

Senate Bill 324

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 Senate Interim Committee on Judiciary for Joint Interim Task Force on Real Estate Agency Oversight)

SUMMARY

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

Reorganizes Real Estate Agency. Converts advisory Real Estate Board into policymaking body regulating real estate licensees. Gives board oversight role of agency and Director of Real Estate Agency, formerly known as Real Estate Commissioner. Retains policymaking role of director with respect to numerous functions, including regulation of escrow agents, condominiums and subdivision and partition of land.

A BILL FOR AN ACT

1
2 Relating to reorganization of Real Estate Agency; creating new provisions; amending ORS 92.090,
3 92.160, 92.305, 92.337, 92.345, 92.355, 92.365, 92.375, 92.385, 92.395, 92.405, 92.410, 92.415, 92.425,
4 92.455, 92.460, 92.465, 92.490, 92.495, 92.843, 92.990, 94.803, 94.807, 94.823, 94.826, 94.828, 94.829,
5 94.831, 94.867, 94.871, 94.873, 94.876, 94.881, 94.890, 94.895, 94.900, 94.905, 94.915, 94.920, 94.925,
6 94.930, 94.940, 94.953, 94.959, 94.965, 94.968, 94.971, 94.974, 94.975, 94.980, 94.986, 94.987, 100.005,
7 100.015, 100.105, 100.110, 100.135, 100.260, 100.290, 100.310, 100.410, 100.635, 100.640, 100.645,
8 100.650, 100.655, 100.660, 100.665, 100.670, 100.675, 100.680, 100.700, 100.705, 100.710, 100.720,
9 100.725, 100.740, 100.750, 100.770, 100.785, 100.900, 100.905, 100.990, 696.010, 696.022, 696.024,
10 696.026, 696.028, 696.130, 696.174, 696.200, 696.205, 696.241, 696.243, 696.245, 696.255, 696.265,
11 696.270, 696.280, 696.301, 696.310, 696.375, 696.392, 696.395, 696.396, 696.398, 696.425, 696.430,
12 696.445, 696.495, 696.505, 696.508, 696.511, 696.525, 696.527, 696.530, 696.532, 696.534, 696.535,
13 696.541, 696.545, 696.555, 696.570, 696.577, 696.578, 696.581, 696.582, 696.585, 696.590, 696.603,
14 696.606, 696.612, 696.615, 696.624, 696.627, 696.730, 696.775, 696.785, 696.790, 696.795, 696.820,
15 696.845, 696.990 and 696.995; and repealing ORS 696.385.

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

17 **SECTION 1.** ORS 696.375 is amended to read:

18 696.375. (1) The Real Estate Agency is established.

19 **(2) The agency consists of the Real Estate Board, the Director of the Real Estate Agency,**
20 **who serves at the pleasure of and reports to the board, and the officers and employees of the**
21 **agency, who report to the director.**

22 [(2)] **(3)** The Real Estate Agency [*shall be*] **is** under the supervision and control of [*an adminis-*
23 *trator who shall be known as the Real Estate Commissioner. The Governor shall appoint the Real*
24 *Estate Commissioner who shall have been, before the date of appointment, for five years a real estate*
25 *broker or principal real estate broker actively engaged in business as such in this state. The Governor*
26 *also may appoint a person who has been actively connected with the administration of the agency for*
27 *at least one year as acting or temporary commissioner. The commissioner shall hold office at the*
28 *pleasure of the Governor and shall be responsible for the performance of the duties imposed upon the*

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 *agency.] the Real Estate Board.*

2 (4) **The board, after consultation with the Governor, shall appoint a Director of the Real**
 3 **Estate Agency to supervise day-to-day operations of the agency and to perform the duties**
 4 **delegated to the director by rule of the board.** The Real Estate [*Commissioner shall receive*
 5 *such*] **Agency shall pay the director a salary as [may be] provided by law.**

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

8 [(4)] (5) Before entering upon the duties of office [*the commissioner*], **the director** shall give to
 9 the state a fidelity bond with one or more corporate sureties authorized to do business in this
 10 state[,] or an irrevocable letter of credit issued by an insured institution, as defined in ORS
 11 706.008[, *in either case in the sum fixed by the Governor. The premium for the bond or the fee for the*
 12 *letter of credit shall be paid by the agency*]. **The Governor shall fix the amount of the bond or**
 13 **letter of credit. The agency shall pay the premium on the bond or the fee for the letter of**
 14 **credit.**

15 **SECTION 2.** ORS 696.395 is amended to read:

16 696.395. The **Director of the Real Estate** [*Commissioner shall have the power to*] **Agency may:**

17 (1) For the purpose of administration **and subject to the approval of the Real Estate Board,**
 18 organize and reorganize[, *as necessary,*] the Real Estate Agency in [*the manner that the commissioner*
 19 *deems necessary to properly*] **a manner that facilitates the** conduct of the work of the agency.

20 (2) Appoint [*all*] subordinate officers and employees of the agency[, *or such*] **or** other agents or
 21 representatives[, *and*].

22 (3) Prescribe [*their*] **the duties of officers, employees, agents and representatives of the**
 23 **agency** and fix their compensation, subject to the applicable provisions of the State Personnel Re-
 24 lations Law. Subject to [*any other*] applicable law regulating travel expenses, the **director shall pay**
 25 **the** officers, employees, agents or representatives of the agency [*shall be allowed such*] reasonable
 26 and necessary travel and other expenses [*as may be*] incurred in the performance of their duties.

27 [(3)] (4) Require a fidelity bond or an irrevocable letter of credit issued by an insured
 28 institution, as defined in ORS 706.008, of [*any*] **an** officer or employee of the agency who has charge
 29 of, handles or has access to any state money or property, and who is not otherwise required by law
 30 to give a bond or letter of credit. The **director shall fix the** amounts of the bonds or letters of
 31 credit [*shall be fixed by the commissioner*], except as otherwise provided by law, and **approve** the
 32 sureties or letter of credit issuers[*shall be approved by the commissioner*]. The agency shall pay the
 33 premium on the bonds and the fees for the letters of credit.

34 **SECTION 3.** ORS 696.425 is amended to read:

35 696.425. (1) The Real Estate Board [*is authorized to inquire into the needs of the real estate*
 36 *licensees of Oregon, the functions of the Real Estate Agency and the matter of the business policy*
 37 *thereof, to confer with and advise the Governor as to how the agency may best serve the state and the*
 38 *licensees, and to make recommendations and suggestions of policy to the agency as the board may deem*
 39 *beneficial and proper for the welfare and progress of the licensees and of the public and of the real*
 40 *estate business in Oregon.*]

41 [(2) *The board shall*] **may:**

42 (a) **Adopt a seal for the Real Estate Agency by which the board shall authenticate pro-**
 43 **ceedings of the agency.**

44 (b) **Prepare and cause to be printed and circulated among the real estate licensees of**
 45 **Oregon printed matter the board deems helpful, educational or proper for the guidance and**

1 **welfare of the licensees.**

2 (c) **Make and enforce reasonable rules the board deems necessary to discharge the duties**
 3 **of the agency and to administer and enforce the provisions of law within the authority of the**
 4 **agency.**

5 (d) **Oversee and administer the agency.**

6 (e) **Supervise the activities of real estate licensees to ensure that licensees comply with**
 7 **the provisions of this chapter in the performance of professional real estate activities.**

8 (f) Conduct all examinations for applicants for real estate licenses, prepare or cause to be pre-
 9 pared the questions to be asked in the examinations and grade or cause to be graded the papers of
 10 each applicant after the completion of the examination and file a written report with the agency as
 11 to applicants taking the examination who have passed and who have failed to pass the examination.
 12 The board shall provide the manner and methods for conducting examinations.

13 (g) **Delegate by rule to the Director of the Real Estate Agency duties and authorities**
 14 **assigned to the board.**

15 [(3)] (2) The expenses of the board shall be paid from moneys available to the agency for pay-
 16 ment of administrative expenses relating to the real estate activities of the agency.

17 **SECTION 4.** ORS 696.010 is amended to read:

18 696.010. As used in ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and
 19 696.995, unless the context requires otherwise:

20 [(1) "Agency" means the Real Estate Agency.]

21 [(2)] (1) "Associated with" means to be employed, engaged or otherwise supervised by, with re-
 22 spect to the relationship between a real estate broker and a principal real estate broker.

23 [(3)] (2) "Bank" includes any bank or trust company, savings bank, mutual savings bank, savings
 24 and loan association or credit union that maintains a head office or a branch in this state in the
 25 capacity of a bank or trust company, savings bank, mutual savings bank, savings and loan associ-
 26 ation or credit union.

27 [(4)(a)] (3)(a) "Branch office" means a business location, other than the main office designated
 28 under ORS 696.200 (1), where professional real estate activity is regularly conducted or *[which]* **that**
 29 is advertised to the public as a place where such business may be regularly conducted.

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

35 [(5) "Commissioner" means the Real Estate Commissioner.]

36 [(6)] (4) "Compensation" means any fee, commission, salary, money or valuable consideration for
 37 services rendered or to be rendered as well as the promise thereof and whether contingent or oth-
 38 erwise.

39 [(7)] (5) "Competitive market analysis" means a method or process used by a real estate licensee
 40 in pursuing a listing agreement or in formulating an offer to acquire real estate in a transaction for
 41 the sale, lease, lease-option or exchange of real estate. The objective of competitive market analysis
 42 is a recommended listing, selling or purchase price or a lease or rental consideration. A competitive
 43 market analysis may be expressed as an opinion of the value of the real estate in a contemplated
 44 transaction. Competitive market analysis may include but is not limited to an analysis of market
 45 conditions, public records, past transactions and current listings of real estate.

1 [(8)] **(6)** “Letter opinion” *[means a document that expresses a real estate licensee’s conclusion re-*
 2 *garding a recommended listing, selling or purchase price or a rental or lease consideration of certain*
 3 *real estate and that results from the licensee’s competitive market analysis. The commissioner by rule*
 4 *shall specify the minimum contents of a letter opinion, including but not limited to the distinction be-*
 5 *tween a letter opinion and a real estate appraisal]* **has the meaning given that term in section 7**
 6 **of this 2007 Act.**

7 [(9)] **(7)** “Management of rental real estate” means:

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

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

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

12 (C) Negotiating with prospective tenants;

13 (D) Accepting deposits from prospective tenants;

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

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

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

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

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

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

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

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

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

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

28 (A) Consulting with tenants or prospective tenants about renting or leasing real estate;

29 (B) Assisting prospective tenants in renting or leasing real estate;

30 (C) Assisting prospective tenants in qualifying for renting or leasing real estate;

31 (D) Accepting deposits or other funds from prospective tenants for renting or leasing real estate
 32 and holding the funds in trust for the prospective tenants;

33 (E) Representing tenants or prospective tenants renting or leasing real estate; and

34 (F) Offering or attempting to do any of the acts described in this paragraph for a tenant or
 35 prospective tenant.

36 **(8) “Nonlicensed individual” means an individual:**

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

38 **(b) Whose real estate license is lapsed, expired, inactive, suspended or revoked.**

39 [(10)] **(9)** “Principal real estate broker” means an individual who *[is licensed]* **holds an active**
 40 **license** as a principal real estate broker and who employs, engages or supervises **the professional**
 41 **real estate activity of** another real estate licensee.

42 [(11)] **(10)** “Professional real estate activity” means any of the following actions, when engaged
 43 in for another and for compensation or with the intention or in the expectation or upon the promise
 44 of receiving or collecting compensation, by *[any person]* **an individual** who:

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

- 1 (b) Offers to sell, exchange, purchase, rent or lease real estate[.];
- 2 (c) Negotiates, offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or
3 leasing of real estate[.];
- 4 (d) Lists, offers, attempts or agrees to list real estate for sale[.];
- 5 (e) Offers, attempts or agrees to perform or provide a competitive market analysis or letter
6 opinion, to represent a taxpayer under ORS 305.230 or 309.100 or to give an opinion in any admin-
7 istrative or judicial proceeding regarding the value of real estate for taxation[. *Such*], **except when**
8 **the activity is** performed by a state certified appraiser or state licensed appraiser [*is not profes-*
9 *sional real estate activity*.];
- 10 (f) Auctions, offers, attempts or agrees to auction real estate[.];
- 11 (g) Buys, sells, offers to buy or sell or otherwise deals in options on real estate[.];
- 12 (h) Engages in management of rental real estate[.];
- 13 (i) Purports to be engaged in the business of buying, selling, exchanging, renting or leasing real
14 estate[.];
- 15 (j) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange,
16 leasing or rental of real estate[.];
- 17 (k) Assists or directs in the negotiation or closing of any transaction calculated or intended to
18 result in the sale, exchange, leasing or rental of real estate[.];
- 19 (L) Except as otherwise provided in ORS 696.030 (1)(L), advises, counsels, consults or analyzes
20 in connection with real estate values, sales or dispositions, including dispositions through eminent
21 domain procedures[.];
- 22 (m) Advises, counsels, consults or analyzes in connection with the acquisition or sale of real
23 estate by an entity if the purpose of the entity is investment in real estate[.]; **or**
- 24 (n) Performs real estate marketing activity as described in ORS 696.600.
- 25 [(12)] (11) “Real estate” includes leaseholds and licenses to use including, but not limited to,
26 timeshare estates and timeshare licenses as defined in ORS 94.803, as well as any and every interest
27 or estate in real property, whether corporeal or incorporeal, whether freehold or nonfreehold,
28 whether held separately or in common with others and whether the real property is situated in this
29 state or elsewhere.
- 30 [(13)] (12) “Real estate broker” means [*a person*] **an individual** who engages in professional real
31 estate activity and who [*is licensed*] **holds an active license** as a real estate broker.
- 32 [(14)] (13) “Real estate licensee” means **an individual who holds an active license** as a real
33 estate broker, principal real estate broker or real estate property manager.
- 34 [(15)] (14) “Real estate property manager” means a real estate licensee who is authorized to
35 engage in management of rental real estate.
- 36 [(16)] (15) “Registered business name” means a name registered with the Real Estate Agency
37 under which the [*person*] **individual** registering the name engages in professional real estate activ-
38 ity.
- 39 [(17)] (16) “Sole practitioner” means a real estate broker conducting professional real estate
40 activity not in conjunction with other real estate brokers or principal real estate brokers.
- 41 **SECTION 5. Section 6 of this 2007 Act is added to and made a part of the Oregon Real**
42 **Estate License Law.**
- 43 **SECTION 6. (1) As used in this section, “letter opinion” means a document that ex-**
44 **presses a real estate licensee’s conclusion regarding a recommended listing, selling or pur-**
45 **chase price or a rental or lease consideration of certain real estate and that results from the**

1 **licensee's competitive market analysis.**

2 **(2) The Real Estate Board by rule shall specify the minimum contents of a letter opinion,**
 3 **including but not limited to the distinction between a letter opinion and a real estate ap-**
 4 **praisal.**

5 **SECTION 7.** ORS 696.022 is amended to read:

6 696.022. (1) The Real Estate [*Agency*] **Board** shall establish by rule a system for licensing real
 7 estate brokers, principal real estate brokers and real estate property managers. The system shall
 8 establish, at a minimum:

9 (a) The form and content of applications for licensing under each category of real estate pro-
 10 fessional licensed by the [*agency*] **board**;

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

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

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

14 (e) Terms and conditions under which the license of a real estate licensee must be returned or
 15 transferred to the Real Estate [*Commissioner*] **Agency** for purposes including, but not limited to,
 16 inactivation, suspension or termination of the license.

17 (2)(a) A real estate broker may engage in all of the professional activities of a real estate broker
 18 described in this chapter. A real estate broker may not employ, engage or otherwise supervise the
 19 professional real estate activities of another real estate broker or principal real estate broker.

20 (b) In order to qualify for a real estate broker's license, an applicant must furnish proof satis-
 21 factory to the [*commissioner*] **board** that the applicant has successfully completed the basic real es-
 22 tate broker's educational courses and the examination required by rule of the [*agency*] **board**. Proof
 23 of completion of all required courses must be provided at the time of applying for the license.

24 (c) A real estate broker may conduct professional real estate activities as a sole practitioner
 25 after:

26 (A) The person has acquired three years of active experience as a real estate broker; or

27 (B) The person has acquired three years of active experience as a real estate salesperson as
 28 defined in ORS 696.025 (1999 Edition) and has successfully completed the real estate broker's ex-
 29 amination required by rule of the [*agency*] **board**.

30 (3)(a) A principal real estate broker may engage in all of the professional activities of a real
 31 estate broker described in this chapter. A principal real estate broker may conduct professional real
 32 estate activities in conjunction with other real estate brokers or principal real estate brokers. In
 33 addition, a principal real estate broker may employ, engage and otherwise supervise the professional
 34 real estate activities of real estate brokers or principal real estate brokers.

35 (b) In order to qualify for a principal real estate broker's license, an applicant must meet the
 36 requirements of subsection (2)(b) of this section and must furnish proof satisfactory to the [*commis-*
 37 *sioner*] **board** that the applicant has successfully completed the brokerage administration and sales
 38 supervision course, as required by [*agency*] **board** rule, and has:

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

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

43 (4) In order to qualify for a real estate property manager's license, an applicant must furnish
 44 proof satisfactory to the [*commissioner*] **board** that the applicant has successfully completed courses
 45 in the legal aspects of real estate, real estate property management and accounting, bookkeeping

1 and trust accounting practices. The applicant also must have successfully completed a real estate
2 property manager's license examination prescribed by rule of the [agency] **board**. Proof of com-
3 pletion of all required courses must be provided at the time of applying for the license.

4 (5)(a) A license for a real estate broker, principal real estate broker or real estate property
5 manager shall be granted only to a person who is trustworthy and competent to conduct professional
6 real estate activity in a manner that protects the public interest. As a condition of licensing, the
7 [commissioner] **board** may require [such] proof of competence and trustworthiness as the [commis-
8 sioner] **board** deems necessary to protect the public interest.

9 (b) In implementing this subsection, the [commissioner] **board** shall require fingerprints and
10 criminal offender information of an applicant for initial licensing and may require fingerprints and
11 criminal offender information of an applicant for license renewal. Fingerprints acquired under this
12 subsection may be used for the purpose of requesting a state or nationwide criminal records check
13 under ORS 181.534.

14 (6) A license may be issued under this section only to persons who are 18 years of age or older.

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

18 (8) In order to satisfy the educational requirements under subsections (2) to (4) and (7) of this
19 section, a course must be approved by the [commissioner] **board**. The [commissioner] **board** shall
20 determine the final examination score acceptable as evidence of successful completion for each re-
21 quired course.

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

25 **SECTION 8.** ORS 696.024 is amended to read:

26 696.024. To qualify for a real estate license under ORS 696.022 or to renew an active or inactive
27 real estate license, the applicant must make full payment of any unpaid moneys due and owing to
28 the Real Estate Agency, including any unpaid civil penalties assessed under a final order of the Real
29 Estate [Commissioner] **Board**.

30 **SECTION 9.** ORS 696.026 is amended to read:

31 696.026. (1) A real estate broker or principal real estate broker may conduct professional real
32 estate activity under the broker's name, a registered business name or a name prescribed by
33 [agency] rule **of the Real Estate Board**. The business name under which a broker conducts pro-
34 fessional real estate activity has no license standing independent of the broker.

