

A-Engrossed
Senate Bill 167

Ordered by the Senate March 23
Including Senate Amendments dated March 23

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

SUMMARY

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

Clarifies authority of Real Estate Agency to issue real estate licenses only to individuals.
Defines "nonlicensed individual" for purposes of distinguishing who may conduct professional real estate activity or engage in management of rental real estate. **Defines expired, inactive and lapsed license.** Conforms language to more effectively use defined terms. **Authorizes Real Estate Agency to adopt rules relating to inactive or suspended licensee acting on licensee's own behalf.**

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to real estate activity; creating new provisions; amending ORS 9.160, 31.350, 94.977, 270.120,
3 305.230, 446.676, 646.382, 646.605, 674.100, 696.010, 696.020, 696.022, 696.026, 696.030, 696.110,
4 696.205, 696.241, 696.280, 696.301, 696.315, 696.365, 696.375, 696.398, 696.511, 696.600, 696.609,
5 696.710, 696.730, 696.775, 696.800, 696.990 and 744.056; and declaring an emergency.

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

7 **SECTION 1.** ORS 696.010 is amended to read:

8 696.010. As used in ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and
9 696.995, unless the context requires otherwise:

10 (1) "Agency" means the Real Estate Agency.

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

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

17 (4)(a) "Branch office" means a business location, other than the main office designated under
18 ORS 696.200 (1), where professional real estate activity is regularly conducted or [*which*] **that** is
19 advertised to the public as a place where such business may be regularly conducted.

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

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

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

2 (6) "Compensation" means any fee, commission, salary, money or valuable consideration for
3 services rendered or to be rendered as well as the promise thereof and whether contingent or oth-
4 erwise.

5 (7) "Competitive market analysis" means a method or process used by a real estate licensee in
6 pursuing a listing agreement or in formulating an offer to acquire real estate in a transaction for
7 the sale, lease, lease-option or exchange of real estate. The objective of competitive market analysis
8 is a recommended listing, selling or purchase price or a lease or rental consideration. A competitive
9 market analysis may be expressed as an opinion of the value of the real estate in a contemplated
10 transaction. Competitive market analysis may include but is not limited to an analysis of market
11 conditions, public records, past transactions and current listings of real estate.

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

14 (9) "**Inactive**" means, in the context of a real estate licensee, that the license has been
15 returned to the agency to be held until the licensee reactivates the license or the license
16 expires or lapses.

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

19 [(8)] (11) "Letter opinion" [*means a document that expresses a real estate licensee's conclusion*
20 *regarding a recommended listing, selling or purchase price or a rental or lease consideration of certain*
21 *real estate and that results from the licensee's competitive market analysis. The commissioner by rule*
22 *shall specify the minimum contents of a letter opinion, including but not limited to the distinction be-*
23 *tween a letter opinion and a real estate appraisal] **has the meaning given that term in section 3***

24 **of this 2007 Act.**
25 [(9)] (12) "Management of rental real estate" means:

26 (a) Representing the owner of real estate in the rental or lease of the real estate and includes
27 but is not limited to:

28 (A) Advertising the real estate for rent or lease;

29 (B) Procuring prospective tenants to rent or lease the real estate;

30 (C) Negotiating with prospective tenants;

31 (D) Accepting deposits from prospective tenants;

32 (E) Checking the qualifications and creditworthiness of prospective tenants;

33 (F) Charging and collecting rent or lease payments;

34 (G) Representing the owner in inspection or repair of the real estate;

35 (H) Contracting for repair or remodeling of the real estate;

36 (I) Holding trust funds or property received in managing the real estate and accounting to the
37 owner for the funds or property;

38 (J) Advising the owner regarding renting or leasing the real estate;

39 (K) Providing staff and services to accommodate the tax reporting and other financial or ac-
40 counting needs of the real estate;

41 (L) Providing copies of records of acts performed on behalf of the owner of the real estate; and

42 (M) Offering or attempting to do any of the acts described in this paragraph for the owner of
43 the real estate; or

44 (b) Representing a tenant or prospective tenant when renting or leasing real estate and includes
45 but is not limited to:

- 1 (A) Consulting with tenants or prospective tenants about renting or leasing real estate;
- 2 (B) Assisting prospective tenants in renting or leasing real estate;
- 3 (C) Assisting prospective tenants in qualifying for renting or leasing real estate;
- 4 (D) Accepting deposits or other funds from prospective tenants for renting or leasing real estate
- 5 and holding the funds in trust for the prospective tenants;
- 6 (E) Representing tenants or prospective tenants renting or leasing real estate; and
- 7 (F) Offering or attempting to do any of the acts described in this paragraph for a tenant or
- 8 prospective tenant.

9 **(13) “Nonlicensed individual” means an individual:**

10 **(a) Who has not obtained a real estate license; or**

11 **(b) Whose real estate license is lapsed, expired, inactive, suspended, surrendered or re-**
12 **voked.**

13 [(10)] **(14) “Principal real estate broker” means an individual who [is licensed] holds an active**
14 **license** as a principal real estate broker and who employs, engages or supervises **the professional**
15 **real estate activity of** another real estate licensee.

