:

YOU WILL BE REVIEWING, APPROVING AND SIGNING IMPORTANT DOCUMENTS AT CLOSING. LEGAL CONSEQUENCES FOLLOW FROM THE SELECTION AND USE OF THESE DOCUMENTS. THESE CONSEQUENCES AFFECT YOUR RIGHTS AND OBLIGATIONS. YOU MAY CONSULT AN ATTORNEY ABOUT THESE DOCUMENTS. YOU SHOULD CONSULT AN ATTORNEY IF YOU HAVE QUESTIONS OR CONCERNS ABOUT THE TRANSACTION OR ABOUT THE DOCUMENTS. IF YOU WISH TO REVIEW TRANSACTION DOCUMENTS THAT YOU HAVE NOT YET SEEN, PLEASE CONTACT THE ESCROW AGENT.

(7) The exemption provided by subsection (4) of this section does not apply to any acts relating to a document or form that are performed by an escrow agent under subsection (4)(b), (c) or (d) of this section for a real estate sale and purchase transaction in which all or part of the purchase price consists of deferred payments by the buyer to the seller unless the escrow agent provides to the principals to the transaction:

(a) A copy of any proposed instrument of conveyance between the buyer and seller to be used in the transaction;

(b) A copy of any proposed deferred payment security instrument between the buyer and seller to be used in the transaction; and

(c) A copy of any proposed promissory note or other evidence of indebtedness between the buyer and seller to be used in the transaction.

(8) The notice and copies of documents that must be provided under subsections (6) and (7) of this section must be delivered in the manner most likely to ensure receipt by the principals to the transaction at least three days before completion of the transaction. If copies of documents have been provided under subsection (7) of this section and are subsequently amended, copies of the amended documents must be provided before completion of the transaction.

(9) Failure of any person to comply with the requirements of subsections (3) to (8) of this section does not affect the validity of any transaction and may not be used as a basis to challenge any transaction.

SECTION 25. ORS 31.350 is amended to read:

31.350. (1) As used in this section, "real estate licensee" has the meaning given that term in ORS 696.010.

(2) A complaint, cross-claim, counterclaim or third-party complaint asserting a claim of professional negligence against a real estate licensee for conduct occurring within the course and scope of the [activities] **professional real estate activity** for which the [person] **individual** is licensed may not be filed unless the claimant's attorney certifies that the attorney has consulted a real estate licensee who is qualified, available and willing to testify to admissible facts and opinions sufficient to create a question of fact as to the liability of the real estate licensee. The certification required by this section must be filed with or be made part of the original complaint, cross-claim, counterclaim or third-party complaint. The certification must contain a statement that a real estate licensee who is qualified to testify as to the standard of care applicable to the alleged facts, is available and willing to testify that:

(a) The alleged conduct of the real estate licensee failed to meet the standard of professional care applicable to the real estate licensee in the circumstances alleged; and

(b) The alleged conduct was a cause of the claimed damages, losses or other harm.

(3) In lieu of providing the certification described in subsection (2) of this section, the claimant's attorney may file with the court at the time of filing a complaint, cross-claim, counterclaim or third-party complaint an affidavit that states:

(a) The applicable statute of limitations is about to expire;

(b) The certification required under subsection (2) of this section will be filed within 30 days after filing the complaint, cross-claim, counterclaim or third-party complaint or such longer time as the court may allow for good cause shown; and

(c) The attorney has made such inquiry as is reasonable under the circumstances and has made a good faith attempt to consult with at least one real estate licensee who is qualified to testify as to the standard of care applicable to the alleged facts, as required by subsection (2) of this section.

(4) Upon motion of the real estate licensee, the court shall enter judgment dismissing any complaint, cross-claim, counterclaim or third-party complaint against any real estate licensee who fails to comply with the requirements of this section.

(5) This section applies only to a complaint, cross-claim, counterclaim or third-party complaint against a real estate licensee by any plaintiff who:

(a) Has contracted with or otherwise employed the real estate licensee; or

(b) Is a person for whose benefit the real estate licensee performed services.