35 (2) The [agency] **board** by rule shall adopt a registration system for business names. The system
36 shall allow the registration of any branch office of either a sole practitioner or a principal real es-
37 tate broker.

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

43 (4) A real estate broker or principal real estate broker may register two or more business names
44 if the business names are for affiliated or subsidiary business organizations. If a real estate broker
45 or principal real estate broker registers the business names for two or more affiliated or subsidiary

1 business organizations, the broker may conduct professional real estate activity separately under
 2 each business name. A real estate broker or principal real estate broker must supervise and control
 3 the professional real estate activity conducted under the broker's name or registered business name.

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

9 (6) A nonlicensed person may have an ownership interest in any business through which a real
 10 estate broker or principal real estate broker engages in professional real estate activity, but may
 11 not control or supervise the professional real estate activity of any real estate broker or principal
 12 real estate broker licensed to control or supervise the professional real estate activity of such
 13 business.

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

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

23 **SECTION 10.** ORS 696.028 is amended to read:

24 696.028. The Real Estate [*Commissioner*] **Board** may prescribe by rule the terms and conditions
 25 for licensed personal assistant agreements including, but not limited to, the duties and responsibil-
 26 ities of, the limitations on the activities of, and the nature and scope of the business relationship
 27 between a real estate licensee and a licensed personal assistant.

28 **SECTION 11.** ORS 696.130 is amended to read:

29 696.130. (1) If the license of any real estate broker or principal real estate broker is revoked by
 30 the Real Estate [*Commissioner, the commissioner*] **Board, the board** may not issue a new license
 31 until the individual complies with the provisions of ORS 696.010 to 696.495, 696.600 to 696.785 and
 32 696.800 to 696.870.

33 (2) Notwithstanding subsection (1) of this section, the [*commissioner*] **board** may issue the indi-
 34 vidual a limited license if, in the discretion of the [*commissioner*] **board**, it is in the public interest
 35 to do so. The [*commissioner*] **board** may limit a license issued under this subsection:

36 (a) By term;

37 (b) To acts subject to the supervision of a specific principal real estate broker; or

38 (c) By conditions to be observed in the exercise and the privileges granted.

39 (3) A limited license issued under this section does not confer any property right in the privi-
 40 leges to be exercised thereunder, and the holder of a limited license does not have the right to re-
 41 newal of such license. A limited license may be suspended or revoked, or the licensee may be
 42 reprimanded, by the [*commissioner*] **board** on the grounds set out in ORS 696.301.

43 **SECTION 12.** ORS 696.174 is amended to read:

44 696.174. (1) To qualify an active license for renewal, the real estate licensee must present evi-
 45 dence of attendance during the preceding two license years at 30 clock-hours of real estate oriented

1 continuing education courses, of which a minimum of 15 clock-hours shall be in required course
2 topics.

3 (2)(a) The Real Estate [*Commissioner*] **Board**, with advice from real estate professionals, educa-
4 tors and the public, may accept a broad range of topics for real estate oriented continuing education
5 courses. Required course topics shall be flexible so as to allow for changes in the real estate pro-
6 fession.

7 (b) The minimum length of each course, required or elective, shall be one hour. A standard form,
8 created by the Real Estate Agency in consultation with real estate professionals, shall be developed
9 to ensure that licensees have completed the required number of hours. Certification of attendance
10 by the principal real estate broker with whom the real estate broker is associated, or self-
11 certification if the licensee is a sole practitioner, a principal real estate broker or a real estate
12 property manager, shall be considered evidence of attendance.

13 (3) The [*commissioner*] **board**, with advice from real estate professionals, educators and the
14 public, shall prescribe rules for certifying continuing education courses. The rules shall provide for
15 correspondence courses and other distance learning alternatives, including but not limited to rules
16 for minimum course length, comprehension of written materials and tests for course completion. The
17 rules shall also provide that continuing education course topics contain an advanced course in real
18 estate practices that must be completed by a licensee prior to the licensee's first renewal of an ac-
19 tive license.

20 (4) The [*commissioner*] **board** may waive the continuing education requirements of subsection (1)
21 of this section for any licensee who submits satisfactory evidence of inability to attend such courses
22 because of health or other circumstances beyond the licensee's control.

23 **SECTION 13.** ORS 696.200 is amended to read:

24 696.200. (1) Except for real estate brokers associated with a principal real estate broker, every
25 real estate broker and principal real estate broker shall maintain in this state a place of business
26 to be designated as the broker's main office and designate the place of business by a sign that
27 contains the name under which the broker is licensed.

28 (2) The place of business must be specified in the application for a real estate license, and des-
29 ignated in the license. Prior to the change of a business location, the broker shall notify the Real
30 Estate [*Commissioner*] **Agency** in writing of the new location. The change of a business location
31 without notification to the [*commissioner*] **agency** is grounds for revocation of licenses previously
32 issued.

33 (3) A real estate broker or principal real estate broker may establish one or more branch offices
34 as separate business locations under the management of the broker. A broker may conduct and su-
35 pervise the business of more than one office, whether main or branch. The broker shall register each
36 branch office with the [*commissioner*] **agency** and designate each branch office by a sign that con-
37 tains the name under which the broker is licensed.

38 (4) Upon vacating any business location, the broker shall ensure that the sign containing the
39 broker's name or the name under which the broker has operated is removed from the location that
40 the broker has vacated. A broker may not display any name at the designated places of business
41 named in the broker's license or licenses other than the name under which the broker is licensed.

42 **SECTION 14.** ORS 696.205 is amended to read:

43 696.205. (1) If a real estate licensee who is a sole practitioner or who is the sole principal real
44 estate broker of a real estate business dies or becomes incapacitated, the Real Estate
45 [*Commissioner*] **Board** may issue a temporary license to the executor, administrator or personal

1 representative of the estate of the deceased real estate licensee or to the court-appointed fiduciary
 2 of the incapacitated real estate licensee, or to some other person designated by the [*commissioner*]
 3 **board**, in order to continue to transact the real estate business in the case of the incapacitated real
 4 estate licensee or to wind up the affairs of the deceased or incapacitated real estate licensee. The
 5 term of a temporary license issued under this section may not exceed one year from the date of is-
 6 suance unless the [*commissioner*] **board**, in the discretion of the [*commissioner*] **board**, extends the
 7 term of the temporary license based on sufficient cause provided by the temporary licensee to the
 8 [*commissioner*] **board**.

9 (2) The [*Real Estate Agency*] **board** may adopt administrative rules to administer this section
 10 or to authorize a person to transact or wind up real estate business on behalf of the deceased or
 11 incapacitated real estate licensee.

12 **SECTION 15.** ORS 696.241 is amended to read:

13 696.241. (1) Each sole practitioner and each principal real estate broker shall maintain in this
 14 state one or more separate bank accounts that shall be designated a Clients' Trust Account in which
 15 all trust funds received or handled by the sole practitioner or broker and the real estate licensees
 16 subject to the supervision of the broker on behalf of any other person shall be deposited unless,
 17 pursuant to written agreement of all parties having an interest in the trust funds, the trust funds
 18 are immediately placed in a neutral escrow depository in this state.

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

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

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

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

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

44 (7) A sole practitioner or principal real estate broker is not entitled to any part of any interest
 45 earnings on trust funds deposited under subsection (5) of this section or to any part of the earnest

1 money or other money paid to the sole practitioner or broker in connection with any real estate
 2 transaction as part or all of the sole practitioner’s or broker’s commission or fee until the trans-
 3 action has been completed or terminated. The question of the disposition of forfeited earnest money
 4 shall be negotiated between the sole practitioner or principal real estate broker and the seller at
 5 the time of executing any listing agreement or earnest money agreement. The result of such nego-
 6 tiation shall be filled in on the agreement form at the time of signing by the seller and either sep-
 7 arately initialed by the seller or placed immediately above the signature of the seller.

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

10 (9) *[No person shall]* **A person may not** knowingly keep or cause to be kept any funds or money
 11 in any bank under the heading of Clients’ Trust Account or any other name designating such funds
 12 or money as belonging to the clients of any sole practitioner or principal real estate broker, except
 13 actual trust funds deposited with the sole practitioner or broker.

14 (10) The *[agency]* **board** by rule shall establish a procedure for disbursement of disputed funds from
 15 a Clients’ Trust Account to the person who delivered the funds to the sole practitioner or principal
 16 real estate broker. The procedure shall allow disbursement not more than 20 days after a request is
 17 made for the disbursement. Any disbursement pursuant to the procedure does not affect the claim of any
 18 other person to the funds.

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

21 **SECTION 16.** ORS 696.243 is amended to read:

22 696.243. (1) Any real estate broker, principal real estate broker, real estate property manager
 23 or escrow agent who is required by the Real Estate *[Commissioner]* **Board** to maintain the canceled
 24 checks used to disburse moneys from the licensee’s clients’ trust account may substitute a copy of
 25 the original canceled check, if the copy is provided by a bank and is produced by optical imaging
 26 or other process that accurately reproduces the original or forms a durable medium for reproducing
 27 the original, and the copy is at least 300 dots per inch in quality.

28 (2) A real estate broker, principal real estate broker, real estate property manager or escrow
 29 agent may use electronic fund transfers for the deposit into or for withdrawal from a clients’ trust
 30 account established under ORS 696.241 or 696.578, if the bank furnishes to the licensee an accurate
 31 paper record of the deposits and withdrawals.

32 (3) As used in subsection (2) of this section, “electronic fund transfer” has the meaning set forth
 33 in section 903 of the Electronic Transfer Act (P.L. 90-321, 15 U.S.C. §1693a).

34 **SECTION 17.** ORS 696.245 is amended to read:

35 696.245. (1) Each sole practitioner and each principal real estate broker, at the time a Clients’
 36 Trust Account is opened under ORS 696.241, shall provide the bank in which the account is opened
 37 with a notice in substantially the following form:

38
 39
 40 **NOTICE OF CLIENTS’ TRUST ACCOUNT**

41
 42 To: (name of bank) _____

43 Under the Oregon Real Estate License Law, I am the sole practitioner, principal real estate
 44 broker or designated real estate appraiser for (licensed name of broker or business)
 45 _____.

1 Further, under ORS 696.241, I am required to maintain in Oregon a Clients' Trust Account for
2 the purpose of holding funds belonging to others.

3 With regard to the account(s) numbered _____ which is/are designated as a Clients'
4 Trust Account, the account(s) is/are maintained with you as a depository for money belonging to
5 persons other than myself and in my fiduciary capacity as a sole practitioner or principal real estate
6 broker established by client agreements in separate documents.

7
8 Dated: (insert date)

9 _____
10 (signature of broker)

11
12 ACKNOWLEDGMENT OF RECEIPT

13
14 I, _____, a duly authorized representative of (bank)
15 _____, do hereby acknowledge receipt of the above NOTICE OF CLI-
16 ENTS' TRUST ACCOUNT on (date) _____.

17 _____
18 (signature)

19 _____
20 (title)

21 _____
22
23 (2) The acknowledged copy of the notice described in subsection (1) of this section shall be re-
24 tained by the sole practitioner or principal real estate broker as provided in ORS 696.241 for the
25 retention of trust account records, subject to inspection by the Real Estate [*Commissioner or the*
26 *commissioner's*] **Board or the board's** authorized representative.

27 **SECTION 18.** ORS 696.255 is amended to read:

28 696.255. (1) The acceptance by a nonresident of a real estate license shall be considered equiv-
29 alent to an appointment by the nonresident of the **Director of the** Real Estate [*Commissioner*]
30 **Agency** as the nonresident licensee's true and lawful attorney, upon whom may be served any lawful
31 summons, process or pleading in any action or suit against the nonresident licensee in any court
32 of this state, arising out of any business done by the nonresident licensee as a real estate licensee
33 in this state. The acceptance shall be considered equivalent to an agreement by the nonresident
34 licensee that any summons, process or pleading so served shall be of the same legal force and va-
35 lidity as if served on the nonresident licensee personally in this state.

36 (2) If it appears by the certificate of the sheriff of the county in which an action or suit has been
37 filed against a nonresident licensee, that the defendant cannot be found in this state, service of any
38 summons, process or pleading in the action or suit may be made by leaving a copy thereof, with a
39 fee of \$2, in the hands of the [*commissioner or in the commissioner's*] **director or in the director's**
40 office. Such service shall be sufficient and valid personal service upon the defendant[:], provided
41 that:

42 (a) Notice of the service and copy of the summons, process or pleading is sent forthwith by
43 registered mail or by certified mail with return receipt by the plaintiff or the plaintiff's attorney to
44 the defendant, at the most recent address furnished to the [*commissioner*] **Real Estate Agency** by
45 the nonresident licensee or to the nonresident licensee's last-known address; and

1 (b) The affidavit of the plaintiff or the plaintiff's attorney of the mailing is appended to the
2 summons, process or pleading and entered as a part of the return thereof.

3 (3) Notwithstanding any other provision of this section, personal service outside of the state in
4 accordance with the statutes relating to personal service of summons outside of the state shall re-
5 lieve the plaintiff from the mailing requirement under this section.

6 (4) Any summons served as provided in this section shall require the defendant to appear and
7 answer the complaint within four weeks after receipt thereof by the [commissioner] **director**.

8 (5) The fee of \$2 paid by the plaintiff to the [commissioner] **director** shall be taxed as costs in
9 favor of the plaintiff if the plaintiff prevails in the action.

10 (6) The [commissioner] **director** shall keep a record of each summons, process or pleading served
11 upon the [commissioner] **director** under this section, showing the day and hour of service.

12 **SECTION 19.** ORS 696.265 is amended to read:

13 696.265. Notwithstanding ORS 696.040 to 696.232 and 696.255, the Real Estate [Commissioner]
14 **Board** may prescribe by rule the terms and conditions for license recognition of a nonresident real
15 estate broker or salesperson and for reciprocity agreements with other states and countries, in-
16 cluding but not limited to application procedures, license qualifications, license maintenance, limi-
17 tations on activities and license renewal requirements.

18 **SECTION 20.** ORS 696.270 is amended to read:

19 696.270. The maximum fees described in this section may be charged by and paid to the Real
20 Estate Agency. Actual fees shall be prescribed by the Real Estate [Commissioner] **Board** with ap-
21 proval of the Oregon Department of Administrative Services. This section applies to the following
22 fees:

23 (1) For each licensing examination applied for, \$75.

24 (2) For each real estate broker's, principal real estate broker's or real estate property manager's
25 license, \$230.

26 (3) For each renewal of a real estate broker's, principal real estate broker's or real estate
27 property manager's license, \$230.

28 (4) For each notification of the opening or closing of a registered branch office of a real estate
29 broker or principal real estate broker, at times other than the time of issuing or renewing the bro-
30 ker's license, \$10.

31 (5) For each change of name or address of a broker on the records of the agency, \$10.

32 (6) For each duplicate license, when the original license is lost or destroyed and affidavit made
33 thereof, \$20.

34 (7) For each transfer of a real estate broker's, principal real estate broker's or real estate
35 property manager's license within the same license category, \$10.

36 (8) For the renewal of a real estate broker's, principal real estate broker's or real estate prop-
37 erty manager's inactive license, \$110.

38 (9) For the reactivation of a real estate broker's, principal real estate broker's or real estate
39 property manager's inactive license, \$75.

40 (10) In addition to the renewal fee, for late renewal, \$30.

41 (11) For a temporary license issued under ORS 696.205, \$40, and for an extension thereof, \$40.

42 (12) For initial registration of a business name, \$230.

43 **SECTION 21.** ORS 696.280 is amended to read:

44 696.280. (1) A real estate broker or principal real estate broker shall maintain within this state
45 complete and adequate records of all professional real estate activity conducted by or through the

1 broker. The Real Estate [*Agency*] **Board** shall specify by rule the records required to establish
 2 complete and adequate records of a broker's professional real estate activity. The only documents
 3 the [*agency*] **board** may require by rule a real estate broker or principal real estate broker to use
 4 or generate are documents that are otherwise required by law or are voluntarily generated during
 5 a real estate transaction.

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

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

14 (3) The records shall at all times be open for inspection by the Real Estate [*Commissioner or the*
 15 *commissioner's*] **Agency or the agency's** authorized representatives. The records of each trans-
 16 action shall be maintained by the licensee for a period of not less than six years after the date the
 17 transaction closed or failed. The records may be maintained in any format that allows for inspection
 18 and copying by the [*commissioner or the commissioner's*] **agency or the agency's** representatives,
 19 as determined by the [*commissioner*] **board** by rule.

20 **SECTION 22.** ORS 696.301 is amended to read:

21 696.301. Subject to ORS 696.396, the Real Estate [*Commissioner*] **Board** may suspend or revoke
 22 the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or
 23 renewal of a license to an applicant who has done any of the following:

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

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

29 (3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785
 30 and 696.800 to 696.870 or any rule of the Real Estate [*Agency*] **Board**.

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

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

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

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

37 (8) Accepted employment or compensation for the preparation of a competitive market analysis
 38 or letter opinion that is contingent upon reporting a predetermined value or for real estate in which
 39 the licensee had an undisclosed interest.

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

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

45 (11) Has been convicted of a felony or misdemeanor substantially related to the licensee's

1 trustworthiness or competence to engage in professional real estate activity.

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

4 (13) Violated a term, condition, restriction or limitation contained in an order issued by the
5 [commissioner] **board**.

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

9 (15) Engaged in any conduct that is below the standard of care for the practice of professional
10 real estate activity in Oregon as established by the community of persons engaged in the practice
11 of professional real estate activity in Oregon.

12 **SECTION 23.** ORS 696.310 is amended to read:

13 696.310. (1) If two or more principal real estate brokers are in business together, the brokers
14 may have equal supervisory control over and shall be equally responsible for the conduct of other
15 principal real estate brokers or real estate brokers associated with the principal real estate brokers,
16 or other employees employed by the principal real estate brokers. The principal real estate brokers
17 shall execute a written agreement between them and establish office policies specifying the super-
18 visory control and responsibility for each principal real estate broker who is a party to the agree-
19 ment.

20 (2) An act constituting a violation of any of the provisions of ORS 696.010 to 696.495, 696.600
21 to 696.785, 696.800 to 696.870 and 696.995 or of any rule adopted thereunder by any licensee is not
22 cause for the suspension or revocation of a license of any real estate licensee associated with or
23 engaged by such licensee, unless it appears to the satisfaction of the Real Estate [Commissioner]
24 **Board** that such associated or engaged real estate licensee had guilty knowledge of the act. A
25 course of dealing shown to have been persistently and consistently followed by any real estate
26 licensee shall constitute prima facie evidence of such knowledge upon the part of any real estate
27 licensee associated with or engaged by that licensee.

28 **SECTION 24.** ORS 696.392 is amended to read:

29 696.392. (1) The Real Estate [Commissioner] **Board or the Director of the Real Estate Agency**
30 may administer oaths, take depositions and issue subpoenas to compel the attendance of witnesses
31 and the production of books, papers, records, memoranda or other information necessary to the
32 carrying out of the laws the [commissioner] **Real Estate Agency** is charged with administering.

33 (2) If any person fails to comply with a subpoena issued under this section or refuses to testify
34 on any matters on which the person may be lawfully interrogated, the procedure provided in ORS
35 183.440 shall be followed to compel obedience.