16 [(11)] **(15) “Professional real estate activity” means any of the following actions, when engaged**
17 **in for another and for compensation or with the intention or in the expectation or upon the promise**
18 **of receiving or collecting compensation, by any person who:**

19 (a) Sells, exchanges, purchases, rents or leases real estate[.];

20 (b) Offers to sell, exchange, purchase, rent or lease real estate[.];

21 (c) Negotiates, offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or
22 leasing of real estate[.];

23 (d) Lists, offers, attempts or agrees to list real estate for sale[.];

24 (e) Offers, attempts or agrees to perform or provide a competitive market analysis or letter
25 opinion, to represent a taxpayer under ORS 305.230 or 309.100 or to give an opinion in any admin-
26 istrative or judicial proceeding regarding the value of real estate for taxation[. *Such*], **except when**
27 **the activity is** performed by a state certified appraiser or state licensed appraiser [*is not profes-*
28 *sional real estate activity*.];

29 (f) Auctions, offers, attempts or agrees to auction real estate[.];

30 (g) Buys, sells, offers to buy or sell or otherwise deals in options on real estate[.];

31 (h) Engages in management of rental real estate[.];

32 (i) Purports to be engaged in the business of buying, selling, exchanging, renting or leasing real
33 estate[.];

34 (j) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange,
35 leasing or rental of real estate[.];

36 (k) Assists or directs in the negotiation or closing of any transaction calculated or intended to
37 result in the sale, exchange, leasing or rental of real estate[.];

38 (L) Except as otherwise provided in ORS 696.030 (1)(L), advises, counsels, consults or analyzes
39 in connection with real estate values, sales or dispositions, including dispositions through eminent
40 domain procedures[.];

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

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

44 [(12)] **(16) “Real estate” includes leaseholds and licenses to use including, but not limited to,**
45 **timeshare estates and timeshare licenses as defined in ORS 94.803, as well as any and every interest**

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

4 [(13)] (17) "Real estate broker" means *[a person]* **an individual** who engages in professional real
5 estate activity and who *[is licensed]* **holds an active license** as a real estate broker.

6 [(14)] (18) "Real estate licensee" means **an individual who holds an active license as** a real
7 estate broker, principal real estate broker or real estate property manager.

8 [(15)] (19) "Real estate property manager" means a real estate licensee who is authorized to
9 engage in management of rental real estate.

10 [(16)] (20) "Registered business name" means a name registered with the Real Estate Agency
11 under which the *[person]* **individual** registering the name engages in professional real estate activ-
12 ity.

13 [(17)] (21) "Sole practitioner" means a real estate broker conducting professional real estate
14 activity not in conjunction with other real estate brokers or principal real estate brokers.

15 **SECTION 2. Section 3 of this 2007 Act is added to and made a part of ORS 696.010 to**
16 **696.495.**

17 **SECTION 3. (1) As used in this section, "letter opinion" means a document that ex-**
18 **presses a real estate licensee's conclusion regarding a recommended listing, selling or pur-**
19 **chase price or a rental or lease consideration of certain real estate and that results from the**
20 **licensee's competitive market analysis.**

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

24 **SECTION 4.** ORS 696.020 is amended to read:

25 696.020. (1) **The Real Estate Agency may issue a real estate license only to an individual.**

26 [(1)] (2) *[No person shall]* **An individual may not** engage in, carry on, advertise or purport to
27 engage in or carry on professional real estate activity, or act in the capacity of[,] a real estate
28 licensee, within this state *[without first obtaining a]* **unless the individual holds an active** license
29 as provided for in this chapter.

30 [(2)] (3) A real estate licensee *[shall be]* **is bound by and subject to the requirements of ORS**
31 **696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and 696.995 [in] while:**

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

33 (b) *[while]* Acting *[in]* **on** the licensee's own behalf in the *[offer to, negotiations for, or]* sale, ex-
34 change, lease option or purchase of real estate **or in the offer or negotiations for the sale, ex-**
35 **change, lease option or purchase of real estate.**

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

40 **SECTION 5.** ORS 696.022 is amended to read:

41 696.022. (1) The Real Estate Agency shall establish by rule a system for licensing real estate
42 brokers, principal real estate brokers and real estate property managers. The system shall establish,
43 at a minimum:

44 (a) The form and content of applications for licensing under each category of real estate pro-
45 fessional licensed by the agency;

1 (b) A licensing examination for each category of license;

2 (c) Schedules and procedures for issuing and renewing licenses;

3 (d) The term of a license in each category; and

4 (e) Terms and conditions under which the license of a real estate licensee must be returned or
5 transferred to the Real Estate Commissioner for purposes including, but not limited to, inactivation,
6 suspension or termination of the license.

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

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

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

17 (A) The [*person*] **individual** has acquired three years of active experience as a real estate bro-
18 ker; or

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

22 (3)(a) A principal real estate broker may engage in [*all of the professional activities of a real es-*
23 *tate broker described in this chapter*] **professional real estate activity**. A principal real estate bro-
24 ker may conduct professional real estate [*activities*] **activity** in conjunction with other real estate
25 brokers or principal real estate brokers. In addition, a principal real estate broker [*may*] **must** em-
26 ploy, engage [*and otherwise*] **or** supervise the professional real estate [*activities of*] **activity of an-**
27 **other** real estate [*brokers or principal real estate brokers*] **licensee**.

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

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

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

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

42 (5)(a) A license for a real estate broker, principal real estate broker or real estate property
43 manager shall be granted only to [*a person*] **an individual** who is trustworthy and competent to
44 conduct professional real estate activity in a manner that protects the public interest. As a condi-
45 tion of licensing, the commissioner may require [*such*] proof of competence and trustworthiness

1 [as] **that** the commissioner deems necessary to protect the public interest.

2 (b) In implementing this subsection, the commissioner shall require fingerprints and criminal
3 offender information of an applicant for initial licensing and may require fingerprints and criminal
4 offender information of an applicant for license renewal. Fingerprints acquired under this sub-
5 section may be used for the purpose of requesting a state or nationwide criminal records check
6 under ORS 181.534.

7 (6) A license may be issued under this section only to [*persons who are*] **an individual who is**
8 18 years of age or older.