SECTION 26. ORS 94.977 is amended to read:

94.977. (1) Unless the transaction is exempt under ORS 94.962, it is unlawful for any person to act as a salesperson or membership camping contract broker in this state without first registering as a salesperson or membership camping contract broker as provided in ORS 94.980. [*Persons*] **Individuals** licensed as real estate brokers or principal real estate brokers under ORS chapter 696 are exempt from registration under this section.

(2) A violation of this section is a Class A misdemeanor.

SECTION 27. ORS 270.120 is amended to read:

270.120. (1) In exercising certain of its functions under ORS 184.634, 270.005 to 270.015, 270.100 to 270.190, 273.416, 273.426 to 273.436 and 273.551, the Oregon Department of Administrative Services shall be advised by an advisory committee consisting of seven members appointed by the Governor.

(2) The advisory committee appointed under subsection (1) of this section shall consist of two members of the Legislative Assembly, one [*person who is licensed*] **real estate licensee** under ORS 696.020, two persons who serve in the executive branch of state government, one person qualified as a land use planner, and one person qualified as a real estate management expert.

(3) Members of the advisory committee shall meet at such times and places and elect such officers and make such rules for the conduct of committee business as the committee may specify.

(4) Members of the advisory committee who are not members of the Legislative Assembly are entitled to compensation under ORS 292.495. Members of the advisory committee who are members of the Legislative Assembly shall be paid compensation and expense reimbursement as provided in ORS 171.072, payable from funds appropriated to the Legislative Assembly.

(5) Expenses of the committee shall be paid from funds appropriated to the department to carry out subsection (6) of this section.

(6)(a) The advisory committee shall advise the department on the acquisition, exchange or disposal of real property valued at \$100,000 or more.

(b) The department may request the advice of the committee involving any real property transaction valued less than \$100,000.

SECTION 28. ORS 305.230 is amended to read:

305.230. (1) Notwithstanding ORS 9.320:

(a) Any person who is qualified to practice law or public accountancy in this state, any person who has been granted active enrollment to practice before the Internal Revenue Service and who

is qualified to prepare tax returns in this state or any person who is the authorized employee of a taxpayer and is regularly employed by the taxpayer in tax matters may represent the taxpayer before a tax court magistrate or the Department of Revenue in any conference or proceeding with respect to the administration of any tax.

(b) Any person who is licensed by the State Board of Tax Practitioners or who is exempt from such licensing requirement as provided for and limited by ORS 673.610 may represent a taxpayer before a tax court magistrate or the department in any conference or proceeding with respect to the administration of any tax on or measured by net income.

(c) Any shareholder of an S corporation, as defined in section 1361 of the Internal Revenue Code, as amended and in effect on December 31, 2004, may represent the corporation in any proceeding before a tax court magistrate or the department in the same manner as if the shareholder were a partner and the S corporation were a partnership. The S corporation must designate in writing a tax matters shareholder authorized to represent the S corporation.

(d) [*Any person*] **An individual** who is licensed as a real estate broker or principal real estate broker under ORS 696.022 or is a state certified appraiser or state licensed appraiser under ORS 674.310 or is a registered appraiser under ORS 308.010 may represent a taxpayer before a tax court magistrate or the department in any conference or proceeding with respect to the administration of any ad valorem property tax.

(e) A general partner who has been designated by members of a partnership as their tax matters partner under ORS 305.242 may represent those partners in any conference or proceeding with respect to the administration of any tax on or measured by net income.

(f) Any person authorized under rules adopted by the department may represent a taxpayer before the department in any conference or proceeding with respect to any tax. Rules adopted under this paragraph, to the extent feasible, shall be consistent with federal law that governs representation before the Internal Revenue Service, as federal law is amended and in effect on December 31, 2004.

(g) Any person authorized under rules adopted by the tax court may represent a taxpayer in a proceeding before a tax court magistrate.

(2) A person may not be recognized as representing a taxpayer pursuant to this section unless there is first filed with the magistrate or department a written authorization, or unless it appears to the satisfaction of the magistrate or department that the representative does in fact have authority to represent the taxpayer. A person recognized as an authorized representative under rules or procedures adopted by the tax court shall be considered an authorized representative by the department.

(3) A taxpayer represented by someone other than an attorney is bound by all things done by the authorized representative, and may not thereafter claim any proceeding was legally defective because the taxpayer was not represented by an attorney.