36 **SECTION 25.** ORS 696.396 is amended to read:

37 696.396. (1) The Real Estate [Commissioner] **Board** shall provide by rule for the progressive
38 discipline of real estate licensees and an objective method for investigation of complaints alleging
39 grounds for discipline under ORS 696.301.

40 (2) The rules adopted by the [commissioner] **board** under this section:

41 (a) Must establish procedures for the discovery of material facts relevant to an investigation and
42 for the reporting of those facts without conclusions of violation or grounds for discipline to the
43 [commissioner or the commissioner's] **board or the board's** designee by the individual assigned to
44 investigate the complaint.

45 (b) Must provide for progressive discipline designed and implemented to correct inappropriate

1 behavior.

2 (c) May not authorize imposition of a suspension or a revocation of a real estate license unless
3 the material facts establish a violation of a ground for discipline under ORS 696.301 that:

4 (A) Results in significant damage or injury;

5 (B) Exhibits incompetence in the performance of professional real estate activity;

6 (C) Exhibits dishonesty or fraudulent conduct; or

7 (D) Repeats conduct or an act that is substantially similar to conduct or an act for which the
8 real estate licensee was disciplined previously.

9 **SECTION 26.** ORS 696.398 is amended to read:

10 696.398. (1) The Real Estate [*Commissioner*] **Board** may delegate to any of the officers and em-
11 ployees of the Real Estate Agency to exercise or discharge [*in the commissioner's name any*] **on**
12 **behalf of the board** a power, duty or function vested in or imposed upon the [*commissioner*] **board**
13 under this chapter. The power to administer oaths and affirmations, subpoena witnesses, take evi-
14 dence and require the production of books, papers, correspondence, memoranda, agreements or other
15 documents or records, and to sign notices and orders may be exercised by an officer or employee
16 of the agency, **other than the Director of the Real Estate Agency**, only when specified in writing
17 by the [*commissioner*] **board** and filed in the records of the Real Estate Agency.

18 (2) An official act of a person acting [*in the commissioner's name*] **on behalf of the board** and
19 by authority of the [*commissioner shall be*] **board is** deemed to be an official act of the
20 [*commissioner*] **board**.

21 **SECTION 27.** ORS 696.430 is amended to read:

22 696.430. Copies of all records and papers in the office of the Real Estate [*Commissioner*] **Agency**
23 duly certified and authenticated by the seal of the [*commissioner*] **agency** shall be received in evi-
24 dence in all courts equally and with like effect as the original. Except for records of open investi-
25 gations, all records kept in the office of the [*commissioner*] **agency** under authority of ORS 696.010
26 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.995 shall be open to public inspection under
27 such reasonable rules and regulations as shall be prescribed by the [*commissioner*] **Real Estate**
28 **Board**.

29 **SECTION 28.** ORS 696.445 is amended to read:

30 696.445. (1) Pursuant to ORS [*696.385 (2)*] **696.425 (1)(b)**, the Real Estate [*Agency*] **Board** shall
31 provide for the advancement of education and research in connection with the educational require-
32 ments for the securing of licenses for real estate licensees under ORS 696.010 to 696.495, 696.600 to
33 696.785, 696.800 to 696.870 and 696.995.

34 (2) The **Director of the Real Estate** [*Commissioner*] **Agency** may assign and reassign staff in
35 the agency to perform such duties as the [*commissioner*] **director** considers necessary to carry out
36 subsection (1) of this section, including but not limited to the preparation and distribution of a pe-
37 riodic publication to be known as the Oregon Real Estate News Journal and the preparation and
38 publication of other printed matter of an educational nature for the benefit of real estate licensees.

39 (3) The [*commissioner*] **director** shall publish in the Oregon Real Estate News Journal the
40 [*names and addresses of all applicants*] **name and the city and county of each applicant** for a real
41 estate or escrow [*licenses whose licenses have*] **license whose license has** been refused, of **each** real
42 estate [*licensees who have*] **licensee who has** been reprimanded, of **each** real estate [*and*] **or** escrow
43 [*licensees whose licenses have*] **licensee whose license has** been suspended or revoked and of **each**
44 real estate [*and*] **or** escrow [*licensees who have*] **licensee who has** been assessed civil penalties.
45 Each [*such*] publication [*shall*] **must** include a brief description of the situation involved and the

1 grounds for the [commissioner's] **director's** action.

2 **SECTION 29.** ORS 696.495 is amended to read:

3 696.495. (1) Upon written request by the Real Estate Agency, the Oregon Department of Ad-
 4 ministrative Services shall draw a warrant on the Real Estate Account, established by ORS 696.490,
 5 for use as a revolving fund. Warrants drawn to establish or increase the revolving fund, rather than
 6 to reimburse the revolving fund, may not exceed the aggregate sum of \$1,500. The State Treasurer
 7 shall hold the revolving fund in a special account against which the Real Estate Agency may draw
 8 checks.

9 (2) The Real Estate Agency may use the revolving fund for the purpose of paying witness fees
 10 and other administrative expenses.

11 (3) All claims for reimbursement of moneys paid from the revolving fund are subject to approval
 12 by the Director of the Oregon Department of Administrative Services and by the **Director of the**
 13 Real Estate [Commissioner] **Agency**. When [such] claims have been approved, a warrant covering
 14 them shall be drawn in favor of the Real Estate Agency and used to reimburse the revolving fund.
 15 [Such] Warrants shall be charged against the Real Estate Account established by ORS 696.490.

16 **SECTION 30.** ORS 696.505 is amended to read:

17 696.505. As used in ORS 696.505 to 696.590, unless the context requires otherwise:

18 (1) "Collection escrow" means an escrow in which the escrow agent:

19 (a) Receives:

20 (A) Installment payments;

21 (B) Instruments evidencing or securing an obligation; or

22 (C) Instruments discharging the security interest; and

23 (b) Disburses the payments or delivers the instruments upon specified conditions pursuant to the
 24 written instructions of an obligor and obligee.

25 [(2) "Commissioner" means the Real Estate Commissioner.]

26 [(3)] (2) "Escrow" means any transaction wherein any written instrument, money, evidence of
 27 title to real or personal property or other thing of value is delivered, for the purpose of paying an
 28 obligation or effecting the sale, transfer, encumbrance or lease of real or personal property, to a
 29 person not otherwise having any right, title or interest therein, to be held by that person as a
 30 neutral third party until the happening of a specified event or the performance of a prescribed
 31 condition, when it is then to be delivered by the neutral third party to a grantee, grantor, promisee,
 32 promisor, obligee, obligor, bailee, bailor or any agent or employee of any of them pursuant to the
 33 written instructions of the principals to the transaction.

34 [(4)] (3) "Escrow agent" means any person who engages in the business of receiving escrows for
 35 deposit or delivery and who receives or is promised any fee, commission, salary or other valuable
 36 consideration, whether contingent or otherwise, for or in anticipation of performance.

37 [(5)] (4) "Principal" means:

38 (a) The buyer and seller, lessor and lessee and the exchanging parties in an escrow transaction
 39 involving the sale, lease, lease-option or exchange of real property or personal property; and

40 (b) The borrower in an escrow transaction involving the refinancing of real or personal prop-
 41 erty, including but not limited to the refinancing of an obligation secured by a land sale contract
 42 requiring a deed to be delivered as part of such refinancing.

43 [(6)] (5) "Real estate closing escrow" means an escrow where the escrow fee is paid in whole
 44 or in part by the principals to a real estate transaction and wherein the unpaid purchase price is
 45 delivered to an escrow agent for disbursement pursuant to the written instructions of the principals to

1 the transaction simultaneously on the transfer of specified title to the real property.

2 [(7)] (6) "Subservicer" means an escrow agent, a financial institution or a trust company, as
 3 those terms are defined in ORS 706.008, or a collection agency registered under ORS 697.015 when
 4 providing, pursuant to written instructions, a portion of the escrow services for an escrow to an
 5 escrow agent, or a person in the business of receiving escrows under the laws of another state, that
 6 would otherwise provide the escrow services directly to the principals.

7 **SECTION 31.** ORS 696.508 is amended to read:

8 696.508. (1) The Legislative Assembly finds the activity of escrow agents in handling large sums
 9 of money and important rights of clients to be of public concern. In order to permit uniform and
 10 equitable regulation of all escrow agents and to improve the standards of escrow conduct, the pro-
 11 visions of ORS 696.505 to 696.590 shall be construed to grant the Real Estate [*Commissioner*]
 12 **Agency** authority to protect the public.

13 (2) ORS 696.505 to 696.590 may be cited as the Oregon Escrow Law.

14 **SECTION 32.** ORS 696.511 is amended to read:

15 696.511. (1) A person may not directly or indirectly engage in or carry on, or purport to engage
 16 in or carry on, the business of an escrow agent or act in the capacity of an escrow agent without
 17 first obtaining a license as an escrow agent under the provisions of ORS 696.505 to 696.590.

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

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

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

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

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

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

43 (5) For the initial license or license renewal of an escrow agent, the [*commissioner*] **director**
 44 shall require fingerprints and a state or nationwide criminal records check under ORS 181.534 of
 45 an applicant for an initial license and may require fingerprints and a state or nationwide criminal

1 records check under ORS 181.534 of an applicant for license renewal. The [*commissioner*] **director**
 2 may require additional information for an initial license or license renewal under this subsection
 3 that the [*commissioner*] **director** considers necessary for protecting the public. For purposes of re-
 4 quiring fingerprints and a criminal records check, “applicant” means a person who has more than
 5 five percent ownership interest in the escrow agency and the corporate officers in direct control of
 6 escrow operations.

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

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

11 (b) A statement identifying by name, address and telephone number one or more individuals who
 12 can respond to the inquiries of or referrals by the [*commissioner or the commissioner’s authorized*
 13 *representative*] **Real Estate Agency** regarding the applicant’s escrow business.

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

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

21 **SECTION 33.** ORS 696.525 is amended to read:

22 696.525. (1) At the time of filing an application for an escrow agent license, the applicant shall
 23 deposit with the Real Estate [*Commissioner*] **Agency** a corporate surety bond running to the State
 24 of Oregon, executed by a surety company satisfactory to the [*commissioner*] **Director of the Real**
 25 **Estate Agency**, in the amount required by this section.

26 (2) If the total annual receipts of client trust funds, as reported in the required annual report
 27 of the escrow agent, are:

28 (a) Less than \$30 million, the bond or deposit must be \$50,000.

29 (b) \$30 million or more, but less than \$60 million, the bond or deposit must be \$125,000.

30 (c) \$60 million or more, but less than \$100 million, the bond or deposit must be \$250,000.

31 (d) \$100 million or more, but less than \$300 million, the bond or deposit must be \$375,000.

32 (e) \$300 million or more, the bond or deposit must be \$500,000.

33 (3) The provisions of the corporate surety bond must be in the form substantially as follows:

34
 35
 36 Know All Persons by These Presents, That we, _____ as principal, and _____, a cor-
 37 poration, qualified and authorized to do business in the State of Oregon as surety, are held and
 38 firmly bound unto the State of Oregon for the use and benefit of any interested person, in the sum
 39 of \$_____, lawful money of the United States of America, to be paid to the State of Oregon for
 40 the use and benefit aforesaid, for which payment well and truly to be made, we bind ourselves, our
 41 heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these pre-
 42 sents.

43 The condition of the above obligation is such that: Whereas the above-named principal has made
 44 application for registration as an escrow agent within the meaning of ORS 696.505 to 696.590 and
 45 is required by the provisions of ORS 696.505 to 696.590 to furnish a bond in the sum above named,

1 conditioned as herein set forth:

2 Now, therefore, if the principal, the principal’s agents and employees, shall strictly, honestly and
 3 faithfully comply with the provisions of ORS 696.505 to 696.590, and shall pay all actual damages
 4 suffered by any person by reason of the violation of any of the provisions of ORS 696.505 to 696.590,
 5 now or hereafter enacted, or by reason of any fraud, dishonesty, misrepresentation or concealment
 6 of material facts growing out of any transaction governed by the provisions of ORS 696.505 to
 7 696.590, then this obligation shall be void; otherwise to remain in full force and effect.

8 This bond shall become effective on the ____ day of _____, 2____, and shall remain in force
 9 until the surety is released from liability by the [commissioner] **Director of the Real Estate**
 10 **Agency**, or until this bond is canceled by the surety. The surety may cancel this bond and be re-
 11 lieved of further liability hereunder by giving 30 days’ written notice to the principal and to the
 12 [commissioner] **director**.

13 This bond shall be one continuing obligation, and the liability of the surety for the aggregate
 14 of any and all claims which may arise hereunder shall in no event exceed the amount of the penalty
 15 hereof.

16 In witness whereof, the seal and signature of the principal hereto is affixed, and the corporate
 17 seal and the name of the surety hereto is affixed and attested by its duly authorized officers at
 18 _____, Oregon, this ____ day of _____, 2____.

19 _____ (Seal)

20 Principal

21 _____ (Seal)

22 Surety

23 By _____
 24 _____

25
 26 **SECTION 34.** ORS 696.527 is amended to read:

27 696.527. (1) Any escrow agent may satisfy the requirements of ORS 696.525 by depositing with
 28 the State Treasurer, in an amount equal to the surety bond required, a deposit consisting only of
 29 the following:

- 30 (a) Cash;
- 31 (b) Ample secured obligations of the United States, a state or a political subdivision thereof;
- 32 (c) Certificates of deposit or other investments described in ORS 733.650 (4), to the extent that
 33 such investments are insured by the Federal Deposit Insurance Corporation; or
- 34 (d) Any combination of paragraphs (a), (b) or (c) of this subsection.

35 (2) The State Treasurer shall accept and hold the deposit for the faithful performance of escrow
 36 activity by the escrow agent. No claimant or judgment creditor or the escrow agent shall have the
 37 right to attach or levy upon any of the assets or securities held on deposit.

38 (3) The **Director of the Real Estate [Commissioner] Agency**, by order, may authorize the State
 39 Treasurer to use such deposit, as follows:

- 40 (a) To satisfy any final judgment entered against the escrow agent for actual damages suffered
 41 by any person by reason of the violation of any of the provisions of ORS 696.505 to 696.590, now or
 42 hereafter enacted, or by reason of any fraud, dishonesty, misrepresentation or concealment of ma-
 43 terial fact growing out of any escrow transaction;
- 44 (b) For use in the liquidation of the escrow agent under the provisions of ORS 696.555; or
- 45 (c) To release any or all of such deposit to the escrow agent when, in the opinion of the [com-

1 *missioner*] **director**, such deposit is no longer necessary to protect the public.

2 (4) The [*commissioner*] **director** may waive the requirement of the surety bond or deposit for any
3 escrow agent that:

4 (a) Demonstrates to the [*commissioner's*] **director's** satisfaction that the capital and surplus or
5 net worth, of such escrow agent as of the end of the previous business accounting year of the agent
6 is equal to, or greater than, the average month-end balance of custodial funds held by such agent
7 during the previous business accounting year;

8 (b) Provides a certified, annually renewable letter of credit executed by a financial institution
9 and satisfactory to the [*commissioner*] **director** in the amount of the surety bond required by ORS
10 696.525; or

11 (c) Provides a certified, personal guarantee executed by one or more owners of the escrow
12 agency and satisfactory to the [*commissioner*] **director** in the amount of the surety bond required
13 by ORS 696.525.

14 (5) All other claims against the bond or deposit of an escrow agent must be paid by the [*com-*
15 *missioner*] **director** only upon the receipt of a final court judgment against the escrow agent and
16 only in the amount of actual damages as ordered by the court.

17 **SECTION 35.** ORS 696.530 is amended to read:

18 696.530. (1) The license of an escrow agent expires June 30 next after the date of issuance if it
19 is not renewed by July 1 of such year. A license may be renewed by filing a renewal application in
20 writing, verified by the applicant and in the form prescribed by the **Director of the Real Estate**
21 [*Commissioner*] **Agency**, and paying the annual license fee for the next succeeding fiscal year.

22 (2) The filing fees are:

23 (a) For filing an original or a renewal application, \$300 for the main office and \$150 for each
24 branch office.

25 (b) For filing an application for a duplicate copy of a license, upon satisfactory showing of loss
26 of the license, the sum of \$20.

27 (c) For a name change or a change of address of an escrow agent, \$10 for the main office plus
28 \$10 for each affected branch office.

29 **SECTION 36.** ORS 696.532 is amended to read:

30 696.532. (1) The **Director of the Real Estate** [*Commissioner*] **Agency** may issue or renew a
31 limited escrow agent license if:

32 (a) An applicant elects not to apply for an escrow agent license; or

33 (b) An applicant does not qualify for an escrow agent license.

34 (2) The [*commissioner*] **director** may limit a license issued under this section:

35 (a) By term;

36 (b) To activities subject to supervision by a specific escrow agent;

37 (c) By conditions to be observed in the exercise of the privileges granted; or

38 (d) In other ways determined by the [*commissioner*] **director** as necessary or appropriate to
39 protect the public.

40 (3) A limited licensee shall comply with the requirements of ORS 696.505 to 696.590 and shall:

41 (a) Restrict the escrow business of the licensee to those escrows specified in the application; or

42 (b) Limit its escrow business to collection escrows.

43 **SECTION 37.** ORS 696.534 is amended to read:

44 696.534. (1) An escrow agent shall keep and maintain at all times in the licensed office of the
45 agent, complete and suitable records of escrow transactions made by the agent and of the business

1 of the agent including, but not limited to, books, papers and data clearly reflecting the financial
 2 condition of the business of the agent. The records must be open for inspection by the Real Estate
 3 [*Commissioner or the commissioner's authorized representatives*] **Agency** at all times. An escrow
 4 agent shall keep escrow records for a period of six years from the date the escrow closes or is ter-
 5 minated. An escrow agent may maintain the records in any format, as determined by the [*commis-*
 6 *sioner*] **Director of the Real Estate Agency** by rule, that allows for inspection and copying by the
 7 [*commissioner or the commissioner's representatives*] **agency**. When an escrow agent acts as a
 8 subservicer for another escrow agent, the subservicer shall keep its records in the manner required
 9 for an escrow agent under this section.

10 (2) Notwithstanding the requirement of subsection (1) of this section that an escrow agent
 11 maintain escrow records in the agent's licensed office, an escrow agent shall keep escrow records
 12 in the office in which the transaction occurred for one year from the date the escrow closes or is
 13 terminated.

14 (3) Notwithstanding the requirements of subsections (1) and (2) of this section to maintain
 15 escrow records in specified locations, an escrow agent may maintain escrow records at another lo-
 16 cation satisfactory to the [*commissioner*] **director** if the escrow agent provides the [*commissioner*]
 17 **director** with prior written notice of the proposed location.