9 (7) In order to qualify for a real estate broker's license, a real estate salesperson licensed in
10 another state or country must successfully complete a course of study and pass a real estate bro-
11 ker's license examination, both as prescribed by agency rule.

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

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

18 **SECTION 6.** ORS 696.026 is amended to read:

19 696.026. (1) A real estate broker or principal real estate broker may conduct professional real
20 estate activity under the broker's name, a registered business name or a name prescribed by agency
21 rule. The business name under which a broker conducts professional real estate activity has no li-
22 cense standing independent of the broker.

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

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

31 (4) A real estate broker or principal real estate broker may register two or more business names
32 if the business names are for affiliated or subsidiary business organizations. If a real estate broker
33 or principal real estate broker registers the business names for two or more affiliated or subsidiary
34 business organizations, the broker may conduct professional real estate activity separately under
35 each business name. A real estate broker or principal real estate broker must supervise and control
36 the professional real estate activity conducted under the broker's name or registered business name.

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

42 (6) A nonlicensed [*person*] **individual** may have an ownership interest in any business through
43 which a real estate broker or principal real estate broker engages in professional real estate activ-
44 ity, but may not control or supervise the professional real estate activity of any real estate broker
45 or principal real estate broker licensed to control or supervise the professional real estate activity

1 of such business.

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

5 (8) Notwithstanding any other provision of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800
6 to 696.870, 696.990 and 696.995, a broker associated with a principal broker may create a corpo-
7 ration, limited liability company, limited liability partnership or any other lawfully constituted
8 business organization for the purpose of receiving commission payments from the principal broker.
9 A business organization created under this subsection may not be licensed under ORS 696.022 or
10 conduct in its own name professional real estate activity requiring a real estate license.

11 **SECTION 7.** ORS 696.030 is amended to read:

12 696.030. (1) ORS 696.010 to 696.375, 696.392, 696.395 to 696.430, 696.490, 696.600 to 696.785,
13 696.990 and 696.995 do not apply to[, and the term “real estate licensee” does not include]:

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

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

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

19 (b) A [*nonlicensed person acting as attorney in fact under a duly executed power*] **nonlicensed**
20 **individual who acts as attorney in fact under a duly executed power** of attorney from the owner
21 or purchaser authorizing the supervision of the closing of or supervision of the performance of a
22 contract for the sale, leasing or exchanging of real estate if the power of attorney was executed
23 prior to July 1, 2002, in compliance with the requirements of law at the time of execution or if:

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

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

27 (C) The [*person*] **individual** does not use the power of attorney as a device to engage in profes-
28 sional real estate activity without obtaining the necessary real estate license.

29 (c) A [*nonlicensed person acting as attorney in fact under a duly executed power*] **nonlicensed**
30 **individual who acts as attorney in fact under a duly executed power** of attorney in which the
31 authorized agent is the spouse of the principal, or the child, grandchild, parent, grandparent, sibling,
32 aunt, uncle, niece or nephew of the principal or of the spouse of the principal, authorizing real es-
33 tate activity if the power of attorney is recorded in the office of the recording officer for the county
34 in which the real estate to be sold, leased or exchanged is located.

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

37 (e) A [*person acting*] **nonlicensed individual who acts** in the [*person’s*] **individual’s** official ca-
38 pacity as a receiver, a conservator, a trustee in bankruptcy, a personal representative or a trustee,
39 or a regular salaried employee of the trustee, acting under a trust agreement, deed of trust or will.

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

42 (g) A nonlicensed **individual who is a** regular full-time employee of a single [*nonlicensed*] cor-
43 poration, partnership, association or **nonlicensed** individual owner of real property acting for the
44 corporation, partnership, association or **nonlicensed** individual **owner** in the rental or management
45 of the real property, but not in the sale, exchange, lease option or purchase of the real property.

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

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

9 (j) [*A person, or an employee of the person, selling or leasing*] **An individual who sells or leases**
10 cemetery lots, parcels or units while engaged in the disposition of human bodies under ORS 97.010
11 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**
12 **nonlicensed individual performing similar activities.**

13 (k) **An individual who is** a salaried employee of the State of Oregon, or any of its political
14 subdivisions, engaging in professional real estate activity as a part of such employment.

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

20 (m) **An individual who is** a hotelkeeper or innkeeper as defined by ORS 699.005 arranging the
21 rental of transient lodging at a hotel or inn in the course of business as a hotelkeeper or innkeeper.

22 (n) **An individual who is** a travel agent arranging the rental of transient lodging at a hotel or
23 inn as defined in ORS 699.005 in the course of business as a travel agent for compensation. For the
24 purpose of this paragraph, "travel agent" means a person, and employees of the person, regularly
25 representing and selling travel services to the public directly or indirectly through other travel
26 agents.

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

32 (p) **An individual who is** a hotel representative arranging the rental of transient lodging at a
33 hotel or inn as defined in ORS 699.005 in the course of business as a hotel representative. For the
34 purpose of this paragraph, "hotel representative" means a person [*who*] **that** provides reservations
35 or sale services to independent hotels, airlines, steamship companies and government tourist agen-
36 cies.

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

39 (r) **An individual who is** a general partner for a domestic or foreign limited partnership duly
40 registered and operating within this state under ORS chapter 70 engaging in the sale of limited
41 partnership interests and the acquisition, sale, exchange, lease, transfer or management of the real
42 estate of the limited partnership.

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

45 (t) **An individual who is** a professional forester or farm manager engaging in property man-

1 agement activity on [*forest or farm land*] **forestland or farmland** when the activity is incidental to
 2 the nonreal estate duties involving overall management of forest or farm resources.