(4) Prior to the holding of a conference or proceeding before the tax court magistrate or department, written notice shall be given by the magistrate or department to the taxpayer of the provisions of subsection (3) of this section.

SECTION 29. ORS 446.676 is amended to read:

446.676. ORS 446.671 does not apply to the following manufactured structures or persons:

(1) A unit of government or a public or private utility.

(2) The owner of a manufactured structure, as shown by a document evidencing ownership issued by any jurisdiction if the person owned the manufactured structure for personal, family or household purposes. If the person sells, trades, displays or offers for sale, trade or exchange two or more manufactured structures during a calendar year, the person has the burden of proving that the person owned the structures primarily for personal, family or household purposes.

(3) A conservator, receiver, trustee, personal representative or public officer while performing any official duties. The exemption provided by this subsection applies to actions taken for the purposes of winding up the affairs of a manufactured structure dealer or dealership and not to the continuing operation of a dealership.

(4) A real estate licensee representing a buyer or seller in a transaction involving real property under ORS 308.875 or a manufactured structure that is recorded in the deed records of a county.

(5) An escrow agent making an application for an ownership document as described under ORS 446.591 (5).

(6) The security interest holder of a manufactured structure as shown by a document evidencing ownership issued by any jurisdiction.

(7) The sale of a manufactured structure by the manufacturer to a manufactured structure dealer. However, a manufacturer must obtain a manufactured structure dealer license under ORS 446.691 in order to sell manufactured structures to retail customers.

(8) An insurance adjuster authorized to do business under ORS 744.505 or 744.515 who is disposing of a manufactured structure for salvage.

(9) A person who sells or trades or offers to sell or trade a manufactured structure that has been used in the operation of the person's business unless the person's business is the buying, selling, brokering, trading or exchanging of manufactured structures, displaying new or used manufactured structures for sale or acting as agent for an owner selling a manufactured structure or for a person interested in buying a manufactured structure.

(10) A person who is licensed as a manufactured structure dealer in another jurisdiction and is participating in a temporary exhibition of manufactured structures, if the exhibition includes at least two other manufactured structure dealers licensed in this state or another jurisdiction, lasts 10 days or less and charges admission to the public. An exemption may be claimed under this subsection for a total of not more than 10 days during a calendar year.

(11) A person who receives no money, goods or services, either directly or indirectly, for displaying a manufactured structure or acting as an agent in the selling or buying of a manufactured structure.

(12) A manufactured dwelling park or mobile home park owner that consigns a manufactured structure for sale by a licensed manufactured structure dealer.

(13) The sale of an abandoned manufactured dwelling by a manufactured dwelling park owner pursuant to ORS 90.675 (10) if the park owner makes a reasonable effort to transfer the title for the manufactured dwelling to the purchaser.

(14) A licensed real estate *[agent]* **broker** acting in the employ of, on behalf of or under the supervision of *[a person that]* **an individual who** is both a licensed **principal** real estate broker and a licensed manufactured structure dealer.

(15) A financial institution or trust company acting as attorney in fact under a duly executed power of attorney from the owner or purchaser authorizing the selling, leasing or exchanging of the owner's or purchaser's assets. As used in this subsection, "financial institution" and "trust company" have the meanings given those terms in ORS 706.008.

SECTION 30. ORS 646.382 is amended to read:

646.382. As used in ORS 646.382 to 646.398:

(1) "Consumer" means any individual who is solicited to purchase or who purchases the services of a credit services organization.

(2)(a) "Credit services organization" means any person who, with respect to the extension of credit by others, sells, provides, performs, or represents that the organization can or will sell, provide or perform, in return for the payment of money or other valuable consideration, any of the following services:

(A) Improving, saving or preserving a consumer's credit record, history or rating.

(B) Obtaining an extension of credit for a consumer.

(C) Providing advice, assistance, instruction or instructional materials to a consumer with regard to either subparagraph (A) or (B) of this paragraph.

(b) "Credit services organization" does not include:

(A) Any person authorized to make loans or extensions of credit under the laws of this state or the United States who is subject to regulation and supervision by this state or the United States

or a lender approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act.