18 **SECTION 38.** ORS 696.535 is amended to read:

19 696.535. (1) The **Director of the Real Estate** [*Commissioner*] **Agency** may refuse to issue or may
 20 suspend or revoke any license by entering an order to that effect with the [*commissioner's*] **direc-**
 21 **tor's** findings in respect thereto if, upon examination into the affairs of the applicant or licensee in
 22 the performance of routine duties, upon field examination or upon hearing, the [*commissioner*] **di-**
 23 **rector** determines that the applicant or licensee:

24 (a) Has, under generally accepted accounting principles, a deficit net worth;

25 (b) Has demonstrated unworthiness to transact the business of an escrow agent;

26 (c) Does not conduct business in accordance with law or has violated any provisions of ORS
 27 696.505 to 696.590;

28 (d) Has committed fraud in connection with any transaction governed by ORS 696.505 to 696.590;

29 (e) Has made any misrepresentations or false statement of an essential or material fact to, or
 30 concealed any essential or material fact from, any person in the course of the escrow business;

31 (f) Has knowingly made or caused to be made to the [*commissioner any*] **Real Estate Agency**
 32 **a** false representation of a material fact, or has suppressed or withheld from the [*commissioner*]
 33 **agency** any information the applicant or licensee possesses that, if submitted, would have disquali-
 34 fied the applicant or licensee from original or renewed licensing under ORS 696.505 to 696.590;

35 (g) Has failed to account to the principals or persons entitled thereto in a real estate trans-
 36 action for the moneys, documents or other things of value received in the transaction;

37 (h) Has not delivered, after a reasonable time, to persons entitled thereto, moneys, documents
 38 or other things of value held or agreed to be delivered by the licensee, as and when paid for and
 39 due to be delivered;

40 (i) Has caused uncompensated material loss to principals by engaging in a pattern of failures to
 41 act with neutrality between principals in multiple escrows;

42 (j) Has refused to permit an examination by the [*commissioner*] **agency** of the escrow agent's
 43 books and affairs, or has refused or failed, within a reasonable time, to furnish any information, re-
 44 cords or files or make any report that may be required by the [*commissioner*] **agency** under the
 45 provisions of ORS 696.505 to 696.590; or

1 (k) Has been convicted of a felony or any misdemeanor that is substantially related to the
2 escrow agent's competency or trustworthiness to engage in the business of an escrow agent.

3 (2) It is sufficient cause for refusal or revocation of a license in case of a partnership or cor-
4 poration or any unincorporated association, if any member of a partnership or any officer or director
5 of the corporation or association has been guilty of any act or omission which would be cause for
6 refusing or revoking the registration of an individual agent.

7 **SECTION 39.** ORS 696.541 is amended to read:

8 696.541. (1) The **Director of the Real Estate [Commissioner] Agency** shall have general super-
9 vision and control over all escrow agents doing business in this state. Subject to ORS chapter 183,
10 the [commissioner] **director** may adopt such rules as reasonably necessary for the administration
11 and enforcement of ORS 696.505 to 696.590.

12 (2) All escrow agents are subject to audits or examinations by the [commissioner, or the com-
13 missioner's authorized representatives at any time the commissioner] **Real Estate Agency when the**
14 **director** considers advisable. The [commissioner] **director** may collect from each escrow agent the
15 reasonable expenses of such audit or examination including but not limited to any administrative
16 expense for travel.

17 (3) The provisions of this section and of any other section relating to the examination of the
18 affairs of an escrow agent shall extend to an escrow agent whose license has expired or been re-
19 voked or suspended, if in the judgment of the [commissioner] **director**, such agent has violated any
20 provisions of ORS 696.505 to 696.590.

21 **SECTION 40.** ORS 696.545 is amended to read:

22 696.545. (1) The **Director of the Real Estate [Commissioner] Agency** may investigate either
23 upon complaint or otherwise whenever it appears that an escrow agent has violated ORS 696.505 to
24 696.590 or that any person is engaging in the escrow business without being licensed under the
25 provisions of ORS 696.505 to 696.590.

26 (2) [If upon investigation it appears that such agent is so conducting business the commissioner]
27 **If it appears upon investigation that an agent is conducting business in violation of sub-**
28 **section (1) of this section, the director** may, in addition to any other remedies, bring action in
29 the name and on behalf of the State of Oregon against [such person] **the agent** and any other person
30 acting in violation of ORS 696.505 to 696.590[,] to enjoin [such person and such other person from
31 continuing any act] **continuing actions** in violation of ORS 696.505 to 696.590.

32 (3) **In addition to the penalties and other remedies provided in ORS 696.505 to 696.590,** the
33 circuit court of any county of this state [is vested with jurisdiction to] **may** restrain illegal practices
34 or transactions and may grant injunctions to prevent and restrain [such] illegal practices or
35 transactions[, in addition to the penalties and other remedies provided in ORS 696.505 to 696.590. The
36 court shall have power,]. During the pendency of the proceedings [before it to], **the court may** issue
37 [such] preliminary restraining orders [as may] **that** appear to be just and proper[; and]. The findings
38 of the [commissioner] **director** shall be deemed to be prima facie evidence and sufficient ground, in
39 the discretion of the court, for the issue ex parte of a preliminary restraining order.

40 (4) In [any such court proceedings the commissioner] **a court proceeding described in this**
41 **section, the director** may apply for and on due showing [be entitled to have issued the court's] **have**
42 **the court issue a subpoena** requiring [forthwith]:

43 (a) The appearance of [any] **a** defendant and employees of the defendant [and the production of
44 documents, books and records as may appear necessary for the hearing of such petition,] to testify and
45 give evidence concerning the acts [or], conduct or things complained of in [such] **the** application for

1 injunction.

2 **(b) The production of documents, books or records that appear to be necessary for the**
3 **hearing of the petition.**

4 **SECTION 41.** ORS 696.555 is amended to read:

5 696.555. (1) When the **Director of the Real Estate** [*Commissioner*] **Agency** ascertains by exam-
6 ination or otherwise that the assets or capital of any agent are impaired, as described in ORS
7 696.535 (1)(a), the [*commissioner*] **director** may immediately take possession of all the property,
8 business and assets of the agent [*which*] **that** are located in this state and retain possession [*of*
9 *them*] pending the further proceedings specified in this section.

10 (2) Pursuant to subsection (1) of this section, the [*commissioner*] **director** may apply to the cir-
11 cuit court of the county in which the agent's principal place of business is located for an order di-
12 recting the agent to show cause why a receiver should not be appointed to take charge of and
13 manage or liquidate if necessary the assets of the agent utilized in professional escrow activity in
14 [*such a manner as to prevent or minimize such*] **a manner that prevents or minimizes** financial loss
15 to others.

16 (3) If the court is satisfied from reading the [*commissioner's*] **director's** petition that the facts
17 [*therein*] alleged, if established, warrant [*such*] **the** receivership action, the court shall issue [*such*]
18 **the** order to show cause. The court may [*at such time*], without notice, issue a temporary injunction
19 restraining [*such agent, or any of*] **the agent or** the agent's officers, directors, stockholders, mem-
20 bers, agents or employees, from the transaction of any professional escrow activity[,] or the waste
21 or disposition of [*any such*] **the** assets until further order of the court. [*Should such an injunction*
22 *be*] **If an injunction is** issued, **the court shall hold** a hearing on whether the injunction [*shall be*
23 *continued shall be held*] **should be continued** within five business days of its service.

24 (4) On return of the order to show cause[,] and after a full hearing, the court shall [*either*] **grant**
25 **or** deny the application or grant the [*same*] **application**, together with [*such*] other relief [*as*] **that**
26 the court [*may deem*] **deems** necessary.

27 (5) Notwithstanding any other provision of law, [*no bond shall be required of the commissioner*
28 *or the commissioner's authorized representatives*] **the court may not require a bond of the Real**
29 **Estate Agency** as a prerequisite for the issuance of [*any*] **an** injunction or other order pursuant to
30 this section.

31 (6) **The court may dismiss the proceedings if**, at any time during [*such*] **the** proceedings, the
32 agent [*may satisfy*] **satisfies** the court that the activity [*which*] **that** prompted [*such*] **the** pro-
33 ceedings has been rectified or that financial loss to others **is** no longer [*will*] likely **to** occur[, *in*
34 *which case the court may dismiss such proceedings*].

35 (7) **The court shall fix the amount of** expenses of the receiver, compensation of the legal
36 counsel of the receiver, [*as well as all*] **and the** expenditures of the receiver required in [*such*] **the**
37 proceedings [*shall be fixed by the court and*] **to be paid. The court shall order that the costs** be
38 paid out of funds in the hands of the receiver or [*entered*] **enter the costs** as a judgment against
39 [*such*] **the** licensee.

40 **SECTION 42.** ORS 696.570 is amended to read:

41 696.570. (1) All hearings **conducted** before the Real Estate [*Commissioner or the commissioner's*
42 *authorized representative conducted*] **Agency** under the authority of ORS 696.505 to 696.590 [*shall*]
43 **must** be conducted in accordance with the provisions of ORS chapter 183.

44 (2) The [*commissioner, or anyone authorized by the commissioner, shall have the power to*] **Di-**
45 **rector of the Real Estate Agency, or a designee of the director, may** subpoena witnesses and

1 administer oaths in connection with hearings in the enforcement of ORS 696.505 to 696.590.

2 **SECTION 43.** ORS 696.577 is amended to read:

3 696.577. [*Whenever*] **If the Director of the Real Estate [Commissioner] Agency** finds that any
4 person is offering to engage in or engaging in the business of an escrow agent without a license as
5 an escrow agent as required under ORS 696.505 to 696.590, the [*commissioner*] **director** may order
6 the person to cease and desist from offering to engage in or engaging in the business of an escrow
7 agent. Any proceeding under this section is subject to the requirements of ORS chapter 183.

8 **SECTION 44.** ORS 696.578 is amended to read:

9 696.578. (1) All money deposited in escrow to be delivered upon the close of the escrow or upon
10 any other contingency shall be deposited and maintained in a bank authorized to do business within
11 this state and kept separate, distinct and apart from funds belonging to the escrow agent. Such
12 funds, when deposited, are to be designated as trust funds, escrow accounts, or under some other
13 appropriate name indicating that the funds are not the funds of the escrow agent.

14 (2) Trust funds received by an escrow agent may be placed by the agent in a federally insured
15 interest-bearing bank account, designated a clients' trust account, but only with the prior written
16 approval of all parties having an interest in the trust funds. The earnings of such interest-bearing
17 account may inure to the benefit of the escrow agent if expressly approved in writing before deposit
18 of the trust funds by all parties having an interest in the trust funds.

19 (3) With prior written notice to all parties who have an interest in the trust funds, an escrow
20 agent may place trust funds received by the escrow agent in a federally insured interest-bearing
21 bank account that is designated a clients' trust account and the earnings of which inure to the
22 benefit of a public benefit corporation, as defined in ORS 65.001, for distribution to organizations
23 and individuals for first-time homebuying assistance and for development of affordable housing. The
24 escrow agent shall select a qualified public benefit corporation to receive the interest earnings.

25 (4) Any bank services, as defined by rule by the **Director of the Real Estate [Commissioner]**
26 **Agency**, provided to the escrow agent shall not be considered to affect the impartiality or neutrality
27 of the escrow agent. [*Such*] **The** services are permitted with approval in the written closing in-
28 structions of the principals.

29 (5) Clients' trust funds may be invested in secured obligations of the United States, if:

30 (a) The depositing principal gives prior written approval to the escrow agent for such invest-
31 ment after receiving written disclosure as may be required by rule adopted by the [*commissioner*]
32 **director**;

33 (b) The depositing principal releases the escrow agent from any liability for loss of [*such*] **the**
34 funds;

35 (c) The depositing principal agrees that any loss of funds shall not be a claim against the bond,
36 deposit, letter of credit or personal guarantee of the agent under ORS 696.525 and 696.527; and

37 (d) The escrow agent does not have any interest in the investment or earnings from the invest-
38 ment.

39 (6) If the funds to be invested represent earnest money in a transaction, both principals in the
40 transaction must give prior written approval for the investment and are both considered depositing
41 principals.

42 **SECTION 45.** ORS 696.581 is amended to read:

43 696.581. (1) An escrow agent may not accept funds, property or documents in any escrow
44 transaction without dated, written escrow instructions from the principals to the transaction or a
45 dated executed agreement in writing between the principals to the transaction.

1 (2) An escrow agent may not close an escrow or disburse any funds or property in an escrow
 2 without obtaining dated, separate escrow instructions in writing from the principals to the trans-
 3 action adequate to administer and close the transaction or, in the case of disbursement, to disburse
 4 the funds and property.

5 (3) The following statement or its substantial equivalent shall appear on or be attached to all
 6 written escrow instructions prepared by an escrow agent for signature of the principals to a trans-
 7 action. The statement shall be in at least 10-point bold type. The statement shall either appear im-
 8 mediately above the signatures of the principals or be separately initialed by the principals:
 9

10
 11 It is understood by the parties signing the above or attached instructions that the instructions
 12 are the complete instructions between this firm as an escrow agent and you as a principal to the
 13 escrow transaction. These instructions may not include all the terms of the agreement which is the
 14 subject of this escrow. Read these instructions carefully, and do not sign them unless they are ac-
 15 ceptable to you.
 16

17
 18 (4) An escrow agent may not solicit or accept any original, amended or supplemental escrow
 19 instructions containing any blank to be filled in after signing. An escrow agent shall not allow any
 20 alteration of original, amended or supplemental escrow instructions, unless the alteration is signed
 21 or initialed by all principals who signed or initialed the instructions before the alteration.

22 (5) An escrow agent may accept client funds, in excess of earnest money required in transaction
 23 documents to be held, as individual funds of the principal who has paid them into escrow. Such
 24 individual funds may be disbursed with only the separate written instructions of the principal who
 25 deposited the funds into escrow.

26 (6) An escrow agent may open a one-sided escrow, as defined by rule by the **Director of the**
 27 **Real Estate [Commissioner. Such] Agency. The** escrow funds may be disbursed with only the sepa-
 28 rate written instructions of the principal who deposited the funds into escrow.

29 **SECTION 46.** ORS 696.582 is amended to read:

30 696.582. (1) An escrow agent shall hold, as provided in subsection (3) of this section, the amount
 31 of money or other property agreed to as a commission in a written real estate broker's or principal
 32 real estate broker's commission agreement, if the escrow agent has at the office at which the escrow
 33 is being closed, before the date of closing:

34 (a) A written notice of demand, signed by the real estate broker or principal real estate broker
 35 who is authorized under rules adopted by the **Director of the** Real Estate [*Commissioner*] **Agency**
 36 to enter into the commission agreement and sign the written notice of demand, in substantially the
 37 form set out in subsection (2) of this section; and

38 (b) The written closing instructions of the principals which do not honor the amount and terms
 39 of payment in the notice of demand.

40 (2) The notice of demand required by subsection (1) of this section may not be incorporated into
 41 any document of agreement between the principals or between the broker and a principal, and shall
 42 be in substantially the following form:
 43

44
 45 Notice of Demand for

1 Real Estate Commission
 2 To: _____
 3 (Name of Escrow Company)
 4 Re: _____
 5 (Names of Principals to
 6 Transaction)
 7 Your Escrow Number: _____

8
 9 The undersigned real estate broker or principal real estate broker states that such broker has
 10 a valid written commission agreement with _____ (Name of Principal), one of the principals to
 11 the transaction referred to above, and that such principal is obligated to pay the broker the com-
 12 mission on account of that transaction. The commission amount is \$_____ and is to be paid on the
 13 following terms: _____. Demand is hereby made that the commission be paid in that
 14 amount and on those terms, out of escrow and as a part of your closing of that transaction.

15 _____
 16 (Name and Signature of Real Estate Broker
 17 or Principal Real Estate Broker)
 18 _____

19
 20 (3) An escrow agent in a transaction described in subsection (1) of this section may only dis-
 21 burse the moneys or other property to:

- 22 (a) The broker and principal, based upon a written agreement between those parties and di-
 23 rected to the escrow agent as disbursement instructions;
- 24 (b) Any persons, as directed by order of a court of competent jurisdiction; or
- 25 (c) The court, upon filing by the escrow agent of an interpleader action for the moneys or
 26 property.

27 (4) At the time of filing a notice of demand with an escrow agent under subsection (1) of this
 28 section, the real estate broker or principal real estate broker filing the notice shall deliver a copy
 29 of the notice to the principal identified in the notice.

30 **SECTION 47.** ORS 696.585 is amended to read:
 31 696.585. (1) [Any] **A** person who violates [any] **a** provision of ORS 696.505 to 696.545, [or any] **a**
 32 lawful rule or final order of the Real Estate [Commissioner] **Agency** or [any] **a** final judgment made
 33 by [any] **a** court upon application of the [commissioner,] **director** may be required to forfeit and
 34 pay, to the General Fund of the State Treasury, a civil penalty in an amount determined by the
 35 [commissioner] **director** of not more than \$3,000 for each offense. Each violation shall be deemed a
 36 separate offense.

37 (2) In addition to the civil penalty set forth in subsection (1) of this section, [any] **a** person who
 38 violates [any] **a** provision of ORS 696.505 to 696.590, [any] **a** lawful rule or final order of the [com-
 39 missioner or any] **director or a** final judgment made by a court upon application [to the commis-
 40 sioner,] **of the director** may be required to forfeit and pay, to the General Fund of the State
 41 Treasury, a civil penalty in an amount determined by the [commissioner] **director** but not to exceed
 42 the amount by which [such] **the** person profited in [any] **a** transaction [which violates any such] **that**
 43 **violates the** provision, rule, order or judgment.

- 44 (3) Civil penalties under this section are imposed as provided in ORS 183.745.
- 45 (4) The provisions of this section are in addition to and not in lieu of any other enforcement

1 provision contained in ORS 696.505 to 696.590.

2 **SECTION 48.** ORS 696.590 is amended to read:

3 696.590. (1) Any person who violates ORS 696.511 (1) may be required by the **Director of the**
4 Real Estate [*Commissioner*] **Agency** to forfeit and pay, to the General Fund of the State Treasury,
5 a civil penalty in an amount determined by the [*commissioner*] **director** of:

6 (a) Not less than \$500 nor more than \$1,000 for the first offense of unlicensed professional
7 escrow activity; and

8 (b) Not less than \$1,000 nor more than \$3,000 for the second and subsequent offenses of unli-
9 censed professional escrow activity.

10 (2) In addition to the civil penalty set forth in subsection (1) of this section, any person who
11 violates ORS 696.511 may be required by the [*commissioner*] **director** to forfeit and pay, to the
12 General Fund of the State Treasury, a civil penalty in an amount determined by the [*commissioner*]
13 **director** but not to exceed the amount by which [*such*] **the** person profited in [*any*] **a** transaction
14 [*which*] **that** violates ORS 696.511.

15 (3) Civil penalties under this section must be imposed in the manner provided in ORS 183.745.

16 (4) The civil penalty provisions of subsections (1) and (2) of this section are in addition to and
17 not in lieu of the criminal penalties for unlicensed professional escrow activity in ORS 696.990 (1)
18 and (2).

19 **SECTION 49.** ORS 696.603 is amended to read:

20 696.603. (1) A person may not engage in real estate marketing activity unless that person is:

21 (a) Licensed under ORS 696.606;

22 (b) Licensed under ORS 696.022; or

23 (c) Registered by a person licensed under ORS 696.606.

24 (2) [*No*] **A** person may **not** employ an individual as a real estate marketing employee unless the
25 person registers the individual with the Real Estate [*Commissioner*] **Agency** as the employee of the
26 real estate marketing organization before the individual commences real estate marketing activity.