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

6 (v) A nonlicensed [*person referring*] **individual who refers** a new tenant for compensation to a
 7 real estate licensee acting as the property manager for a residential building or facility while the
 8 [*person*] **individual** resides in the building or facility or within six months after termination of the
 9 [*person's*] **individual's** tenancy.

10 (w) A nonlicensed [*person giving*] **individual who gives** an opinion in an administrative or ju-
 11 dicial proceeding regarding the value of real estate for taxation or representing a taxpayer under
 12 ORS 305.230 or 309.100.

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

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

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

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

25 **SECTION 8.** ORS 696.205 is amended to read:

26 696.205. (1) If a real estate licensee who is a sole practitioner or who is the sole principal real
 27 estate broker of a real estate business dies or becomes incapacitated, the Real Estate Commissioner
 28 may issue a temporary license to the executor, administrator or personal representative of the estate
 29 of the deceased real estate licensee or to the court-appointed fiduciary of the incapacitated real
 30 estate licensee, or to some other [*person*] **individual** designated by the commissioner, in order to
 31 continue to transact the real estate business in the case of the incapacitated real estate licensee
 32 or to wind up the affairs of the deceased or incapacitated real estate licensee. The term of a tem-
 33 porary license issued under this section may not exceed one year from the date of issuance unless
 34 the commissioner, in the discretion of the commissioner, extends the term of the temporary license
 35 based on sufficient cause provided by the temporary licensee to the commissioner.

36 (2) The Real Estate Agency may adopt administrative rules to administer this section or to au-
 37 thorize [*a person*] **an individual** to transact or wind up real estate business on behalf of the de-
 38 ceased or incapacitated real estate licensee.

39 **SECTION 9.** ORS 696.241 is amended to read:

40 696.241. (1) Each sole practitioner and each principal real estate broker shall maintain in this
 41 state one or more separate bank accounts that shall be designated a Clients' Trust Account in which
 42 all trust funds received or handled by the sole practitioner or broker and the real estate licensees
 43 subject to the supervision of the broker on behalf of any other person shall be deposited unless,
 44 pursuant to written agreement of all parties having an interest in the trust funds, the trust funds
 45 are immediately placed in a neutral escrow depository in this state.

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

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

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

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

19 (6) With prior written notice to all parties who have an interest in the trust funds, a sole
20 practitioner or principal real estate broker may place trust funds received by the sole practitioner
21 or principal real estate broker in a federally insured interest-bearing bank account that is desig-
22 nated a Clients' Trust Account and the earnings of which inure to the benefit of a public benefit
23 corporation, as defined in ORS 65.001, for distribution to organizations and individuals for first-time
24 homebuying assistance and for development of affordable housing. The sole practitioner or principal
25 real estate broker shall select a qualified public benefit corporation to receive the interest earnings.

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

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

37 (9) *[No person shall]* **A sole practitioner or principal real estate broker may not** knowingly
38 keep or cause to be kept any funds or money in any bank under the heading of Clients' Trust Ac-
39 count or any other name designating such funds or money as belonging to the clients of any sole
40 practitioner or principal real estate broker, except actual trust funds deposited with the sole prac-
41 titioner or broker.

42 (10) The agency by rule shall establish a procedure for disbursal of disputed funds from a Cli-
43 ents' Trust Account to the person who delivered the funds to the sole practitioner or principal real
44 estate broker. The procedure shall allow disbursal not more than 20 days after a request is made
45 for the disbursal. Any disbursal pursuant to the procedure does not affect the claim of any other

1 person to the funds.

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

4 **SECTION 9a.** ORS 696.280 is amended to read:

5 696.280. (1) A real estate broker or principal real estate broker shall maintain within this
6 state, **except as provided in subsection (4) of this section**, complete and adequate records of all
7 professional real estate activity conducted by or through the broker. The Real Estate Agency shall
8 specify by rule the records required to establish complete and adequate records of a broker's pro-
9 fessional real estate activity. The only documents the agency may require by rule a real estate
10 broker or principal real estate broker to use or generate are documents that are otherwise required
11 by law or are voluntarily generated during a real estate transaction.

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

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

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

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

27 **SECTION 10.** ORS 696.301 is amended to read:

28 696.301. Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real
29 estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal
30 of a license to an applicant who has done any of the following:

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

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

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

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

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

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

42 (7) Intentionally interfered with the exclusive representation or exclusive brokerage relationship
43 of another licensee.

44 (8) Accepted employment or compensation for the preparation of a competitive market analysis
45 or letter opinion that is contingent upon reporting a predetermined value or for real estate in which

1 the licensee had an undisclosed interest.

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

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

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

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

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

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

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

19 **SECTION 11.** ORS 696.315 is amended to read:

20 696.315. *[No]* A real estate licensee *[shall]* **may not** knowingly permit *[any person whose license*
21 *has been revoked or suspended]* **a nonlicensed individual** to engage in professional real estate ac-
22 tivity, with or on behalf of the licensee.

23 **SECTION 12.** ORS 696.365 is amended to read:

24 696.365. (1) A city or county *[shall]* **may not impose a business license tax on** or collect a
25 business license tax from *[a person]* **an individual** licensed as a real estate broker who engages in
26 professional real estate activity only as an agent of a principal real estate broker.

27 (2) As used in this section, "business license tax" has the meaning given that term in ORS
28 701.015.

29 **SECTION 13.** ORS 696.375 is amended to read:

30 696.375. (1) The Real Estate Agency is established.

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

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

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

1 the agency.