(B) Any financial institution, financial holding company or bank holding company as those terms are defined in ORS 706.008 or any subsidiary or affiliate of a financial institution, financial holding company or bank holding company.

(C) A mortgage banker or mortgage broker as defined in ORS 59.840.

(D) Any nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code, provided that the organization does not require a fee for its services and does not receive any money or other valuable consideration prior to the rendering of any services by the organization for the consumer.

(E) [*Any person*] **An individual** licensed as a real estate broker or principal real estate broker by this state if the [*person*] **individual** is acting within the course and scope of that license.

(F) Any person licensed to practice law in this state if the person renders services within the course and scope of practice as an attorney.

(G) Any broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission if the broker-dealer is acting within the course and scope of that regulation.

(H) Any consumer reporting agency as defined in the Federal Fair Credit Reporting Act, 15 U.S.C. 1681 et seq.

(I) Any licensee licensed under ORS chapter 725.

(3) "Department" means the Department of Consumer and Business Services.

(4) "Director" means the director of the department or the director's designees.

(5) "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment offered or granted primarily for personal, family or household purposes.

SECTION 31. ORS 646.605 is amended to read:

646.605. As used in ORS 646.605 to 646.652:

(1) "Appropriate court" means the circuit court of a county:

(a) Where one or more of the defendants reside;

(b) Where one or more of the defendants maintain a principal place of business;

(c) Where one or more of the defendants are alleged to have committed an act prohibited by ORS 646.605 to 646.652; or

(d) With the defendant's consent, where the prosecuting attorney maintains an office.

(2) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate.

(3) "Examination" of documentary material shall include inspection, study, or copying of any such material, and taking testimony under oath or acknowledgment in respect of any such documentary material or copy thereof.

(4) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity except bodies or officers acting under statutory authority of this state or the United States.

(5) "Prosecuting attorney" means the Attorney General or the district attorney of any county in which a violation of ORS 646.605 to 646.652 is alleged to have occurred.

(6) "Real estate, goods or services" means those which are or may be obtained primarily for personal, family or household purposes, or which are or may be obtained for any purposes as a result of a telephone solicitation, and includes franchises, distributorships and other similar business opportunities, but does not include insurance. Except as provided in section 2, chapter 658, Oregon Laws 2003, real estate does not cover conduct covered by ORS chapter 90.

(7) "Telephone solicitation" means a solicitation where a person, in the course of the person's business, vocation or occupation, uses a telephone or an automatic dialing-announcing device to initiate telephonic contact with a potential customer and the person is not one of the following:

(a) A person who is a broker-dealer or salesperson licensed under ORS 59.175, or a mortgage banker or mortgage broker licensed under ORS 59.850 when the solicitation is for a security qualified for sale pursuant to ORS 59.055;

(b) [A *person who is licensed or*] **A real estate licensee or a person who** is otherwise authorized to engage in professional real estate activity pursuant to ORS chapter 696, when the solicitation involves professional real estate activity;

(c) A person licensed or exempt from licensure as a builder pursuant to ORS chapter 701, when the solicitation involves the construction, alteration, repair, improvement or demolition of a structure;

(d) A person licensed or otherwise authorized to sell insurance as an insurance producer pursuant to ORS chapter 744, when the solicitation involves insurance;

(e) A person soliciting the sale of a newspaper of general circulation, a magazine or membership in a book or record club who complies with ORS 646.611, when the solicitation involves newspapers, magazines or membership in a book or record club;

(f) A person soliciting without the intent to complete and who does not complete the sales presentation during the telephone solicitation and who only completes the sales presentation at a later face-to-face meeting between the solicitor and the prospective purchaser;

(g) A supervised financial institution or parent, subsidiary or affiliate thereof. As used in this paragraph, "supervised financial institution" means any financial institution or trust company, as those terms are defined in ORS 706.008, or any personal property broker, consumer finance lender, commercial finance lender or insurer that is subject to regulation by an official or agency of this state or of the United States;

(h) A person who is authorized to conduct prearrangement or preconstruction funeral or cemetery sales, pursuant to ORS chapter 692, when the solicitation involves prearrangement or preconstruction funeral or cemetery plans;