27 (3) This section applies to persons who:

28 (a) Initiate real estate marketing activity in this state; or

29 (b) Initiate real estate marketing activity in another state that includes contacting persons in
30 this state.

31 (4) One act or transaction of real estate marketing activity is sufficient to constitute engaging
32 in real estate marketing activity within the meaning of this section.

33 **SECTION 50.** ORS 696.606 is amended to read:

34 696.606. (1) **As used in this section:**

35 (a) **“Principal” means a person who has permitted or directed another to act for the**
36 **person’s benefit with respect to a real estate marketing organization.**

37 (b) **“Satisfactory proof” includes but is not limited to the fingerprints and a criminal re-**
38 **ords check of the applicant.**

39 (2) In accordance with any applicable provisions of ORS chapter 183, the **Director of the** Real
40 Estate [*Commissioner*] **Agency** shall establish by rule a system to license real estate marketing or-
41 ganizations. [*Such a*] **The** system shall include but need not be limited to prescribing:

42 (a) The form and content of and the times and procedures for submitting an application for the
43 issuance or renewal of a license.

44 (b) The term of the license and the fee for the original issue and renewal in an amount that does
45 not exceed the cost of administering the licensing system.

1 (c) The requirements and procedures to register the names of and other information regarding
2 the real estate marketing employees employed by applicants or licensees.

3 (d) Those actions or circumstances that constitute failure to achieve or maintain licensing or
4 competency or that otherwise constitute a danger to the public interest and for which the [*commis-*
5 *sioner*] **director** may refuse to issue or renew or may suspend or revoke a license or registration
6 or may impose a penalty.

7 (e) Those activities of principals of the organization that constitute a danger to the public in-
8 terest and for which the [*commissioner*] **director** may refuse to issue or renew or may suspend or
9 revoke a registration or may impose a penalty. [*For purposes of this section, "principal" means a*
10 *person who has permitted or directed another to act for the person's benefit with respect to a real estate*
11 *marketing organization.*]

12 [(2)] (3) Licenses for real estate marketing organizations shall be granted only if the principal
13 persons of the organization are trustworthy and competent to conduct real estate marketing activity
14 in such manner as to safeguard the interests of the public and only after satisfactory proof has been
15 presented to the [*commissioner*. *As used in this subsection, "satisfactory proof" includes but is not*
16 *limited to the fingerprints and a criminal records check of the applicant. For the purpose of requesting*
17 *a state or nationwide criminal records check under ORS 181.534, the commissioner may require the*
18 *fingerprints of the applicant.*] **director**.

19 [(3)] (4) At the time of filing an application for a license as a real estate marketing organization,
20 the applicant shall deposit with the [*commissioner*] **director** a corporate surety bond running to the
21 State of Oregon, executed by a surety company satisfactory to the [*commissioner*] **director**, in the
22 amount of \$35,000 in a form and under terms and conditions established by the [*commissioner*] **di-**
23 **rector**.

24 [(4)] (5) Any real estate marketing organization may satisfy the requirements of subsection [(3)]
25 (4) of this section by depositing with the [*commissioner*] **director**, in an amount equal to the surety
26 bond required, a deposit consisting of any of the following:

27 (a) Cash;

28 (b) Ample secured obligations of the United States, a state or a political subdivision thereof;

29 (c) Certificates of deposit or other investments described in ORS 733.650 (4) to the extent that
30 such investments are insured by the Federal Deposit Insurance Corporation; or

31 (d) Any combination of paragraphs (a), (b) and (c) of this subsection.

32 [(5)] (6) Any real estate marketing organization making a deposit with the [*commissioner*] **di-**
33 **rector** shall assign in trust, to the **Director of the Real Estate** [*Commissioner*] **Agency**, and the
34 [*commissioner's*] **director's** successors in office, all cash certificates or securities deposited in ac-
35 cordance with this section.

36 [(6)] (7) The deposit shall be accepted and held by the [*commissioner*] **director** for the faithful
37 performance of real estate marketing activity by the real estate marketing organization. [*No*] **A**
38 claimant or judgment creditor of the real estate marketing organization [*shall have the right to*] **may**
39 **not** attach or levy upon any of the assets or securities held on deposit.

40 [(7)] (8) The [*commissioner*] **director**, by order, may use [*such*] **the** deposit under [*subsection (3)*
41 *or (4)*] **subsection (4) or (5)** of this section, as follows:

42 (a) To satisfy any final judgment entered against the real estate marketing organization for ac-
43 tual damages suffered by any person by reason of the violation of ORS 696.603, 696.606 or 696.612
44 or a rule adopted pursuant thereto, or by reason of any fraud, dishonesty, misrepresentation or
45 concealment of material fact growing out of any real estate marketing activity.

1 (b) To satisfy an order of the [*commissioner*] **director** if the [*commissioner*] **director** determines
 2 that a violation of ORS 696.603, 696.606 or 696.612 or a rule adopted pursuant thereto has occurred
 3 and directs the payment of a claim from the deposit provided the following conditions have been
 4 met:

5 (A) The amount of actual damages claimed, excluding attorney fees, by the consumer is \$1,000
 6 or less.

7 (B) The consumer has first contacted the real estate marketing organization involved and, in
 8 writing, has made demand for payment of actual damages.

9 (C) The real estate marketing organization has had 30 calendar days from the date of the con-
 10 sumer's written demand to deal with the demand.

11 (D) The claim is only for actual damages sustained by the consumer.

12 [(8)] (9) All claims against the deposit under [*subsection (3) or (4)*] **subsection (4) or (5)** of this
 13 section of a real estate marketing organization, other than those described in subsection [(7)] (8) of
 14 this section, must be paid by the [*commissioner*] **director** only upon the receipt of a final court
 15 judgment against the real estate marketing organization and only in the amount of actual damages
 16 as ordered by the court.

17 **SECTION 51.** ORS 696.612 is amended to read:

18 696.612. (1) **As used in this section, "supervision" means management, by an organization,**
 19 **that is reasonably designed and implemented to result in compliance by the employees of the**
 20 **organization with this section, ORS 696.603 or 696.606 or any rule adopted pursuant to these**
 21 **sections.**

22 (2) The **Director of the Real Estate** [*Commissioner*] **Agency** may suspend or revoke the license
 23 of any real estate marketing organization or reprimand any licensee, or may deny the issuance or
 24 renewal of a license to an applicant who has done any of the following:

25 [(1)] (a) Knowingly or negligently pursued a course of material misrepresentation in matters
 26 related to real estate marketing activity, whether or not damage or injury resulted, or knowingly
 27 or negligently made any material misrepresentation or material false promise in a matter related to
 28 real estate marketing activity if the material misrepresentation or material false promise created a
 29 reasonable probability of damage or injury, whether or not damage or injury actually resulted.

30 [(2)] (b) Failed, within a reasonable time, to account for or to remit any moneys or to surrender
 31 to the rightful owner any documents or other valuable property coming into the possession of the
 32 real estate marketing organization that belongs to others.

33 [(3)] (c) Disregarded or violated any provision of this section, ORS 696.603 or 696.606 or any rule
 34 adopted pursuant thereto.

35 [(4)] (d) Guaranteed, authorized or permitted any person to guarantee future profits that may
 36 result from the resale of real property.

37 [(5)] (e) Failed or refused upon demand to produce or to supply true copies of any document,
 38 book or record in the possession or control of the real estate marketing organization for inspection
 39 by the [*commissioner or the commissioner's authorized representative*] **Real Estate Agency**.

40 [(6)] (f) Failed to register and maintain the current and accurate names of, and information re-
 41 garding, each real estate marketing employee of the real estate marketing organization.

42 [(7)] (g) Procured or attempted to procure a real estate marketing license by fraud, misrepre-
 43 sentation or deceit or by making any material misstatement of fact in an application for a real es-
 44 tate marketing license.

45 [(8)] (h) Failed to exercise supervision over the activities of real estate marketing employees.

1 *[For the purposes of this subsection, “supervision” means that management by an organization that is*
 2 *reasonably designed and implemented to result in compliance by the employees of the organization with*
 3 *this section, ORS 696.603 or 696.606 or any rule adopted pursuant thereto.]*

4 [(9)] (i) Engaged in any act or conduct, whether of the same or of a different character specified
 5 in this subsection, that constitutes or demonstrates bad faith, incompetence, untrustworthiness or
 6 dishonest, fraudulent or improper dealings.

7 [(10)] (j) Failed to meet or maintain the deposit requirements of ORS 696.606 [(3) or (4)] (4) or
 8 (5).

9 [(11)] (k) Failed to pay in full any final judgment on claims adjudged by the [commissioner] di-
 10 rector or by a court of competent jurisdiction.

11 [(12)] (L) Violated ORS 646.608.

12 **SECTION 52.** ORS 696.615 is amended to read:

13 696.615. The Real Estate [Commissioner] **Agency** shall publish information in local newspapers
 14 pertaining to sanctions imposed for violations of ORS 696.603, 696.606 or 696.612 in a manner al-
 15 lowed under ORS 696.430 and 696.445 (3).

16 **SECTION 53.** ORS 696.624 is amended to read:

17 696.624. (1) Every nonresident real estate marketing organization, at the time of licensing, shall
 18 file with the **Director of the Real Estate [Commissioner] Agency** an irrevocable consent that if, in
 19 any suit or action commenced against the nonresident organization in this state arising out of a
 20 violation of any provision of ORS 696.603, 696.606 or 696.612, personal service of summons or process
 21 upon the nonresident organization cannot be made in this state after the exercise of due diligence,
 22 a valid service may be made upon the nonresident organization by service on the [commissioner]
 23 **director**.

24 (2) The consent shall be in writing, executed and verified by an officer of the real estate mar-
 25 keting organization and shall set forth:

26 (a) The name of the real estate marketing organization.

27 (b) The address to which documents served upon the [commissioner] **director** are to be for-
 28 warded.

29 (c) If the real estate marketing organization is a corporation or unincorporated association, that
 30 the consent signed by such officer was authorized by resolution duly adopted by the board of di-
 31 rectors.

32 (3) The address for forwarding documents served under this section may be changed by filing a
 33 new consent in the form prescribed in subsection (2) of this section.

34 (4) Service on the [commissioner] **director** of any summons or process shall be made by delivery
 35 to the [commissioner] **director** or a clerk on duty in any office of the [commissioner] **director**, and
 36 shall include duplicate copies of such summons or process, together with duplicate copies of any
 37 papers required by law to be delivered in connection with such service.

38 (5) When the [commissioner] **director** is served with any such summons or process, the [com-
 39 missioner] **director** shall immediately cause one of the copies [thereof], with any accompanying pa-
 40 pers, to be forwarded by registered or certified mail, return receipt requested, to the real estate
 41 marketing organization at the address set forth in the consent.

42 (6) The [commissioner] **director** shall keep a record of all summonses and processes, notices and
 43 demands served upon the [commissioner] **director** under this section, and shall record therein the
 44 time of such service and the action with reference thereto.

45 **SECTION 54.** ORS 696.627 is amended to read:

1 696.627. (1) The **Director of the Real Estate** [*Commissioner*] **Agency** may make an on-site in-
2 spection of any real estate marketing organization.

3 (2) When an on-site inspection under subsection (1) of this section is to be made, the [*commis-*
4 *sioner*] **director** may require the organization to advance a deposit not to exceed \$200 per day, in
5 addition to any other fee, for making the on-site inspection. Any unexpended portion of the deposit
6 shall be refunded to the organization.

7 **SECTION 55.** ORS 696.730 is amended to read:

8 696.730. Any court of competent jurisdiction, including a justice court, has full power to hear
9 any violation of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.995 by persons
10 licensed under ORS 696.022, and, upon finding such violation, the court may, at its discretion and
11 in addition to the other penalties imposed, revoke the license of the person or persons found to have
12 violated any provision of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.995.
13 The clerk of the court shall forward a copy of any order revoking a real estate license to the Real
14 Estate [*Commissioner*] **Agency**.

15 **SECTION 56.** ORS 696.775 is amended to read:

16 696.775. The lapsing or suspension of a license, whether by operation of law, order of the Real
17 Estate [*Commissioner,*] **Board or the director of the Real Estate Agency**, a decision of a court
18 of law, inactive status of the license or voluntary surrender of the license by the licensee, does not
19 deprive the [*commissioner*] **Real Estate Agency** of jurisdiction to:

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

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

22 (3) Take action against a licensee, including assessment of a civil penalty against the licensee
23 for a violation of ORS 696.020 (1); or

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

25 **SECTION 57.** ORS 696.785 is amended to read:

26 696.785. (1) When the Real Estate [*Commissioner*] **Board** ascertains by audit, investigation or
27 otherwise that a real estate licensee has commingled trust funds with personal funds or has
28 embezzled trust funds and that such activity is likely to cause significant financial loss to others
29 as a result of professional real estate activity engaged in by [*such*] **the** licensee, the [*commissioner*]
30 **board** may communicate [*such*] **that** fact to the Attorney General, whereupon it shall become the
31 duty of the Attorney General to [*forthwith*] assist the [*commissioner in instituting such*] **board to**
32 **institute the** proceedings [*as may be*] **that are** necessary to carry out the purposes of this section.

33 (2) Pursuant to subsection (1) of this section, the [*commissioner*] **board** may apply to the circuit
34 court of the county in which the licensee's principal place of business is located for an order di-
35 recting the licensee to show cause why a receiver should not be appointed to take charge of and
36 manage or liquidate if necessary the assets of the licensee utilized in professional real estate activ-
37 ity in such a manner as to prevent or minimize such financial loss to others.

38 (3) If the court is satisfied from reading the [*commissioner's*] **board's** petition that the facts
39 therein alleged, if established, warrant [*such*] **the** receivership action, the court shall issue [*such*]
40 **the** order to show cause. The court may [*at such time*], without notice, issue a temporary injunction
41 restraining [*such*] **the** licensee, or any of the licensee's officers, directors, stockholders, members,
42 agents or employees, from the transaction of any professional real estate activity[,] or the waste or
43 disposition of [*any such*] **the** assets until further order of the court. [*Should such an injunction be*
44 *issued,*] **If the court issues an injunction, the court shall hold** a hearing on whether the injunc-
45 tion [*shall*] **should** be continued [*shall be held*] within five business days of its service.

1 (4) On return of the order to show cause[,] and after a full hearing, the court shall [either] **grant**
 2 **or** deny the application or grant the [same] **application**, together with [such] other relief [as the
 3 court may deem] **that the court deems** necessary.

4 (5) Notwithstanding any other provision of law, [no bond shall be required of the commissioner
 5 or the commissioner's authorized representatives] **the court may not require a bond of the Real**
 6 **Estate Agency** as a prerequisite for the issuance of any injunction or other order pursuant to this
 7 section.

8 (6) **The court may dismiss the proceedings if** at any time during [such] **the** proceedings, the
 9 licensee [may satisfy] **satisfies** the court that the activity [which] **that** prompted [such] **the** pro-
 10 ceedings has been rectified or that financial loss to others **is** no longer [will] likely **to** occur[, in
 11 which case the court may dismiss such proceedings].

12 (7) **The court shall fix the amount of the** expenses of the receiver, compensation of the legal
 13 counsel of the receiver[, as well as all] **and other** expenditures of the receiver required in [such]
 14 **the** proceedings [shall be fixed by the court and] **to be paid. The court shall order that the costs**
 15 be paid out of funds in the hands of the receiver or [entered] **enter the costs** as a judgment against
 16 such licensee.

17 **SECTION 58.** ORS 696.790 is amended to read:

18 696.790. For the purpose of requesting a state or nationwide criminal records check under ORS
 19 181.534, the Real Estate [Commissioner] **Agency** may require any applicant or licensee regulated
 20 under this chapter to provide fingerprints.

21 **SECTION 59.** ORS 696.795 is amended to read:

22 696.795. (1) For the purpose of an investigation or proceeding under this chapter, the [commis-
 23 sioner] **Real Estate Board** may administer oaths and affirmations, subpoena witnesses, compel their
 24 attendance, take evidence and require the production of books, papers, correspondence, memoranda,
 25 agreements or other documents or records [which the commissioner] **that the board** deems relevant
 26 or material to the inquiry. Each witness who appears before the [commissioner] **board** under a
 27 subpoena shall receive the fees and mileage provided for witnesses in civil cases.

28 (2) If a person fails to comply with a subpoena [so issued] or a party or witness refuses to testify
 29 on any matters, the judge of the circuit court or of any county, on the application of the [commis-
 30 sioner] **board**, shall compel obedience by proceedings for contempt as in the case of disobedience
 31 of the requirements of a subpoena issued from such court or a refusal to testify therein.

32 **SECTION 60.** ORS 696.820 is amended to read:

33 696.820. (1) The Real Estate [Commissioner] **Board** shall prescribe by rule the format and con-
 34 tent of an initial agency disclosure pamphlet. The rules must provide that the initial agency disclo-
 35 sure pamphlet is informational only and may not be construed to be evidence of intent to create an
 36 agency relationship.

37 (2) An agent shall provide a copy of the initial agency disclosure pamphlet at the first contact
 38 with each party to a real property transaction, including but not limited to contacts in person, by
 39 telephone, over the Internet or the World Wide Web, or by electronic mail, electronic bulletin board
 40 or a similar electronic method.

41 **SECTION 61.** ORS 696.845 is amended to read:

42 696.845. When signing an offer to purchase, each buyer shall acknowledge the existing agency
 43 relationships, if any. When a seller accepts or rejects an offer to purchase in writing, each seller
 44 shall acknowledge the existing agency relationships, if any. An agent to the real property trans-
 45 action shall obtain the signatures of the buyers and the sellers to the acknowledgment, which shall

1 be incorporated into or attached as an addendum to the offer to purchase or to the acceptance. The
 2 Real Estate [Agency] **Board** shall prescribe by rule the form and content of the acknowledgment of
 3 existing agency relationships.

4 **SECTION 62.** ORS 696.990 is amended to read:

5 696.990. (1) Violation of any provision of ORS 696.010 to 696.130, 696.200, 696.205, 696.241 to
 6 696.375, 696.392, 696.395 to 696.430, 696.490, 696.600 to 696.785 and 696.995 is a Class A misdemeanor.

7 (2) Any officer, director or shareholder or agent of a corporation, or member or agent of a
 8 partnership or association, who personally participates in or is an accessory to any violation of ORS
 9 696.010 to 696.130, 696.200, 696.205, 696.241 to 696.375, 696.392, 696.395 to 696.430, 696.490, 696.600
 10 to 696.785 and 696.995 by the partnership, association or corporation, is subject to the penalties
 11 prescribed in subsection (1) of this section.

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

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

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

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

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

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

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

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

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

38 **SECTION 63.** ORS 696.995 is amended to read:

39 696.995. (1) Any person who violates ORS 696.603, 696.606 or 696.612 may be required by the
 40 Real Estate [Commissioner] **Board** to forfeit and pay, to the General Fund of the State Treasury, a
 41 civil penalty in an amount determined by the [commissioner] **board** of:

42 (a) Not less than \$100 nor more than \$500 for the first violation of ORS 696.603, 696.606 or
 43 696.612 or a rule adopted pursuant thereto; or

44 (b) Not less than \$500 nor more than \$1,000 for the second and subsequent violations of ORS
 45 696.603, 696.606 or 696.612 or a rule adopted pursuant thereto.