2 **SECTION 14.** ORS 696.398 is amended to read:

3 696.398. (1) The Real Estate Commissioner may delegate to any of the officers and employees
4 of the Real Estate Agency to exercise or discharge in the commissioner's name any power, duty or
5 function vested in or imposed upon the commissioner under this chapter. The power to administer
6 oaths and affirmations, subpoena witnesses, take evidence and require the production of books, pa-
7 pers, correspondence, memoranda, agreements or other documents or records, and to sign notices
8 and orders may be exercised by an officer or employee of the agency only when specified in writing
9 by the commissioner and filed in the records of the Real Estate Agency.

10 (2) An official act of [*a person*] **an individual** acting in the commissioner's name and by au-
11 thority of the commissioner shall be deemed to be an official act of the commissioner.

12 **SECTION 15.** ORS 696.511 is amended to read:

13 696.511. (1) A person may not directly or indirectly engage in or carry on, or purport to engage
14 in or carry on, the business of an escrow agent, or act in the capacity of an escrow agent, [*without*
15 *first obtaining a*] **unless the person holds an active** license as an escrow agent under the pro-
16 visions of ORS 696.505 to 696.590.

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

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

27 (3) For the initial license of an escrow agent, the commissioner may require information and
28 evidence the commissioner considers necessary to demonstrate the applicant's qualifications to
29 transact escrow business including, but not limited to, information regarding the applicant's finan-
30 cial resources, the applicant's escrow business in another state or the experience or training of
31 employees in escrow business, or a testimonial of an escrow agent licensed in this state. Subject to
32 subsection (4) of this section, an applicant:

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

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

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

41 (5) For the initial license or license renewal of an escrow agent, the commissioner shall require
42 fingerprints and a state or nationwide criminal records check under ORS 181.534 of an applicant for
43 an initial license and may require fingerprints and a state or nationwide criminal records check
44 under ORS 181.534 of an applicant for license renewal. The commissioner may require additional
45 information for an initial license or license renewal under this subsection that the commissioner

1 considers necessary for protecting the public. For purposes of requiring fingerprints and a criminal
2 records check, “applicant” means [*a person*] **an individual** who has more than five percent owner-
3 ship interest in the escrow agency and the corporate officers in direct control of escrow operations.

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

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

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

11 (7) The commissioner, if satisfied that the applicant should not be refused a license under ORS
12 696.535, shall issue or renew an escrow agent license for an applicant that complies with the re-
13 quirements of ORS 696.505 to 696.590.

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

18 **SECTION 16.** ORS 696.600 is amended to read:

19 696.600. As used in ORS 696.392, 696.600 to 696.785 and 696.995:

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

22 (2) “Real estate marketing activity” means procuring or offering to procure prospects to pur-
23 chase, sell, lease or rent real estate by telemarketing, mail or otherwise.

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

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

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

31 **SECTION 17.** ORS 696.609 is amended to read:

32 696.609. ORS 696.392, 696.600 to 696.785 and 696.995 do not apply to [*a person*] **an individual**
33 licensed under ORS 696.022 or to those persons exempt under ORS 696.030 from licensing under ORS
34 696.020.

35 **SECTION 18.** ORS 696.710 is amended to read:

36 696.710. (1) [*A person*] **An individual** engaged in the business of, or acting in the capacity of,
37 a real estate broker or principal real estate broker within this state [*shall*] **may** not bring or
38 maintain any action in the courts for the collection of compensation without alleging and proving
39 that the [*person*] **individual** was a licensed broker [*at the time*] **when** the alleged cause of action
40 arose.

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

45 **SECTION 19.** ORS 696.730 is amended to read:

1 696.730. Any court of competent jurisdiction, including a justice court, has full power to hear
2 any violation of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.995 by [*per-*
3 *sons*] **an individual** licensed under ORS 696.022, and, upon finding [*such*] a violation, the court may,
4 at its discretion and in addition to the other penalties imposed, revoke the license of the [*person or*
5 *persons*] **individual** found to have violated any provision of ORS 696.010 to 696.495, 696.600 to
6 696.785, 696.800 to 696.870 and 696.995. The clerk of the court shall forward a copy of any order
7 revoking a real estate license to the Real Estate Commissioner.

8 **SECTION 20.** ORS 696.775 is amended to read:

9 696.775. The lapsing, **expiration, revocation** or suspension of a **real estate** license, whether
10 by operation of law, order of the Real Estate Commissioner[,] **or** decision of a court of law, **or the**
11 inactive status of the license or voluntary surrender of the license by the **real estate** licensee, does
12 not deprive the commissioner of jurisdiction to:

13 (1) Proceed with an investigation of the licensee;

14 (2) Conduct disciplinary proceedings relating to the licensee;

15 (3) Take action against a licensee, including assessment of a civil penalty against the licensee
16 for a violation of ORS 696.020 [(1)] (2); or

17 (4) Revise or render null and void an order suspending or revoking a license.

18 **SECTION 21.** ORS 696.800 is amended to read:

19 696.800. As used in ORS 696.392, 696.600 to 696.785, 696.800 to 696.870 and 696.995, unless the
20 context requires otherwise:

21 (1) “Agent” means:

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

23 (A) A listing agreement with a seller;

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

25 (C) A disclosed limited agency agreement; or

26 (b) [A *person*] **An individual** licensed under ORS 696.022 who has entered into a written con-
27 tract with a real estate broker or principal real estate broker to act as the broker’s agent in con-
28 nection with acts requiring a real estate license and to function under the broker’s supervision.

29 (2) “Buyer” means a potential transferee in a real property transaction, and includes a person
30 who:

31 (a) Executes an offer to purchase real property from a seller through an agent; or

32 (b) Enters into an exclusive representation contract or buyer’s service agreement with a real
33 estate broker or principal real estate broker, whether or not a sale or transfer of property results.