(i) A person who solicits the services provided by a cable television system licensed or franchised pursuant to state, local or federal law, when the solicitation involves cable television services;

(j) A person or affiliate of a person whose business is regulated by the Public Utility Commission of Oregon;

(k) A person who sells farm products as defined by ORS chapter 576 if the solicitation neither intends to nor actually results in a sale that costs the purchaser in excess of \$100;

(L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section;

(m) A person soliciting exclusively the sale of telephone answering services to be provided by that person or that person's employer when the solicitation involves answering services; or

(n) A telecommunications utility with access lines of 15,000 or less or a cooperative telephone association when the solicitation involves regulated goods or services.

(8) "Trade" and "commerce" mean advertising, offering or distributing, whether by sale, rental or otherwise, any real estate, goods or services, and includes any trade or commerce directly or indirectly affecting the people of this state.

(9) "Unconscionable tactics" include, but are not limited to, actions by which a person:

(a) Knowingly takes advantage of a customer's physical infirmity, ignorance, illiteracy or inability to understand the language of the agreement;

(b) Knowingly permits a customer to enter into a transaction from which the customer will derive no material benefit; or

(c) Permits a customer to enter into a transaction with knowledge that there is no reasonable probability of payment of the attendant financial obligation in full by the customer when due.

(10) A willful violation occurs when the person committing the violation knew or should have known that the conduct of the person was a violation.

(11) A loan is made "in close connection with the sale of a manufactured dwelling" if:

(a) The lender directly or indirectly controls, is controlled by or is under common control with the seller, unless the relationship is remote and is not a factor in the transaction;

(b) The lender gives a commission, rebate or credit in any form to a seller who refers the borrower to the lender, other than payment of the proceeds of the loan jointly to the seller and the borrower;

(c) The lender is related to the seller by blood or marriage;

(d) The seller directly and materially assists the borrower in obtaining the loan;

(e) The seller prepares documents that are given to the lender and used in connection with the loan; or

(f) The lender supplies documents to the seller used by the borrower in obtaining the loan.

SECTION 32. ORS 646.605, as amended by section 12, chapter 658, Oregon Laws 2003, is amended to read:

646.605. As used in ORS 646.605 to 646.652:

(1) "Appropriate court" means the circuit court of a county:

(a) Where one or more of the defendants reside;

(b) Where one or more of the defendants maintain a principal place of business;

(c) Where one or more of the defendants are alleged to have committed an act prohibited by ORS 646.605 to 646.652; or

(d) With the defendant's consent, where the prosecuting attorney maintains an office.

(2) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate.

(3) "Examination" of documentary material shall include inspection, study, or copying of any such material, and taking testimony under oath or acknowledgment in respect of any such documentary material or copy thereof.

(4) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity except bodies or officers acting under statutory authority of this state or the United States.

(5) "Prosecuting attorney" means the Attorney General or the district attorney of any county in which a violation of ORS 646.605 to 646.652 is alleged to have occurred.

(6) "Real estate, goods or services" means those which are or may be obtained primarily for personal, family or household purposes, or which are or may be obtained for any purposes as a result of a telephone solicitation, and includes franchises, distributorships and other similar business opportunities, but does not include insurance. Real estate does not cover conduct covered by ORS chapter 90.

(7) "Telephone solicitation" means a solicitation where a person, in the course of the person's business, vocation or occupation, uses a telephone or an automatic dialing-announcing device to initiate telephonic contact with a potential customer and the person is not one of the following:

(a) A person who is a broker-dealer or salesperson licensed under ORS 59.175, or a mortgage banker or mortgage broker licensed under ORS 59.850 when the solicitation is for a security qualified for sale pursuant to ORS 59.055;

(b) [A *person who is licensed or*] **A real estate licensee or a person who** is otherwise authorized to engage in professional real estate activity pursuant to ORS chapter 696, when the solicitation involves professional real estate activity;

(c) A person licensed or exempt from licensure as a builder pursuant to ORS chapter 701, when the solicitation involves the construction, alteration, repair, improvement or demolition of a structure;

(d) A person licensed or otherwise authorized to sell insurance as an insurance producer pursuant to ORS chapter 744, when the solicitation involves insurance;