1 (2) In addition to the civil penalty set forth in subsection (1) of this section, any person who
 2 violates ORS 696.603 may be required by the [*commissioner*] **board** to forfeit and pay, to the General
 3 Fund of the State Treasury, a civil penalty in an amount determined by the [*commissioner*] **board**
 4 but not to exceed the amount by which [*such*] **the** person profited from the transaction in violation
 5 of ORS 696.603.

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

7 (4) The civil penalty provisions of this section are in addition to and not in lieu of other ad-
 8 ministrative sanctions.

9 **SECTION 64.** ORS 92.090 is amended to read:

10 92.090. (1) Subdivision plat names shall be subject to the approval of the county surveyor or, in
 11 the case where there is no county surveyor, the county assessor. [*No*] **A** tentative subdivision plan
 12 or subdivision plat [*of a subdivision shall*] **may not** be approved [*which*] **if the plan or plat** bears
 13 a name similar to or pronounced the same as the name of any other subdivision in the same county,
 14 unless the land platted is contiguous to and platted by the same party that platted the subdivision
 15 bearing that name or unless the party files and records the consent of the party that platted the
 16 contiguous subdivision bearing that name. All subdivision plats must continue the lot numbers and,
 17 if used, the block numbers of the subdivision plat of the same name last filed. On or after January
 18 1, 1992, any subdivision submitted for final approval shall not use block numbers or letters unless
 19 such subdivision is a continued phase of a previously recorded subdivision, bearing the same name,
 20 that has previously used block numbers or letters.

21 (2) No tentative plan for a proposed subdivision and no tentative plan for a proposed partition
 22 shall be approved unless:

23 (a) The streets and roads are laid out so as to conform to the plats of subdivisions and partitions
 24 already approved for adjoining property as to width, general direction and in all other respects un-
 25 less the city or county determines it is in the public interest to modify the street or road pattern.

26 (b) Streets and roads held for private use are clearly indicated on the tentative plan and all
 27 reservations or restrictions relating to such private roads and streets are set forth thereon.

28 (c) The tentative plan complies with the applicable zoning ordinances and regulations and the
 29 ordinances or regulations adopted under ORS 92.044 that are then in effect for the city or county
 30 within which the land described in the plan is situated.

31 (3) No plat of a proposed subdivision or partition shall be approved unless:

32 (a) Streets and roads for public use are dedicated without any reservation or restriction other
 33 than reversionary rights upon vacation of any such street or road and easements for public utilities.

34 (b) Streets and roads held for private use and indicated on the tentative plan of such subdivision
 35 or partition have been approved by the city or county.

36 (c) The subdivision or partition plat complies with any applicable zoning ordinances and regu-
 37 lations and any ordinance or regulation adopted under ORS 92.044 that are then in effect for the
 38 city or county within which the land described in the subdivision or partition plat is situated.

39 (d) The subdivision or partition plat is in substantial conformity with the provisions of the ten-
 40 tative plan for the subdivision or partition, as approved.

41 (e) The subdivision or partition plat contains a donation to the public of all common improve-
 42 ments, including but not limited to streets, roads, parks, sewage disposal and water supply systems,
 43 the donation of which was made a condition of the approval of the tentative plan for the subdivision
 44 or partition.

45 (f) Explanations of all common improvements required as conditions of approval of the tentative

1 plan of the subdivision or partition have been recorded and referenced on the subdivision or parti-
2 tion plat.

3 (4) Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of a sub-
4 division shall be approved by a city or county unless the city or county has received and accepted:

5 (a) A certification by a city-owned domestic water supply system or by the owner of a privately
6 owned domestic water supply system, subject to regulation by the Public Utility Commission of
7 Oregon, that water will be available to the lot line of each and every lot depicted in the proposed
8 subdivision plat;

9 (b) A bond, irrevocable letter of credit, contract or other assurance by the subdivider to the city
10 or county that a domestic water supply system will be installed by or on behalf of the subdivider
11 to the lot line of each and every lot depicted in the proposed subdivision plat; and the amount of
12 any such bond, irrevocable letter of credit, contract or other assurance by the subdivider shall be
13 determined by a registered professional engineer, subject to any change in such amount as deter-
14 mined necessary by the city or county; or

15 (c) In lieu of paragraphs (a) and (b) of this subsection, a statement that no domestic water supply
16 facility will be provided to the purchaser of any lot depicted in the proposed subdivision plat, even
17 though a domestic water supply source may exist. A copy of any such statement, signed by the
18 subdivider and [*indorsed*] **endorsed** by the city or county, shall be filed by the subdivider with the
19 Real Estate [*Commissioner*] **Agency** and shall be included by the [*commissioner*] **agency** in any
20 public report made for the subdivision under ORS 92.385. If the making of a public report has been
21 waived or the subdivision is otherwise exempt under the Oregon Subdivision Control Law, the sub-
22 divider shall deliver a copy of the statement to each prospective purchaser of a lot in the subdivi-
23 sion at or prior to the signing by the purchaser of the first written agreement for the sale of the lot.
24 The subdivider shall take a signed receipt from the purchaser upon delivery of such a statement,
25 shall immediately send a copy of the receipt to the [*commissioner*] **agency** and shall keep any such
26 receipt on file in this state, subject to inspection by the [*commissioner*] **agency**, for a period of three
27 years after the date the receipt is taken.

28 (5) Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of a sub-
29 division shall be approved by a city or county unless the city or county has received and accepted:

30 (a) A certification by a city-owned sewage disposal system or by the owner of a privately owned
31 sewage disposal system that is subject to regulation by the Public Utility Commission of Oregon that
32 a sewage disposal system will be available to the lot line of each and every lot depicted in the
33 proposed subdivision plat;

34 (b) A bond, irrevocable letter of credit, contract or other assurance by the subdivider to the city
35 or county that a sewage disposal system will be installed by or on behalf of the subdivider to the
36 lot line of each and every lot depicted on the proposed subdivision plat; and the amount of such
37 bond, irrevocable letter of credit, contract or other assurance shall be determined by a registered
38 professional engineer, subject to any change in such amount as the city or county considers neces-
39 sary; or

40 (c) In lieu of paragraphs (a) and (b) of this subsection, a statement that no sewage disposal fa-
41 cility will be provided to the purchaser of any lot depicted in the proposed subdivision plat, where
42 the Department of Environmental Quality has approved the proposed method or an alternative
43 method of sewage disposal for the subdivision in its evaluation report described in ORS 454.755
44 (1)(b). A copy of any such statement, signed by the subdivider and [*indorsed*] **endorsed** by the city
45 or county shall be filed by the subdivider with the Real Estate [*Commissioner*] **Agency** and shall be

1 included by the [*commissioner*] **agency** in the public report made for the subdivision under ORS
 2 92.385. If the making of a public report has been waived or the subdivision is otherwise exempt un-
 3 der the Oregon Subdivision Control Law, the subdivider shall deliver a copy of the statement to
 4 each prospective purchaser of a lot in the subdivision at or prior to the signing by the purchaser
 5 of the first written agreement for the sale of the lot. The subdivider shall take a signed receipt from
 6 the purchaser upon delivery of such a statement, shall immediately send a copy of the receipt to the
 7 [*commissioner*] **agency** and shall keep any such receipt on file in this state, subject to inspection by
 8 the [*commissioner*] **agency**, for a period of three years after the date the receipt is taken.

9 (6) Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of a sub-
 10 division or partition located within the boundaries of an irrigation district, drainage district, water
 11 control district, water improvement district or district improvement company shall be approved by
 12 a city or county unless the city or county has received and accepted a certification from the district
 13 or company that the subdivision or partition is either entirely excluded from the district or company
 14 or is included within the district or company for purposes of receiving services and subjecting the
 15 subdivision or partition to the fees and other charges of the district or company.

16 **SECTION 65.** ORS 92.160 is amended to read:

17 92.160. If the comprehensive plan and land use regulations of a city or county have not been
 18 acknowledged under ORS 197.251, the city engineer, city surveyor or county surveyor shall imme-
 19 diately notify the Real Estate [*Commissioner*] **Agency** in writing of receipt for approval of any sub-
 20 division plat pursuant to ORS 92.100 (1). The notification shall include a general description of the
 21 land with the number of lots and total acreage covered by the subdivision plat and the names of the
 22 persons submitting the subdivision plat for approval.

23 **SECTION 66.** ORS 92.305 is amended to read:

24 92.305. As used in ORS 92.305 to 92.495:

25 (1) "Blanket encumbrance" means a trust deed or mortgage or any other lien or encumbrance,
 26 mechanic's lien or otherwise, securing or evidencing the payment of money and affecting more than
 27 one interest in subdivided or series partitioned land, or an agreement affecting more than one such
 28 lot, parcel or interest by which the subdivider, series partitioner or developer holds such subdivision
 29 or series partition under an option, contract to sell or trust agreement.

30 [(2) "*Commissioner*" means the *Real Estate Commissioner*.]

31 [(3)] (2) Except as otherwise provided in ORS 92.325 (2), "developer" means a person who pur-
 32 chases a lot, parcel or interest in a subdivision or series partition that does not have a single family
 33 residential dwelling or duplex thereon to construct a single family residential dwelling or duplex on
 34 the lot, parcel or interest and to resell the lot, parcel or interest and the dwelling or duplex for
 35 eventual residential use purposes. [*Developer*] "**Developer**" also includes a person who purchases a
 36 lot, parcel or other interest in a subdivision or series partition that does not have a single family
 37 residential dwelling or duplex thereon for resale to another person. "Developer" does not mean a
 38 "developer" as that term is defined in ORS 100.005.

39 [(4)] (3) "Interest" includes a lot or parcel, and a share, undivided interest or membership which
 40 includes the right to occupy the land overnight, and lessee's interest in land for more than three
 41 years or less than three years if the interest may be renewed under the terms of the lease for a total
 42 period more than three years. "Interest" does not include any interest in a condominium as that
 43 term is defined in ORS 100.005 or any security interest under a land sales contract, trust deed or
 44 mortgage. "Interest" does not include divisions of land created by lien foreclosures or foreclosures
 45 of recorded contracts for the sale of real property.

1 [(5)] (4) “Negotiate” means any activity preliminary to the execution of a binding agreement for
 2 the sale or lease of land in a subdivision or series partition, including but not limited to advertising,
 3 solicitation and promotion of the sale or lease of such land.

4 [(6)] (5) “Lot,” “parcel” and “partition” have the meaning given those terms in ORS 92.010.

5 [(7)] (6) “Person” includes a natural person, a domestic or foreign corporation, a partnership,
 6 an association, a joint stock company, a trust and any unincorporated organization. As used in ORS
 7 92.305 to 92.495 the term “trust” includes a common law or business trust, but does not include a
 8 private trust or a trust created or appointed under or by virtue of any last will and testament, or
 9 by a court.

10 [(8)] (7) “Real property sales contract” means an agreement wherein one party agrees to lease
 11 or to convey title to real property to another party upon the satisfaction of specified conditions set
 12 forth in the contract.

13 [(9)] (8) “Sale” or “lease” includes every disposition or transfer of land in a subdivision or a
 14 series partition, or an interest or estate therein, by a subdivider or series partitioner or a developer,
 15 or their agents, including the offering of such property as a prize or gift when a monetary charge
 16 or consideration for whatever purpose is required by the subdivider, series partitioner or developer
 17 or their agents.

18 [(10)] (9) “Series partitioned lands” and “series partition” mean a series of partitions of land
 19 located within this state resulting in the creation of four or more parcels over a period of more than
 20 one calendar year.

21 [(11)] (10) “Series partitioner” means any person who causes land to be series partitioned into
 22 a series partition, or who undertakes to develop a series partition, but does not include a public
 23 agency or officer authorized by law to make partitions.

24 [(12)] (11) “Subdivided lands” and “subdivision” mean improved or unimproved land or lands
 25 divided, or created into interests or sold under an agreement to be subsequently divided or created
 26 into interests, for the purpose of sale or lease, whether immediate or future, into 11 or more undi-
 27 vided interests or four or more other interests. “Subdivided lands” and “subdivision” include but are
 28 not limited to a subdivision of land located within this state subject to an ordinance adopted under
 29 ORS 92.044 and do not include series partitioned lands. “Subdivided lands” and “subdivision” do not
 30 mean property submitted to ORS 100.005 to 100.910 or property located outside this state which has
 31 been committed to the condominium form of ownership in accordance with the laws of the jurisdic-
 32 tion within which the property is located.

33 [(13)] (12) “Subdivider” means any person who causes land to be subdivided into a subdivision,
 34 or who undertakes to develop a subdivision, but does not include a public agency or officer au-
 35 thorized by law to make subdivisions.

36 **SECTION 67.** ORS 92.337 is amended to read:

37 92.337. (1) The **Director of the** Real Estate [*Commissioner*] **Agency** shall grant an exemption
 38 pursuant to this section if a subdivider or series partitioner submits on a form prepared by the
 39 [*commissioner*] **director**, verification that:

40 (a) The subdivision or series partition is recorded pursuant to ORS 92.010 to 92.190;

41 (b) Each lot or parcel is situated on a surfaced roadway which, together with means for opera-
 42 tion and maintenance, meets the standards of the governing body of the local jurisdiction and is
 43 either a concrete or asphalt surface road which has right of way and improvements, including curbs
 44 and necessary and adequate drainage structures, or a road which meets alternative standards of the
 45 governing body of the local jurisdiction;

1 (c) The subdivision or series partition, where necessary, has drainage structures and fill de-
2 signed to prevent flooding and approved by the appropriate governing body;

3 (d) Energy sources and telephone services for normal domestic use are economically available
4 to the subdivision or series partition and are ready for hookup for each lot or parcel at time of sale
5 or lease;

6 (e) Water is available for each lot or parcel at the time of sale or lease of each lot or parcel in
7 quantity and quality for domestic use as determined by the Department of Human Services;

8 (f) A municipally owned disposal system, an individual or collective subsurface sewage disposal
9 system to serve the lot or parcel, or a privately owned sewage disposal system is available for each
10 lot or parcel at the time of sale or lease of each lot or parcel which meets the requirements of the
11 Environmental Quality Commission;

12 (g) A surety bond, or bonds, or other security or agreements to complete the improvements is
13 provided by the subdivider or series partitioner to the city or county having jurisdiction so that all
14 of the subdivision or series partition improvements committed by the subdivider or series partitioner
15 to the city or county will be completed; and

16 (h) Provisions, satisfactory to the [*commissioner*] **director**, have been made for satisfaction of
17 all liens and encumbrances existing against the subdivision or series partition which secure or evi-
18 dence the payment of money.

19 (2) A subdivision or series partition granted exemption under this section shall be exempt from
20 the provisions of ORS 92.305 to 92.495 and 92.820 except ORS 92.375, 92.385, 92.425, 92.427, 92.430,
21 92.433, 92.455, 92.460, 92.465, 92.475, 92.485, 92.490 and 92.495.

22 (3) The [*commissioner*] **director** may withdraw the exemption provided by this section if the
23 [*commissioner*] **director** determines that the subdivider or series partitioner has provided false in-
24 formation or omitted to state material facts to obtain the exemption or has failed to comply with
25 any provision to which the subdivider or series partitioner is subject under subsections (1) and (2)
26 of this section.

27 (4) In the event that any provision under subsection (1) of this section is not or cannot be sat-
28 isfied and without invoking the power granted under subsection (3) of this section, the
29 [*commissioner*] **director** and the subdivider or series partitioner may mutually agree in writing upon
30 a written disclosure of the condition that shall be provided to any prospective purchaser prior to
31 the sale or lease of any interest in the subdivision or series partition to carry out the public policy
32 stated in ORS 92.313.

33 (5) The form required by subsection (1) of this section shall be accompanied by a filing fee of
34 \$100 plus \$10 for each lot, parcel or interest in the subdivision or series partition, with a maximum
35 fee of \$500.

36 (6) For purposes of verification by the subdivider or series partitioner under subsection (1)(b),
37 (c) and (g) of this section, a copy of the conditions imposed by the appropriate governing body will
38 be sufficient.

39 **SECTION 68.** ORS 92.345 is amended to read:

40 92.345. (1) Prior to negotiating within this state for the sale or lease of subdivided lands located
41 outside this state, or prior to the sale or lease of any subdivided or series partitioned lands located
42 within this state, the subdivider, series partitioner or agent of the subdivider or series partitioner
43 shall by a "Notice of Intention" notify the Real Estate [*Commissioner*] **Agency** in writing of the in-
44 tention to sell or lease. A notice of intention shall contain true information as follows:

45 (a) The name and the business and residence address of the subdivider or series partitioner;

1 (b) The names and the business addresses of [*all*] **the real estate** licensees [*of the commissioner*
 2 *and of all*] **and** other persons selling or leasing, within this state, interests in the subdivision or
 3 series partition;

4 (c) With respect to subdivided or series partitioned lands located in this state:

5 (A) For “subdivided land” or a “subdivision” as those terms are defined, respectively, by ORS
 6 92.010 (15) and (16), a certified copy of the plat filed for record under ORS 92.120 and a copy of any
 7 conditions imposed by the city or county governing body;

8 (B) For “partitioned land” or a “partition” as those terms are defined by ORS 92.010 (6) and (7),
 9 a certified copy of the plat filed for record under ORS 92.120 and a copy of any conditions imposed
 10 by the city or county governing body; and

11 (C) For all other land subject to ORS 92.305 to 92.495, a survey, diagram, drawing or other
 12 writing designating and describing, including location and boundaries when applicable, the interests
 13 to be sold and a statement from the city or county governing body that the proposal as depicted on
 14 the survey, diagram, drawing or other writing has received all necessary local approvals or that no
 15 local approval is required;

16 (d) With respect to subdivided lands located outside this state:

17 (A) A copy of the plat, map, survey, diagram, drawing or other writing designating and de-
 18 scribing, including location and boundaries when applicable, the interests to be sold, in the final
 19 recorded form required by the governing body having jurisdiction over the property; and

20 (B) A written statement from the appropriate governing body that the plat, map, survey, dia-
 21 gram, drawing or other writing is in compliance with all applicable laws, ordinances and regulations;

22 (e) A brief but comprehensive statement describing the land on and the locality in which the
 23 subdivision or series partition is located;

24 (f) A statement of the condition of the title to the land;

25 (g) A statement of the provisions, if any, that have been made for legal access, sewage disposal
 26 and public utilities in the proposed subdivision or series partition, including water, electricity, gas
 27 and telephone facilities;

28 (h) A statement of the use or uses for which the proposed subdivision or series partition will
 29 be offered; and

30 (i) A statement of the provisions, if any, limiting the use or occupancy of the interests in the
 31 subdivision or series partition.

32 (2) The notice of intention shall be accompanied by a filing fee as follows:

33 (a) For subdivisions or series partitions containing 10 or fewer lots, parcels or interests, \$100.

34 (b) For subdivisions or series partitions containing over 10 lots, parcels or interests, \$100, and
 35 \$25 for each additional lot, parcel or interest, but in no case shall the fee be more than \$2,500.