34 (3) “Confidential information” means information communicated to a real estate licensee or the
35 licensee’s agent by the buyer or seller of one to four residential units regarding the real property
36 transaction, including but not limited to price, terms, financial qualifications or motivation to buy
37 or sell. “Confidential information” does not mean information that:

38 (a) The buyer instructs the licensee or the licensee’s agent to disclose about the buyer to the
39 seller or the seller instructs the licensee or the licensee’s agent to disclose about the seller to the
40 buyer; and

41 (b) The licensee or the licensee’s agent knows or should know failure to disclose would consti-
42 tute fraudulent representation.

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

1 (5) "Listing agreement" means a contract between a seller of real property and a real estate
2 broker or principal real estate broker by which the broker has been authorized to act as an agent
3 of the seller for compensation to offer the real property for sale or to find and obtain a buyer.

4 (6) "Listing price" means the amount expressed in dollars, specified in the listing agreement, for
5 which the seller is willing to sell the real property through the listing agent.

6 (7) "Offer" means a written proposal executed by a buyer for the sale or lease of real property.

7 (8) "Offering price" is the amount expressed in dollars specified in an offer to purchase for
8 which the buyer is willing to buy the real property.

9 (9) "Principal" means the person who has permitted or directed an agent to act on the princi-
10 pal's behalf. In a real property transaction, this generally means the buyer or the seller.

11 (10) "Real property" means any estate in real property, including a condominium as defined in
12 ORS 100.005, a timeshare property as defined in ORS 94.803 and the granting of an option or right
13 of first refusal. "Real property" also includes a manufactured structure, as defined in ORS 446.561,
14 owned by the same person who owns the land upon which the manufactured structure is situated.
15 "Real property" does not include a leasehold in real property.

16 (11) "Real property transaction" means a transaction regarding real property in which an agent
17 is employed by one or more of the principals to act in that transaction and includes but is not lim-
18 ited to listing agreements, buyer's service agreements, exclusive representation contracts and offers
19 to purchase.

20 (12) "Sale" or "sold" refers to a transaction for the transfer of real property from the seller to
21 the buyer and includes:

22 (a) Exchanges of real property between the seller and the buyer and third parties; and

23 (b) Land sales contracts.

24 (13) "Seller" means a potential transferor in a real property transaction and includes an owner:

25 (a) Who enters into a listing agreement with a real estate broker or principal real estate broker,
26 whether or not a transfer results; or

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

29 **SECTION 22.** ORS 696.110 is amended to read:

30 696.110. The provisions of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and
31 696.995 shall be exclusive and no political subdivision or agency of this state shall require or issue
32 any license or charge any fee for licensing or regulation of [*persons*] **individuals** licensed under ORS
33 696.022. Nothing in this section shall limit the authority of a county, city or town to levy and collect
34 a general and nondiscriminatory license fee upon all businesses in the county, city or town or to
35 levy a tax based upon the business conducted by any licensee or firm within the county, city or
36 town.

37 **SECTION 23.** ORS 696.990 is amended to read:

38 696.990. (1) Violation of any provision of ORS 696.010 to 696.130, 696.200, 696.205, 696.241 to
39 696.375, 696.392, 696.395 to 696.430, 696.490, 696.600 to 696.785 and 696.995 is a Class A misdemeanor.

40 (2) Any officer, director or shareholder or agent of a corporation, or member or agent of a
41 partnership or association, who personally participates in or is an accessory to any violation of ORS
42 696.010 to 696.130, 696.200, 696.205, 696.241 to 696.375, 696.392, 696.395 to 696.430, 696.490, 696.600
43 to 696.785 and 696.995 by the partnership, association or corporation, is subject to the penalties
44 prescribed in subsection (1) of this section.

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

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

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

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

8 (5) In addition to the civil penalty set forth in subsection (4) of this section, any person [*who*]
9 **that** violates ORS 696.020 may be required by the commissioner to forfeit and pay to the General
10 Fund of the State Treasury a civil penalty in an amount determined by the commissioner but not
11 to exceed the amount by which such person profited in any transaction [*which*] **that** violates ORS
12 696.020.

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

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

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

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

26 **SECTION 24.** ORS 9.160 is amended to read:

27 9.160. (1) Except as provided in this section, a person may not practice law or represent that
28 person as qualified to practice law unless that person is an active member of the Oregon State Bar.

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

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

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

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

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

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

45 (d) Presents to the principals to the transaction for their selection a blank form prepared or

1 approved by a lawyer licensed to practice law in this state for one or more of the following:

2 (A) A mortgage.

3 (B) A trust deed.

4 (C) A promissory note.

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

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

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

8 (G) A power of attorney.

9 (H) A subordination agreement.

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

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

15 (6) The exemption provided by subsection (4) of this section does not apply to any acts relating
16 to a document or form that are performed by an escrow agent under subsection (4)(b), (c) or (d) of
17 this section unless the escrow agent provides to the principals to the transaction a notice in at least
18 12-point type as follows:

19 _____
20
21 YOU WILL BE REVIEWING, APPROVING AND SIGNING IMPORTANT DOCUMENTS AT
22 CLOSING. LEGAL CONSEQUENCES FOLLOW FROM THE SELECTION AND USE OF THESE
23 DOCUMENTS. THESE CONSEQUENCES AFFECT YOUR RIGHTS AND OBLIGATIONS. YOU
24 MAY CONSULT AN ATTORNEY ABOUT THESE DOCUMENTS. YOU SHOULD CONSULT AN
25 ATTORNEY IF YOU HAVE QUESTIONS OR CONCERNS ABOUT THE TRANSACTION OR
26 ABOUT THE DOCUMENTS. IF YOU WISH TO REVIEW TRANSACTION DOCUMENTS THAT
27 YOU HAVE NOT YET SEEN, PLEASE CONTACT THE ESCROW AGENT.
28 _____

29
30 (7) The exemption provided by subsection (4) of this section does not apply to any acts relating
31 to a document or form that are performed by an escrow agent under subsection (4)(b), (c) or (d) of
32 this section for a real estate sale and purchase transaction in which all or part of the purchase price
33 consists of deferred payments by the buyer to the seller unless the escrow agent provides to the
34 principals to the transaction:

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

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

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

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

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

4 **SECTION 25.** ORS 31.350 is amended to read:

5 31.350. (1) As used in this section, “real estate licensee” has the meaning given that term in
6 ORS 696.010.