(e) A person soliciting the sale of a newspaper of general circulation, a magazine or membership in a book or record club who complies with ORS 646.611, when the solicitation involves newspapers, magazines or membership in a book or record club;

(f) A person soliciting without the intent to complete and who does not complete the sales presentation during the telephone solicitation and who only completes the sales presentation at a later face-to-face meeting between the solicitor and the prospective purchaser;

(g) A supervised financial institution or parent, subsidiary or affiliate thereof. As used in this paragraph, "supervised financial institution" means any financial institution or trust company, as those terms are defined in ORS 706.008, or any personal property broker, consumer finance lender, commercial finance lender or insurer that is subject to regulation by an official or agency of this state or of the United States;

(h) A person who is authorized to conduct prearrangement or preconstruction funeral or cemetery sales, pursuant to ORS chapter 692, when the solicitation involves prearrangement or preconstruction funeral or cemetery plans;

(i) A person who solicits the services provided by a cable television system licensed or franchised pursuant to state, local or federal law, when the solicitation involves cable television services;

(j) A person or affiliate of a person whose business is regulated by the Public Utility Commission of Oregon;

(k) A person who sells farm products as defined by ORS chapter 576 if the solicitation neither intends to nor actually results in a sale that costs the purchaser in excess of \$100;

(L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section;

(m) A person soliciting exclusively the sale of telephone answering services to be provided by that person or that person's employer when the solicitation involves answering services; or

(n) A telecommunications utility with access lines of 15,000 or less or a cooperative telephone association when the solicitation involves regulated goods or services.

(8) "Trade" and "commerce" mean advertising, offering or distributing, whether by sale, rental or otherwise, any real estate, goods or services, and includes any trade or commerce directly or indirectly affecting the people of this state.

(9) "Unconscionable tactics" include, but are not limited to, actions by which a person:

(a) Knowingly takes advantage of a customer's physical infirmity, ignorance, illiteracy or inability to understand the language of the agreement;

(b) Knowingly permits a customer to enter into a transaction from which the customer will derive no material benefit; or

(c) Permits a customer to enter into a transaction with knowledge that there is no reasonable probability of payment of the attendant financial obligation in full by the customer when due.

(10) A willful violation occurs when the person committing the violation knew or should have known that the conduct of the person was a violation.

(11) A loan is made "in close connection with the sale of a manufactured dwelling" if:

(a) The lender directly or indirectly controls, is controlled by or is under common control with the seller, unless the relationship is remote and is not a factor in the transaction;

(b) The lender gives a commission, rebate or credit in any form to a seller who refers the borrower to the lender, other than payment of the proceeds of the loan jointly to the seller and the borrower;

(c) The lender is related to the seller by blood or marriage;

(d) The seller directly and materially assists the borrower in obtaining the loan;

(e) The seller prepares documents that are given to the lender and used in connection with the loan; or

(f) The lender supplies documents to the seller used by the borrower in obtaining the loan.

SECTION 33. ORS 674.100 is amended to read:

674.100. (1)(a) A person may not engage in, carry on, advertise or purport to engage in or carry on real estate appraisal activity within this state without first obtaining certification, licensure or registration as provided for in ORS 674.310.

(b) Real estate appraisal activity is the preparation, completion and issuance of an opinion as to the value on a given date or at a given time of real property or an interest in real property, whether the activity is performed in connection with a federally related transaction or is not performed in connection with a federally related transaction. Notwithstanding any other provision of law, a state certified appraiser or a state licensed appraiser:

(A) Is not required to be licensed under ORS 696.022 to perform real estate appraisal activity or any other activity that constitutes the giving of an opinion as to the value of real property or an interest in real property; and

(B) Is not subject to regulation under ORS 696.010 to 696.495 and 696.600 to 696.995 in connection with the performance of real estate appraisal activity or the performance of any other activity that constitutes the giving of an opinion as to the value of real estate or an interest in real estate.