36 (3) For lands located outside this state, the notice of intention shall include only the area shown
 37 by the plat, survey, diagram, drawing or other writing required under subsection (1)(d) of this sec-
 38 tion. The subdivision of any contiguous lands located outside this state shall be treated as a sepa-
 39 rate subdivision for which an additional complete filing must be made, even though the plat, map,
 40 survey, diagram, drawing or other writing of the contiguous lands is recorded simultaneously as part
 41 of an overall development.

42 **SECTION 69.** ORS 92.355 is amended to read:

43 92.355. (1) The Real Estate [*Commissioner*] **Agency** may require the subdivider or series
 44 partitioner to furnish such additional information in a “Request for Further Information” as the
 45 [*commissioner*] **agency** determines to be necessary in the administration and enforcement of ORS

1 92.305 to 92.495 including but not limited to:

2 (a) A statement of the terms and conditions on which it is intended to transfer or dispose of the
3 land or interest therein, together with copies of any contract, conveyance, lease, assignment or
4 other instrument intended to be used;

5 (b) Copies of all sales pamphlets and literature to be used in connection with the proposed
6 subdivision or series partition; and

7 (c) Any other information that the subdivider or series partitioner may desire to present.

8 (2) The subdivider's or series partitioner's reply to the first request for further information re-
9 quired by the [commissioner] **agency** under subsection (1) of this section shall be accompanied by
10 proof of the financial ability of the subdivider or series partitioner to complete improvements and
11 facilities which are:

12 (a) Required by the appropriate state, city and county authorities; and

13 (b) Promised to prospective purchasers.

14 **SECTION 70.** ORS 92.365 is amended to read:

15 92.365. (1) The information required under ORS 92.345 and 92.355 shall be kept current by the
16 subdivider or series partitioner. Any material change in the information furnished to the Real Estate
17 [Commissioner shall] **Agency must** be reported by the subdivider or series partitioner within 10
18 days after the change occurs.

19 (2) A subdivider or series partitioner shall be responsible for the accuracy of and for providing
20 all information required by ORS 92.345, 92.355 and this section for as long as the subdivider or se-
21 ries partitioner retains any unsold lot, parcel or interest in the subdivision or series partition to
22 which the information pertains.

23 (3) A developer who acquires a lot, parcel or interest in a subdivision or series partition shall
24 be responsible for as long as the developer retains any unsold lot, parcel or interest in the subdivi-
25 sion or series partition for all material changes in the information contained in the public report
26 which the developer receives on acquisition of the property:

27 (a) Which the developer causes by action of the developer; and

28 (b) Concerning the zoning, sewage disposal and water supply which substantially affect the in-
29 tended use of the property as stated in the public report.

30 (4) A developer shall accurately report to the [commissioner] **agency** a material change specified
31 in subsection (3) of this section within 10 days after the change occurs. However, a developer who
32 acquires less than 11 lots, parcels or interests in a subdivision or series partition during a six con-
33 secutive month period shall only be responsible for a material change specified in subsection (3)(b)
34 of this section and may revise a public report to reflect [such] **the** material change without reporting
35 the material change to the [commissioner] **agency**.

36 (5) The [commissioner] **Director of the Real Estate Agency** shall require a fee sufficient to
37 recover any administrative expenses after receipt of a material change notice if, because of the
38 changes, a public report must be issued or revised by the [commissioner] **agency**. The fee is subject
39 to prior approval of the Oregon Department of Administrative Services and a report to the Emer-
40 gency Board prior to adopting the fee and shall be within the budget authorized by the Legislative
41 Assembly as that budget may be modified by the Emergency Board.

42 **SECTION 71.** ORS 92.375 is amended to read:

43 92.375. (1) Every nonresident subdivider or series partitioner, at the time of filing the notice of
44 intention and information required by ORS 92.345 and 92.355, and every nonresident developer who
45 acquires more than 10 lots or parcels in a subdivision or series partition during a six consecutive

1 month period, at the time the developer acquires the lots, parcels or interests in a subdivision or
 2 series partition, shall also file with the **Director of the Real Estate** [*Commissioner*] **Agency** an
 3 irrevocable consent that if, in any suit or action commenced against the developer, subdivider or
 4 series partitioner in this state arising out of a violation of ORS 92.305 to 92.495, personal service
 5 of summons or process upon the developer, subdivider or series partitioner cannot be made in this
 6 state after the exercise of due diligence, a valid service may thereupon be made upon the developer,
 7 subdivider or series partitioner by service on the [*commissioner*] **director**.

8 (2) The consent shall be in writing executed and verified by an officer of a corporation or as-
 9 sociation, a general partner of a partnership or by an individual subdivider, series partitioner or
 10 developer and shall set forth:

11 (a) The name of the subdivider, series partitioner or developer.

12 (b) The address to which documents served upon the [*commissioner*] **director** are to be for-
 13 warded.

14 (c) If the subdivider, series partitioner or developer is a corporation or unincorporated associ-
 15 ation, that the consent signed by such officer was authorized by resolution duly adopted by the
 16 board of directors.

17 (3) The address for forwarding documents served under this section may be changed by filing a
 18 new consent in the form prescribed in subsection (2) of this section.

19 (4) Service **of process** on the [*commissioner of any such process shall*] **director may** be made
 20 by delivery to the [*commissioner*] **director** or a clerk on duty in any office of the [*commissioner*]
 21 **director**, duplicate copies of [*such*] **the** process, with duplicate copies of any papers required by law
 22 to be delivered in connection with [*such*] **the** service.

23 (5) When served with [*any such*] **the** process, the [*commissioner*] **director** shall immediately
 24 cause one of the copies thereof, with any accompanying papers, to be forwarded by registered mail
 25 or by certified mail with return receipt to the subdivider, series partitioner or developer at the ad-
 26 dress set forth in the consent.

27 (6) The [*commissioner*] **director** shall keep a record of all processes, notices and demands served
 28 upon the [*commissioner*] **director** under this section, and shall record therein the time of such ser-
 29 vice and action with reference thereto.

30 **SECTION 72.** ORS 92.385 is amended to read:

31 92.385. (1) The Real Estate [*Commissioner*] **Agency** may make an examination of any subdivision
 32 or series partition subject to ORS 92.305 to 92.495 to be offered for sale or lease and may make a
 33 public report of the [*commissioner's*] **agency's** findings. If a subdivision or series partition is located
 34 within this state and if no report is made within 45 days after examination of the subdivision or
 35 series partition, the report shall be deemed waived.

36 (2) The [*commissioner*] **Director of the Real Estate Agency** may waive an examination of a
 37 real estate subdivision located in another state only when that state has an existing subdivision law
 38 which provides for the examination of and a public report on the real estate subdivision and only
 39 where that state will waive examination of a real estate subdivision or series partition located
 40 within this state and will accept in lieu thereof a report prepared by the [*commissioner*] **agency**
 41 under subsection (1) of this section.

42 **SECTION 73.** ORS 92.395 is amended to read:

43 92.395. With respect to any subdivision or series partition within this state, if, after examination
 44 of the preliminary notice of intention required by ORS 92.345 or the reply to the Real Estate
 45 [*Commissioner's*] **Agency's** request for further information, the [*commissioner*] **agency** concludes

1 that the sale or lease of any portion of such subdivision or series partition would be reasonably
 2 certain not to involve any misrepresentation, deceit or fraud, the [commissioner] **Director of the**
 3 **Real Estate Agency** shall waive all of the provisions of ORS 92.305 to 92.495, except ORS 92.475
 4 to 92.495 and 92.990 (2), [which the commissioner] **that the director** considers unnecessary for the
 5 protection of the public from fraud, deceit or misrepresentation. The [commissioner] **agency** shall
 6 notify the subdivider or series partitioner within 15 days of receipt of the preliminary notice of in-
 7 tention of the approval or disapproval of any waiver. However, the [commissioner] **director** may, for
 8 good and sufficient cause, revoke any waiver at any time upon 10 days' notice and a hearing held
 9 for [such] **the** purpose.

10 **SECTION 74.** ORS 92.405 is amended to read:

11 92.405. (1) Unless the making of a public report has been waived, a person may not sell or lease
 12 a lot, parcel or interest in a subdivision or series partition prior to the issuance of the report.

13 (2) A copy of the public report, when issued, must be given to the prospective purchaser by the
 14 subdivider, series partitioner or developer, or their agents, prior to the execution of a binding con-
 15 tract or agreement for the sale or lease of a lot, parcel, or interest in a subdivision or series parti-
 16 tion. The subdivider, series partitioner or developer, or their agents, shall take a receipt from the
 17 prospective purchaser or lessee upon delivery of a copy of the Real Estate [Commissioner's] **Agen-**
 18 **cy's** public report, and the receipt must be kept on file within this state in the possession of the
 19 subdivider, series partitioner or developer subject to inspection by the [commissioner] **agency** for a
 20 period of three years from the date the receipt is taken.

21 (3) The [commissioner's] **agency's** public report may not be used for advertising purposes unless
 22 the report is used in its entirety. [No] **A** portion of the report [shall] **may not** be underscored,
 23 italicized or printed in larger or heavier type than the balance of the report unless the true copy
 24 of the report so emphasizes [such] **the** portion.

25 (4) The [commissioner] **agency** may furnish at cost copies of the public report for the use of
 26 subdividers, series partitioners and developers.

27 (5) The requirements of this section extend to lots, parcels or other interests sold by the subdivi-
 28 der, series partitioner or developer after repossession.

29 (6) In addition to other sanctions provided by law, a violation of subsection (1), (2) or (3) of this
 30 section is an unlawful practice subject to ORS 646.608.

31 **SECTION 75.** ORS 92.410 is amended to read:

32 92.410. (1) Notwithstanding the effective date of chapter 643, Oregon Laws 1975, prior to Feb-
 33 ruary 1, 1976, the Real Estate [Commissioner] **Agency** may review any subdivision for which a public
 34 report has been issued and is dated prior to September 13, 1975, and when the [commissioner] **Di-**
 35 **rector of the Real Estate Agency** considers it necessary for the protection of the public from
 36 fraud, deceit or misrepresentation, the [commissioner] **agency** may, after notice to the subdivider,
 37 issue a revised public report for the subdivider and subsequent developers of interests in the subdivi-
 38 sion to comply with the provisions of ORS 92.305 to 92.495 as though the public report had been
 39 issued and dated after September 13, 1975.

40 (2) Any subdivision for which a public report has been issued and is dated prior to September
 41 13, 1975, and for which the [commissioner] **agency** has not issued a revised public report under
 42 subsection (1) of this section prior to February 1, 1976, shall not be required to comply with the
 43 amendments to ORS 92.305 to 92.495 and made by chapter 643, Oregon Laws 1975.

44 **SECTION 76.** ORS 92.415 is amended to read:

45 92.415. When an examination is to be made of subdivided or series partitioned lands situated in

1 the State of Oregon, or of subdivided lands situated outside the state which will be offered for sale
 2 or lease within this state, the Real Estate [*Commissioner*] **Agency**, in addition to the filing fee pro-
 3 vided in ORS 92.355, may require the subdivider or series partitioner to advance payment of an
 4 amount estimated by the [*commissioner*] **agency** to be the expense incurred in going to and returning
 5 from the location of the project, and an amount estimated to be necessary to cover the additional
 6 expense of [*such*] **the** examination, subject to prior approval of the Oregon Department of Adminis-
 7 trative Services and a report to the Emergency Board prior to adopting the fee and shall be within
 8 the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency
 9 Board. The amounts estimated by the [*commissioner*,] **agency** under this section shall be based upon
 10 any applicable limits established and regulated by the Oregon Department of Administrative Ser-
 11 vices under ORS 292.220.

12 **SECTION 77.** ORS 92.425 is amended to read:

13 92.425. (1) [*No*] **A** lot, parcel or interest in a subdivision or series partition [*shall*] **may not** be
 14 sold by a subdivider, series partitioner or developer by means of a land sale contract unless a col-
 15 lection escrow is established within this state with a person or firm authorized to receive escrows
 16 under the laws of this state and all of the following are deposited in the escrow:

17 (a) A copy of the title report or abstract, as it relates to the property being sold.

18 (b) The original sales document or an executed copy [*thereof*] relating to the purchase of real
 19 property in the subdivision or series partition clearly setting forth the legal description of the
 20 property being purchased, the principal amount of the encumbrance outstanding at the date of the
 21 sales document and the terms of the document.

22 (c) A commitment to give a partial release for the lot, parcel or other interest being sold from
 23 the terms and provisions of any blanket encumbrance as described in ORS 92.305 (1). Except as
 24 otherwise provided in subsection (4) of this section, the commitment shall be in a form satisfactory
 25 to the **Director of the Real Estate** [*Commissioner*] **Agency**.

26 (d) A commitment to give a release of any other lien or encumbrance existing against such lot,
 27 parcel or other interest being sold as revealed by such title report. Except as otherwise provided
 28 in subsection (4) of this section, the commitment shall be in a form satisfactory to the
 29 [*commissioner*] **director**.

30 (e) A warranty or bargain and sale deed in good and sufficient form conveying merchantable and
 31 marketable title to the purchaser of such lot, parcel or other interest.

32 (2) The subdivider, series partitioner or developer shall submit written authorization allowing
 33 the [*commissioner*] **Real Estate Agency** to inspect all escrow deposits established pursuant to sub-
 34 section (1) of this section.

35 (3) In lieu of the procedures provided in subsection (1) of this section, the subdivider, series
 36 partitioner or developer shall conform to [*such*] **an** alternative requirement or method [*which the*
 37 *commissioner may deem*] **that the director deems** acceptable to carry into effect the intent and
 38 provisions of this section.

39 (4) The requirements of subsection (1)(c) and (d) of this section relating to use of a commitment
 40 form acceptable to the [*commissioner*] **director** and the provisions of subsection (2) of this section
 41 shall not apply to subdivided or series partitioned lands described by ORS 92.325 (3)(h).

42 **SECTION 78.** ORS 92.455 is amended to read:

43 92.455. Records of the sale or lease of real property within a subdivision or series partition shall
 44 be subject to inspection by the Real Estate [*Commissioner*] **Agency**.

45 **SECTION 79.** ORS 92.460 is amended to read:

1 92.460. (1) Subject to the provisions of ORS 92.425, *[no]* a lot, parcel or other interest in a sub-
 2 division or series partition *[shall]* **may not** be sold by a subdivider, series partitioner or developer
 3 subject to a blanket encumbrance unless there exists in the blanket encumbrance or other supple-
 4 mentary agreement a provision which by its terms shall unconditionally provide that the purchaser
 5 or lessee of a lot, parcel or other interest can obtain legal title or other interest bargained for, free
 6 and clear of the blanket encumbrance, upon compliance with the terms and conditions of the pur-
 7 chase or lease.

8 (2) In lieu of the requirement of subsection (1) of this section, the subdivider, series partitioner
 9 or developer shall conform to *[any]* **an** alternative requirement or method *[which the Real Estate*
 10 *Commissioner]* **that the Director of the Real Estate Agency** deems acceptable to carry into effect
 11 the intent and provisions of this section.

12 **SECTION 80.** ORS 92.465 is amended to read:

13 92.465. *[No]* **A** person *[shall]* **may not**, in connection with the offer, sale or lease of any lot,
 14 parcel or interest in a real estate subdivision or series partition, directly or indirectly:

15 (1) Employ any device, scheme or artifice to defraud;

16 (2) Make any untrue statement of a material fact or fail to state a material fact necessary to
 17 make the statement made, in the light of the circumstances under which it is made, not misleading;

18 (3) Engage in any act, practice or course of business which operates or would operate as a fraud
 19 or deception upon any person;

20 (4) Issue, circulate or publish any prospectus, circular, advertisement, printed matter, document,
 21 pamphlet, leaflet or other literature which contains an untrue statement of a material fact or fails
 22 to state a material fact necessary in order to make the statements therein made, in the light of the
 23 circumstances under which they are made, not misleading;

24 (5) Issue, circulate or publish any advertising matter or make any written representation, unless
 25 the name of the person issuing, circulating or publishing the matter or making the representation
 26 is clearly indicated; or

27 (6) Make any statement or representation, or issue, circulate or publish any advertising matter
 28 containing any statement to the effect that the real estate subdivision or series partition has been
 29 in any way approved or *[indorsed by the Real Estate Commissioner]* **endorsed by the Real Estate**
 30 **Agency.**

31 **SECTION 81.** ORS 92.490 is amended to read:

32 92.490. (1) In addition to any other penalties provided by law, the **Director of the Real Estate**
 33 *[Commissioner]* **Agency** may impose a civil penalty for violation of the provisions of ORS 92.305 to
 34 92.495. *[No]* **A** civil penalty *[shall]* **may not** exceed \$1,000 per violation.

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

36 **SECTION 82.** ORS 92.495 is amended to read:

37 92.495. (1) *[Whenever the Real Estate Commissioner]* **If the Director of the Real Estate Agency**
 38 finds that any owner, subdivider, series partitioner, developer or other person is violating any of the
 39 provisions of ORS 92.305 to 92.495 or of the alternative requirements of the *[commissioner]* **director**
 40 prescribed pursuant to ORS 92.425 (3), the *[commissioner]* **director** may order the persons to desist
 41 and refrain from violating the provisions or requirements, or from the further sale or lease of lots,
 42 parcels or interests within the subdivision or series partition.

43 (2) *[Whenever the commissioner]* **If the director** finds that any subdivider, series partitioner,
 44 developer or other person is violating, or has violated or is about to violate, any of the provisions
 45 of ORS 92.305 to 92.495 or the alternative requirements of the *[commissioner]* **director** prescribed

1 pursuant to ORS 92.425 (3) the [commissioner] **director** may bring proceedings in the circuit court
 2 within the county in which the violation or threatened violation has occurred or is about to occur,
 3 or in the county where the person, firm or corporation resides or carries on business, in the name
 4 of and on behalf of the people of the State of Oregon against the person, firm or corporation, and
 5 any other person or persons concerned in or in any way participating or about to participate in the
 6 violation, to enjoin the person, firm or corporation or any other person from continuing the violation
 7 or engaging in the violation or doing any act or acts in furtherance of the violation, and to apply
 8 for the appointment of a receiver or conservator of the assets of the defendant where an appoint-
 9 ment is appropriate.

10 **SECTION 83.** ORS 92.843 is amended to read:

11 92.843. (1) A declaration made pursuant to ORS 92.845, or an amendment to the declaration, may
 12 not be recorded unless first approved by the tax collector for the county where the property is lo-
 13 cated and the **Director of the Real Estate [Commissioner] Agency**.

14 (2) A tax collector shall approve a declaration or amendment submitted under this section if:

15 (a) All ad valorem taxes, special assessments, fees and other charges required by law to be
 16 placed on the tax roll that are or will become a lien on the property during the tax year have been
 17 paid as required by ORS 92.095; and

18 (b) Any additional taxes or penalties, and interest on taxes or penalties, resulting from a dis-
 19 qualification of the property from special assessment have been paid.

20 (3) The [commissioner] **director** shall approve a declaration or amendment submitted under this
 21 section if:

22 (a) The declaration or amendment complies with ORS 92.835, 92.845 and 94.580; and

23 (b) The plat executed by the declarant is in conformance with ORS 92.835 (2).