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

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

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

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

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

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

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

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

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

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

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

37 **SECTION 26.** ORS 94.977 is amended to read:

38 94.977. (1) Unless the transaction is exempt under ORS 94.962, it is unlawful for any person to
39 act as a salesperson or membership camping contract broker in this state without first registering
40 as a salesperson or membership camping contract broker as provided in ORS 94.980. [*Persons*] **In-**
41 **dividuals** licensed as real estate brokers or principal real estate brokers under ORS chapter 696 are
42 exempt from registration under this section.

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

44 **SECTION 27.** ORS 270.120 is amended to read:

45 270.120. (1) In exercising certain of its functions under ORS 184.634, 270.005 to 270.015, 270.100

1 to 270.190, 273.416, 273.426 to 273.436 and 273.551, the Oregon Department of Administrative Ser-
2 vices shall be advised by an advisory committee consisting of seven members appointed by the
3 Governor.

4 (2) The advisory committee appointed under subsection (1) of this section shall consist of two
5 members of the Legislative Assembly, one [*person who is licensed*] **real estate licensee** under ORS
6 696.020, two persons who serve in the executive branch of state government, one person qualified
7 as a land use planner, and one person qualified as a real estate management expert.

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

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

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

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

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

20 **SECTION 28.** ORS 305.230 is amended to read:

21 305.230. (1) Notwithstanding ORS 9.320:

22 (a) Any person who is qualified to practice law or public accountancy in this state, any person
23 who has been granted active enrollment to practice before the Internal Revenue Service and who
24 is qualified to prepare tax returns in this state or any person who is the authorized employee of a
25 taxpayer and is regularly employed by the taxpayer in tax matters may represent the taxpayer be-
26 fore a tax court magistrate or the Department of Revenue in any conference or proceeding with
27 respect to the administration of any tax.

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

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

37 (d) [*Any person*] **An individual** who is licensed as a real estate broker or principal real estate
38 broker under ORS 696.022 or is a state certified appraiser or state licensed appraiser under ORS
39 674.310 or is a registered appraiser under ORS 308.010 may represent a taxpayer before a tax court
40 magistrate or the department in any conference or proceeding with respect to the administration
41 of any ad valorem property tax.

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

45 (f) Any person authorized under rules adopted by the department may represent a taxpayer be-

1 fore the department in any conference or proceeding with respect to any tax. Rules adopted under
2 this paragraph, to the extent feasible, shall be consistent with federal law that governs represen-
3 tation before the Internal Revenue Service, as federal law is amended and in effect on December 31,
4 2004.

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

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

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

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

19 **SECTION 29.** ORS 446.676 is amended to read:

20 446.676. ORS 446.671 does not apply to the following manufactured structures or persons:

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

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

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

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

33 (5) An escrow agent making an application for an ownership document as described under ORS
34 446.591 (5).

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

37 (7) The sale of a manufactured structure by the manufacturer to a manufactured structure
38 dealer. However, a manufacturer must obtain a manufactured structure dealer license under ORS
39 446.691 in order to sell manufactured structures to retail customers.

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

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

1 interested in buying a manufactured structure.

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

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

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

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

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

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

22 **SECTION 30.** ORS 646.382 is amended to read:

23 646.382. As used in ORS 646.382 to 646.398:

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

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

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

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

32 (C) Providing advice, assistance, instruction or instructional materials to a consumer with re-
33 gard to either subparagraph (A) or (B) of this paragraph.

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

35 (A) Any person authorized to make loans or extensions of credit under the laws of this state or
36 the United States who is subject to regulation and supervision by this state or the United States
37 or a lender approved by the Secretary of Housing and Urban Development for participation in any
38 mortgage insurance program under the National Housing Act.

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

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

43 (D) Any nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Re-
44 venue Code, provided that the organization does not require a fee for its services and does not re-
45 ceive any money or other valuable consideration prior to the rendering of any services by the

1 organization for the consumer.

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

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

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

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

11 (I) Any licensee licensed under ORS chapter 725.

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

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

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

16 **SECTION 31.** ORS 646.605 is amended to read:

17 646.605. As used in ORS 646.605 to 646.652:

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

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

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

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

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

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

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

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

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

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

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

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

1 (b) [A person who is licensed or] **A real estate licensee or a person who** is otherwise author-
2 ized to engage in professional real estate activity pursuant to ORS chapter 696, when the sollicita-
3 tion involves professional real estate activity;

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

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

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

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

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

20 (h) A person who is authorized to conduct prearrangement or preconstruction funeral or ceme-
21 tery sales, pursuant to ORS chapter 692, when the solicitation involves prearrangement or precon-
22 struction funeral or cemetery plans;

23 (i) A person who solicits the services provided by a cable television system licensed or fran-
24 chised pursuant to state, local or federal law, when the solicitation involves cable television ser-
25 vices;

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

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

30 (L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section
31 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration
32 under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section;

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

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

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

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

41 (a) Knowingly takes advantage of a customer's physical infirmity, ignorance, illiteracy or ina-
42 bility to understand the language of the agreement;

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

45 (c) Permits a customer to enter into a transaction with knowledge that there is no reasonable

1 probability of payment of the attendant financial obligation in full by the customer when due.