(2) Real estate appraisal activity excludes activity that is not performed in connection with a federally related transaction and that:

(a) Is performed by a nonlicensed regular full-time employee of a single owner of real estate, if the activity involves the real estate of the employer and is incidental to the employee's normal, nonreal estate activities;

(b) Is performed by a nonlicensed regular full-time employee whose activity involves the real estate of the employer, when the activity is the employee's principal activity, but the employer's principal activity or business is not the appraisal of real estate;

(c) Is performed by an attorney at law rendering services in the performance of duties as an attorney at law;

(d) Is performed by a registered geologist, registered professional engineer or architect rendering services as a registered geologist, registered professional engineer or architect;

(e) Is performed by a certified public accountant rendering services as a certified public accountant;

(f) Is performed by a mortgage banker rendering services as a mortgage banker;

(g) Constitutes a letter opinion or a competitive market analysis as those terms are defined in ORS 696.010 that, by administrative or judicial order or subpoena, is compelled from [a person] **an individual** licensed to engage in **professional** real estate activity under ORS 696.022;

(h) Is performed by a salaried employee of the federal government, the State of Oregon or a political subdivision of the federal government or the State of Oregon while engaged in the performance of the duties of the employee;

(i) Is limited to analyzing or advising of permissible land use alternatives, environmental impact, building and use permit procedures or demographic market studies, if the performance of the activities does not involve the rendering of an opinion as to the value of the real estate in question;

(j) Is performed by a professional forester appraising or valuing timber, timberland or both as part of services performed as a private consultant in forest management, but only if, in the case of timberland, the appraisal or valuation is limited to the use of the land as forestland;

(k) Is limited to giving an opinion in an administrative or judicial proceeding regarding the value of real estate for taxation;

(L) Is limited to giving an opinion regarding the value of real estate by a person who is not licensed under ORS chapter 696, if the person's business is not the appraisal, selling or listing of real estate and the activity is performed without compensation. This paragraph does not apply to a person conducting transactional negotiations on behalf of another person for transfer of an interest in real property;

(m) Is limited to transferring or acquiring an interest in real estate by a person who is not licensed under ORS chapter 696; or

(n) Is performed by a home inspector acting within the scope of a certificate or license issued under ORS chapter 701.

(3)(a) Real estate appraisal activity does not include an analysis, evaluation, opinion, conclusion, notation or compilation of data prepared by a financial institution or affiliate, a consumer finance

company licensed under ORS chapter 725 or an insurance company or affiliate, made for internal use only by the financial institution or affiliate, consumer finance company or the insurance company or affiliate, concerning an interest in real estate for ownership or collateral purposes by the financial institution or affiliate, the consumer finance company licensed under ORS chapter 725 or the insurance company or affiliate. Nothing in this subsection shall be construed to excuse a financial institution or affiliate from complying with the provisions of Title XI of the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3310 et seq.).

(b) As used in this subsection, "evaluation" means a study of the nature, quality or utility of a parcel of real estate or interests in, or aspects of, real property in which a value estimate is not necessarily required.

(4)(a) As used in this section, "purport to engage in or carry on real estate appraisal activity" means the display of a card, sign, advertisement or other printed, engraved or written instrument bearing the person's name in conjunction with the term "appraiser," "licensed appraiser," "certified appraiser," "appraiser assistant," "registered appraiser assistant" or "appraisal" or an oral statement or representation of certification, licensure or registration by the Appraiser Certification and Licensure Board made by a person.

(b) Each display or statement described in paragraph (a) of this subsection by a person not licensed, certified or registered by the board is a separate violation under ORS 674.850 or 674.990.

(c) In a proceeding under ORS 674.850 or 674.990, a display or statement described in paragraph (a) of this subsection shall be considered prima facie evidence that the person named in the display or making the statement purports to engage in or carry on real estate appraisal activity.

SECTION 34. ORS 744.056 is amended to read:

744.056. (1) ORS 744.052 to 744.089 do not require an insurer to obtain a license as an insurance producer as required by ORS 744.053. For purposes of this section, the term "insurer" does not include an insurer's officers, directors, employees, subsidiaries or affiliates.

(2) A license as an insurance producer is not be required of any of the following:

(a) An officer, director or employee of an insurer or an insurance producer, if the officer, director or employee does not receive any commission on or fee for policies written or sold to insure risks residing, located or to be performed in this state and:

(A) The officer's, director's or employee's activities are executive, administrative, managerial, clerical or a combination of these, and are only indirectly related to the sale, solicitation or negotiation of insurance;

(B) The officer's, director's or employee's function relates to underwriting, loss control, inspection or the processing, adjusting, investigating or settling of a claim on a contract of insurance; or

(C) The officer, director or employee is acting in the capacity of an agency supervisor assisting insurance producers when the person's activities are limited to providing technical advice and assistance to insurance producers and do not include the sale, solicitation or negotiation of insurance.

(b) A person who does either of the following, when the person does not receive any commission or fee for the service:

(A) Secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities or group or blanket health insurance or for the purpose of enrolling individuals under plans, issuing certificates under plans or otherwise assisting in administrative plans; or

(B) Performs administrative services related to mass-marketed property and casualty insurance.

(c) An employer or an association of employers or its officers, directors or employees, or the trustees of an employee trust plan:

(A) To the extent that the employers, associations, directors, officers, employees or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates;

(B) To the extent that the program of employee benefits involves the use of insurance issued by an insurer; and

(C) As long as the employers, associations, officers, directors, employees or trustees are not in any manner compensated, directly or indirectly, by the insurer issuing the insurance.

(d) An employee of an insurer or an organization employed by insurers who is engaging in the inspection, rating or classification of risks, or in the supervision of the training of insurance producers and who is not individually engaged in the sale, solicitation or negotiation of insurance.

(e) A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or electronic mass media, the distribution of which is not limited to residents of this state, but only if the person does not sell, solicit or negotiate insurance that would insure risks residing, located or to be performed in this state.

(f) A person who is not a resident of this state who sells, solicits or negotiates a policy of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that policy, but only if the person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state.

(g) A salaried full-time employee who counsels or advises the employer of the employee relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer, but only if the employee does not sell or solicit insurance or receive any commission.

(h) An attorney in fact of an authorized reciprocal insurer, or the salaried representative of the insurer or attorney who does not receive any commission.

(i) A person engaging in the lawful transaction of reinsurance.

(j) Salaried employees of title insurance producers or insurers, except for the individual or individuals designated as exercising the powers conferred by a title insurance producer's license.

(k) Any agent or representative of persons exempt from the Insurance Code under ORS 731.036 or holding a certificate of exemption under ORS 731.042, with respect to the exempted transactions.

(L) Any agent or representative of a fraternal benefit society who devotes, or intends to devote, less than 50 percent of the agent's or representative's time to the solicitation and procurement of insurance policies for that society. Any person who in the preceding calendar year has solicited and procured life insurance policies on behalf of any fraternal benefit society for an amount of insurance in excess of \$50,000 or, in the case of any other class or classes of insurance that the society might write, on the persons of more than 25 individuals, and who has received or will receive a commission or other compensation therefor, shall be presumed to be devoting, or intending to devote, 50 percent or more of the person's time to the solicitation and procurement of insurance policies for that society.

(m) [A person] **An individual** engaging in the lawful transaction of home protection insurance if the [person] **individual** is a real estate licensee as defined in ORS 696.010, and if the transaction of such insurance by the [person] **individual** is subject to a written contract, to which the insurer is a party, governing the [person's] **individual's** activities in the transaction.

(n) Salaried employees of a financial institution or trust company, as those terms are defined in ORS 706.008, who, in the regular course of business with the customers of the financial institution or trust company, present the customers with written information about savings account annuities issued by an authorized insurer. Any person who purchases such an annuity may rescind the transaction within 10 days after the issuance of the contract. For purposes of this paragraph, "savings account annuities" means annuities purchased with the proceeds of a savings account, certificate or share in a financial institution or trust company.

(3) A person who provides general insurance advice in connection with providing other professional services such as legal services, trust services, tax and accounting services, financial planning or investment advisory services is not considered to be soliciting the sale of insurance for the purpose of the definition of "insurance producer" in ORS 731.104.

SECTION 35. This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on its passage.

Passed by Senate March 27, 2007

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Secretary of Senate

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President of Senate

Passed by House May 22, 2007

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Speaker of House

Received by Governor:

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

Approved:

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

.....
Governor

Filed in Office of Secretary of State:

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

.....
Secretary of State