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

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

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

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

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

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

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

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

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

17 646.605. As used in ORS 646.605 to 646.652:

18 (1) “Appropriate court” means the circuit court of a county:

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

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

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

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

24 (2) “Documentary material” means the original or a copy of any book, record, report, memo-
25 randum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or
26 other tangible document or recording, wherever situate.

27 (3) “Examination” of documentary material shall include inspection, study, or copying of any
28 such material, and taking testimony under oath or acknowledgment in respect of any such docu-
29 mentary material or copy thereof.

30 (4) “Person” means natural persons, corporations, trusts, partnerships, incorporated or
31 unincorporated associations, and any other legal entity except bodies or officers acting under stat-
32 utory authority of this state or the United States.

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

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

40 (7) “Telephone solicitation” means a solicitation where a person, in the course of the person’s
41 business, vocation or occupation, uses a telephone or an automatic dialing-announcing device to in-
42 itiate telephonic contact with a potential customer and the person is not one of the following:

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

1 (b) [A person who is licensed or] **A real estate licensee or a person who** is otherwise author-
2 ized to engage in professional real estate activity pursuant to ORS chapter 696, when the sollicita-
3 tion involves professional real estate activity;

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

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

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

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

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

20 (h) A person who is authorized to conduct prearrangement or preconstruction funeral or ceme-
21 tery sales, pursuant to ORS chapter 692, when the solicitation involves prearrangement or precon-
22 struction funeral or cemetery plans;

23 (i) A person who solicits the services provided by a cable television system licensed or fran-
24 chised pursuant to state, local or federal law, when the solicitation involves cable television ser-
25 vices;

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

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

30 (L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section
31 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration
32 under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section;

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

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

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

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

41 (a) Knowingly takes advantage of a customer's physical infirmity, ignorance, illiteracy or ina-
42 bility to understand the language of the agreement;

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

45 (c) Permits a customer to enter into a transaction with knowledge that there is no reasonable

1 probability of payment of the attendant financial obligation in full by the customer when due.

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

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

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

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

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

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

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

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

15 **SECTION 33.** ORS 674.100 is amended to read:

16 674.100. (1)(a) A person may not engage in, carry on, advertise or purport to engage in or carry
17 on real estate appraisal activity within this state without first obtaining certification, licensure or
18 registration as provided for in ORS 674.310.

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

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

27 (B) Is not subject to regulation under ORS 696.010 to 696.495 and 696.600 to 696.995 in con-
28 nection with the performance of real estate appraisal activity or the performance of any other ac-
29 tivity that constitutes the giving of an opinion as to the value of real estate or an interest in real
30 estate.

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

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

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

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

41 (d) Is performed by a registered geologist, registered professional engineer or architect render-
42 ing services as a registered geologist, registered professional engineer or architect;

43 (e) Is performed by a certified public accountant rendering services as a certified public ac-
44 countant;

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

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

4 (h) Is performed by a salaried employee of the federal government, the State of Oregon or a
5 political subdivision of the federal government or the State of Oregon while engaged in the per-
6 formance of the duties of the employee;

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

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

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

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

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

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

24 (3)(a) Real estate appraisal activity does not include an analysis, evaluation, opinion, conclusion,
25 notation or compilation of data prepared by a financial institution or affiliate, a consumer finance
26 company licensed under ORS chapter 725 or an insurance company or affiliate, made for internal
27 use only by the financial institution or affiliate, consumer finance company or the insurance com-
28 pany or affiliate, concerning an interest in real estate for ownership or collateral purposes by the
29 financial institution or affiliate, the consumer finance company licensed under ORS chapter 725 or
30 the insurance company or affiliate. Nothing in this subsection shall be construed to excuse a fi-
31 nancial institution or affiliate from complying with the provisions of Title XI of the federal Financial
32 Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3310 et seq.).

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

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

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

44 (c) In a proceeding under ORS 674.850 or 674.990, a display or statement described in paragraph
45 (a) of this subsection shall be considered prima facie evidence that the person named in the display

1 or making the statement purports to engage in or carry on real estate appraisal activity.

2 **SECTION 34.** ORS 744.056 is amended to read:

3 744.056. (1) ORS 744.052 to 744.089 do not require an insurer to obtain a license as an insurance
4 producer as required by ORS 744.053. For purposes of this section, the term “insurer” does not in-
5 clude an insurer’s officers, directors, employees, subsidiaries or affiliates.

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

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

10 (A) The officer’s, director’s or employee’s activities are executive, administrative, managerial,
11 clerical or a combination of these, and are only indirectly related to the sale, solicitation or nego-
12 tiation of insurance;

13 (B) The officer’s, director’s or employee’s function relates to underwriting, loss control, in-
14 spection or the processing, adjusting, investigating or settling of a claim on a contract of insurance;
15 or

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

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

21 (A) Secures and furnishes information for the purpose of group life insurance, group property
22 and casualty insurance, group annuities or group or blanket health insurance or for the purpose of
23 enrolling individuals under plans, issuing certificates under plans or otherwise assisting in adminis-
24 trative plans; or

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

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

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

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

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

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

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

43 (f) A person who is not a resident of this state who sells, solicits or negotiates a policy of in-
44 surance for commercial property and casualty risks to an insured with risks located in more than
45 one state insured under that policy, but only if the person is otherwise licensed as an insurance

1 producer to sell, solicit or negotiate that insurance in the state where the insured maintains its
2 principal place of business and the contract of insurance insures risks located in that state.

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

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

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

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

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

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

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

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

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

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

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