24 (4) The [commissioner's] **director's** approval of a declaration or amendment under this section
 25 expires after two years if the declaration or amendment has not been recorded. The [commissioner]
 26 **director** shall specify the expiration date when approving the declaration or amendment. A decla-
 27 ration or amendment may not be reapproved after an approval expires unless the declaration or
 28 amendment is resubmitted and new determinations are made under subsections (2) and (3) of this
 29 section.

30 **SECTION 84.** ORS 92.990 is amended to read:

31 92.990. (1) Violation of any provision of ORS 92.010 to 92.090, 92.100 and 92.120 to 92.170 or of
 32 any regulation or ordinance adopted thereunder, is punishable, upon conviction, by a fine of not less
 33 than \$50 nor more than \$500 or imprisonment in the county jail for not less than 25 days nor more
 34 than 50 days, or both.

35 (2) Any person who violates any of the provisions of ORS 92.325 (1), 92.345 to 92.365, 92.405 (1),
 36 (2) and (3), 92.425, 92.433, 92.460 to 92.475 and any alternative requirements of the **Director of the**
 37 **Real Estate [Commissioner] Agency** prescribed pursuant to ORS 92.425 (3), not waived by the [com-
 38 missioner] **director** pursuant to ORS 92.395, or who provides false information or omits to state
 39 material facts pursuant to ORS 92.337, shall be punished by a fine not exceeding \$10,000, or by
 40 imprisonment in the custody of the Department of Corrections for a period not exceeding three
 41 years, or in the county jail not exceeding one year, or by both [such] fine and imprisonment.

42 **SECTION 85.** ORS 94.803 is amended to read:

43 94.803. As used in this section and ORS 94.807 to 94.945:

44 [(1) "Agency" means the Real Estate Agency.]

45 [(2)] (1) "Accommodation" means an apartment, condominium unit, cabin, house, lodge, hotel or

1 motel room or other private or commercial structure situated on real property and designed for
2 residential occupancy.

3 [(3)] (2) "Assessment" means the pro rata share assessed from time to time against each owner
4 of a timeshare by the managing entity to pay for common expenses.

5 [(4)] (3) "Blanket encumbrance" means a trust deed or mortgage or any other lien or
6 encumbrance, mechanic's lien or otherwise, securing or evidencing the payment of money and af-
7 fecting more than one timeshare, or an agreement affecting more than one timeshare by which the
8 developer holds the timeshare property under an option, leasehold, contract to sell or trust agree-
9 ment.

10 [(5)] *"Commissioner" means the Real Estate Commissioner.*

11 [(6)] (4) "Common expenses" means:

12 (a) Expenses of administration, maintenance, repair or replacement of the accommodations and
13 facilities of the timeshare plan;

14 (b) Expenses agreed upon as common by all the timeshare owners in the timeshare plan; and

15 (c) Expenses declared common by the timeshare instrument or bylaws of the timeshare plan.

16 [(7)] (5) "Developer" means a person creating a timeshare plan and a seller of a timeshare plan.

17 [(8)] (6) "Exchange program" means any opportunity for a purchaser to exchange timeshare pe-
18 riods among purchasers in the same or other timeshare plans.

19 [(9)] (7) "Facility" means a structure, service, improvement or real property available for the
20 owner's use.

21 [(10)] (8) "Fractional interest" means any undivided fractional ownership of real property which
22 gives each and every fractional owner full rights to unlimited use and possession of the real prop-
23 erty subject only to such limitation as the fractional owners may agree to among themselves.

24 [(11)] (9) "Managing entity" means the person designated in the timeshare instrument or se-
25 lected by the owners' association board or by the owners to manage all or a portion of the timeshare
26 plan.

27 [(12)] (10) "Negotiate" means any activity preliminary to the execution of a binding agreement
28 for the sale of a timeshare, including but not limited to advertising, solicitation and promotion of
29 the sale of the timeshare.

30 [(13)] (11) "Offering" means any advertisement, inducement, solicitation or attempt to encourage
31 a person to acquire a timeshare, other than as a security for an obligation. An advertisement in a
32 newspaper or other periodical of general circulation, or in any broadcast medium to the general
33 public, of a timeshare in property located outside this state is not an offering if the advertisement
34 states that the offering is valid only if made in compliance with the law of the jurisdiction in which
35 the offer is disseminated.

36 [(14)] (12) "Owner" means a person, other than the developer, to whom a timeshare has been
37 conveyed other than as security for an obligation.

38 [(15)] (13) "Project" means real property subject to a timeshare instrument. A project may in-
39 clude accommodations that are not timeshare accommodations.

40 [(16)] (14) "Purchaser" means any person, other than a developer, who by voluntary transfer
41 acquires an interest in a timeshare other than as security for an obligation.

42 [(17)] (15) "Sale" means a transaction that conveys a timeshare other than as security for an
43 obligation, including, but not limited to a lease or assignment.

44 [(18)] (16) "Seller" means a person who offers a timeshare for sale to the public. "Seller" does
45 not include a person who acquired a timeshare for the person's own use and later offers it for resale.

1 [(19)] (17) "Timeshare" means a timeshare estate or a timeshare license.

2 [(20)] (18) "Timeshare agreement" means an agreement conferring the rights and obligations of
3 the timeshare plan on a purchaser including but not limited to a deed, lease and vacation license.

4 [(21)] (19) "Timeshare estate" means a right to occupy an accommodation during five or more
5 separated timeshare periods over a period of at least five years, including renewal options, coupled
6 with a freehold estate or an estate for years in the timeshare property.

7 [(22)] (20) "Timeshare instrument" means a document creating or regulating timeshares.

8 [(23)] (21) "Timeshare license" means a right to occupy an accommodation during five or more
9 separated timeshare periods over a period of more than three years, including renewal options, not
10 coupled with a freehold estate or an estate for years.

11 [(24)] (22) "Timeshare period" means the period of time when an owner is entitled to possess
12 and occupy accommodations or facilities of a timeshare plan.

13 [(25)] (23) "Timeshare plan" means an arrangement, whether by membership, agreement, tenancy
14 in common, sale, lease, deed, rental agreement, license, right to use agreement or otherwise, in
15 which an owner receives a timeshare estate or a timeshare license and the right to use accommo-
16 dations and facilities that are part of the timeshare property. A timeshare plan does not include an
17 exchange program.

18 [(26)] (24) "Timeshare property" means one or more accommodations subject to the same
19 timeshare instrument and any other real estate or rights appurtenant to those accommodations.

20 **SECTION 86.** ORS 94.807 is amended to read:

21 94.807. ORS 94.803, 94.806, 94.811 to 94.863 and 94.869 to 94.945 do not apply to:

22 (1) Any timeshare plan for which the developer has complied with the requirements of ORS
23 92.305 to 92.495 or 100.005 to 100.910 before July 28, 1983.

24 (2) Any timeshare plan for which the developer has complied with all applicable local regu-
25 lations and has submitted a completed filing under ORS 92.305 to 92.495 or 100.005 to 100.910 before
26 July 28, 1983.

27 (3) Any subsequent phase or stage of a timeshare plan described in subsection (1) or (2) of this
28 section that has complied with the applicable requirements of ORS chapter 92 and this chapter in
29 effect prior to July 28, 1983. However, the developer of the phase or stage must comply with the
30 cancellation provisions of ORS 94.836 and 94.839.

31 (4) Subdivided land as defined by ORS 92.305, a planned community as defined by ORS 94.550
32 and a condominium subject to ORS 100.005 to 100.910 that does not involve a timeshare plan.

33 (5) Subdivided land as defined by ORS 92.305, a planned community as defined by ORS 94.550
34 and a condominium subject to ORS 100.005 to 100.910, that involves a timeshare plan to the extent
35 of the nontimeshare aspects of the development. The developer of such a development must comply
36 with the applicable requirements of ORS chapter 92 and this chapter in addition to ORS 94.803,
37 94.806 and 94.811 to 94.945.

38 (6) Any transaction normal and customary in the hotel and motel business involving the ac-
39 ceptance of advance reservations which are not entered into for the purpose of evading the pro-
40 visions of ORS 92.325, 94.570, 94.803 to 94.945, 100.005, 100.105, 100.200, 100.450 and 696.490.

41 (7) The offering, sale or transfer of a fractional interest or a timeshare in a timeshare plan
42 comprised of 12 timeshares or less unless the **Director of the Real Estate [Commissioner] Agency**
43 determines that the developer is attempting by a common scheme or course of development to evade
44 the provisions of ORS 92.325, 94.570, 94.803 to 94.945, 100.005, 100.105, 100.200, 100.450 and 696.490.

45 (8) The transfer of a timeshare by reason of a foreclosure action, by deed in lieu of foreclosure,

1 by gift or by devise, descent or distribution or transfer to an inter vivos trust that is not made to
2 evade ORS 94.803 and 94.807 to 94.945.

3 (9) The offering, sale or transfer of a membership or interest in a recreational vehicle park or
4 campground that provides no right to use or occupy a residential dwelling structure in the project
5 overnight.

6 (10) The offering, sale or transfer of a membership or interest entitling the purchaser to a
7 timeshare in personal property, including but not limited to an airplane, boat or recreational vehicle.

8 (11) The offering, sale or transfer of a membership or interest entitling the purchaser to use real
9 property and facilities without overnight use for dwelling purposes, including but not limited to
10 commercial office, retail or similar space and golf, tennis or athletic clubs.

11 **SECTION 87.** ORS 94.823 is amended to read:

12 94.823. A developer shall submit a notice to the Real Estate [*Commissioner*] **Agency** informing
13 the [*commissioner*] **agency** of the developer's intent to sell timeshares in Oregon. The form and
14 content of the notice shall be established by rule by the [*commissioner*] **Director of the Real Estate**
15 **Agency**, but shall include at least:

16 (1) The name and business and residence addresses of:

17 (a) The developer;

18 (b) The developer's agent;

19 (c) The designated managing entity; and

20 (d) Any person selling the timeshare plan within Oregon.

21 (2) An explanation of the timeshare form of ownership to be offered under the timeshare plan.

22 (3) A general description of the timeshare plan, including the number of timeshares to be offered
23 under the timeshare plan and the number and description of the accommodations and facilities.

24 (4) A complete description, including a copy of all necessary implementing documents, of the
25 methods to be used by the developer to comply with the requirements of ORS 92.325, 92.425, 94.570,
26 94.803 to 94.945, 100.005, 100.105, 100.200, 100.450 and 696.490.

27 (5) A title report for the real property underlying the timeshare plan, acceptable to the [*com-*
28 *missioner*] **director** and including a statement of any lien, defect, judgment or other encumbrance
29 affecting title to the property.

30 (6) A copy of any judgment against the developer or managing entity, the status of any pending
31 suit that is material to the timeshare plan to which the developer or managing entity is a party and
32 the status of any other suit that is material to the timeshare plan of which the developer has actual
33 knowledge.

34 (7) A description of any insurance coverage provided for the benefit of a purchaser or a state-
35 ment that no insurance coverage is provided.

36 (8) The name and address of the accommodations and facilities and the schedule for completing
37 any improvements not complete at the time of filing.

38 (9) The financial obligation of a purchaser, excluding the initial purchase price and including:

39 (a) Additional charges and common expenses to which the purchaser may be subject, whether
40 or not in the form of an assessment; and

41 (b) An estimated operating budget and schedule of estimated common expenses.

42 (10) A copy of the timeshare instrument or notice of timeshare plan as required under ORS
43 94.818.

44 (11) A copy of any contract, lease or timeshare agreement to be signed by the purchaser.

45 (12) A copy of the rules, limitations or conditions on the use of accommodations or facilities

1 available to purchasers.

2 (13) Any restriction on the transfer of any timeshare.

3 (14) If any portion of the timeshare property is located outside the state, proof that the devel-
 4 oper has recorded the notice of timeshare plan as required under ORS 94.833 (1).

5 (15) Any other information the [*commissioner may determine*] **director determines** is necessary.

6 **SECTION 88.** ORS 94.826 is amended to read:

7 94.826. (1) A seller offering an exchange program to a purchaser in conjunction with a timeshare
 8 plan shall provide written information to the purchaser about the exchange program.

9 (2) The exchange program information to be provided to the purchaser shall be established by
 10 rule by the **Director of the Real Estate [Commissioner] Agency** and shall include at least:

11 (a) The name and address of the exchange company;

12 (b) Whether or not the purchaser's participation in the exchange program is dependent upon the
 13 timeshare plan's continued affiliation with the exchange program;

14 (c) Whether or not the purchaser's participation in the exchange program is voluntary;

15 (d) A complete and accurate description of the terms and conditions of the purchaser's con-
 16 tractual relationship with the exchange program, and the procedure for modifying the exchange
 17 program contract;

18 (e) The procedure to qualify for and effectuate an exchange;

19 (f) A description of any limitation, restriction or priority system employed in the operation of
 20 the exchange program;

21 (g) The circumstances under which a purchaser may lose the use and occupancy of the pur-
 22 chaser's accommodation in any properly applied for exchange through the exchange program;

23 (h) Any fee for participation in the exchange program; and

24 (i) Any other information material to the exchange program which, by omission, tends to make
 25 the information otherwise disclosed misleading.

26 (3) The exchange program information shall be in addition to the information found in the public
 27 report required under ORS 94.828 (1), (2) and (4) and must be provided to the purchaser before a
 28 contract may be executed between the purchaser and the company offering the exchange program.

29 (4) An exchange company offering an exchange program to purchasers in Oregon shall file the
 30 information required in subsection (2) of this section annually with the [*commissioner*] **Real Estate**
 31 **Agency**.

32 (5) Only a timeshare owner and a developer other than a seller may participate in an exchange
 33 program.

34 **SECTION 89.** ORS 94.828 is amended to read:

35 94.828. (1) After the Real Estate [*Commissioner*] **Agency** receives a completed notice under ORS
 36 94.823 the [*commissioner*] **agency** shall prepare a public report on the timeshare plan. In lieu of
 37 preparing a report, the [*commissioner*] **Director of the Real Estate Agency** may accept a report
 38 prepared by the developer and issue the report with any changes the [*commissioner*] **director** con-
 39 siders necessary.

40 (2) Whether or not the [*commissioner*] **agency** issues a public report on a timeshare plan, the
 41 developer shall report to the [*commissioner any*] **agency a** material change in the timeshare plan
 42 or in the marketing program for the timeshare plan within 10 days after the change occurs.

43 (3) The [*commissioner*] **agency** may examine a timeshare plan subject to ORS 94.803 and 94.807
 44 to 94.945 to be offered for sale and make a public report of the findings. If a timeshare plan is lo-
 45 cated within this state and no report is made within 45 days after the [*commissioner*] **agency** re-

1 ceives a completed timeshare filing, the report shall be considered waived.

2 (4) As used in this section, “material change” includes, but is not limited to:

3 (a) The addition or deletion of a timeshare accommodation or facility.

4 (b) A change in the method of marketing or conveyancing the timeshare plan.

5 (c) A change in the purchase money handling procedure previously approved by the [commis-
6 sioner] **agency**, including but not limited to:

7 (A) A change in the escrow depository; or

8 (B) A change in or creation of an encumbrance affecting more than one timeshare.

9 (d) A change in the developer or, if the developer is an entity, a change in the name, form of
10 organization or status of the developer.

11 (e) A revision of the timeshare plan’s annual budget that will require a regular annual assess-
12 ment against the owners that is more than 25 percent greater than the regular annual assessment
13 indicated in the current public report for the timeshare plan.

14 (f) Any legal or physical condition rendering a timeshare accommodation or facility unusable
15 by an owner.

16 **SECTION 90.** ORS 94.829 is amended to read:

17 94.829. (1) [No] **A** developer or agent of the developer [shall] **may not** sell a timeshare in a
18 timeshare plan before the issuance of a public report for the timeshare plan, unless the public report
19 has been waived under ORS 94.828 (3).

20 (2) A copy of the public report, when issued, shall be given to the prospective purchaser of a
21 timeshare by the developer or agent of the developer prior to the execution of a binding contract
22 or agreement for the sale of the timeshare. The developer or the developer’s agent shall take a re-
23 ceipt from the prospective purchaser upon delivery of a copy of the Real Estate [Commissioner’s]
24 **Agency’s** public report. Each [such] receipt shall be kept on file by the developer within this state
25 subject to inspection by the [commissioner or the commissioner’s authorized representative] **agency**
26 for a period of three years from the date the receipt is taken.

27 (3) The [commissioner’s] **agency’s** public report shall not be used for advertising purposes unless
28 the report is used in its entirety. No portion of the public report shall be underscored, italicized or
29 printed in larger or heavier type than the balance of the public report unless the true copy of the
30 report emphasizes the portion.

31 (4) The [commissioner] **agency** may furnish, at cost, copies of a public report for the use of a
32 developer.

33 (5) The requirements of this section extend to timeshares sold by the developer after repos-
34 session.

35 (6) Remedies and sanctions available for violation of ORS 646.605 to 646.656 are available for
36 violation of this section, in addition to any other remedies or sanctions provided by law.

37 **SECTION 91.** ORS 94.831 is amended to read:

38 94.831. (1) The notice required under ORS 94.823 shall be accompanied by a filing fee as follows:

39 (a) For a timeshare plan developed in a single phase, \$500 plus \$10 for each timeshare but in
40 no case shall the fee exceed \$3,000.

41 (b) For a timeshare plan developed in two or more phases, \$500 plus \$10 for each timeshare in
42 the first phase, and \$5 for each additional timeshare developed in a subsequent phase of the same
43 development, but in no case shall the fee exceed \$3,000 for each phase.

44 (2) For a material change notice submitted under ORS 94.828 (1), (2) and (4), the Real Estate
45 [Commissioner] **Agency** may charge a fee not to exceed \$100 for each page of the public report that

1 must be revised, but in no case shall the fee for a material change exceed \$500.

2 (3) When an examination is to be made of timeshare property located in the State of Oregon,
3 or timeshare property located outside Oregon that will be offered for sale to persons within Oregon,
4 the [commissioner] **agency**, in addition to the filing fee provided in subsections (1) and (2) of this
5 section, may require the developer to advance payment of an amount estimated by the
6 [commissioner] **agency** to be the expense incurred in going to and returning from the timeshare
7 property, and an amount estimated to be necessary to cover the additional expense of the examina-
8 tion not to exceed \$200 a day for each day consumed in the examination of the timeshare property.
9 The amounts estimated by the [commissioner] **agency** under this subsection shall be based upon any
10 applicable limits established and regulated by the Oregon Department of Administrative Services
11 under ORS 292.220.

12 (4) The moneys received under subsections (1) to (3) of this section shall be paid into the State
13 Treasury and placed in the General Fund to the credit of the Real Estate Account established under
14 ORS 696.490.

15 **SECTION 92.** ORS 94.867 is amended to read:

16 94.867. (1) A court of competent jurisdiction, upon petition by timeshare owners constituting at
17 least 10 percent of the total number of timeshare owners in a timeshare plan, may declare a failure
18 in the management of the timeshare plan and timeshare property and appoint a trustee to assume
19 the duties of a managing entity for the timeshare plan, if the court finds that:

20 (a) The management of the timeshare plan and timeshare property has failed to carry out the
21 duties of a managing entity under the timeshare instrument and ORS 94.846 to 94.858;

22 (b) The rights of the timeshare owners under the timeshare instrument will be substantially
23 impaired if a trustee is not appointed; and

24 (c) No reasonable alternative exists to appointment of a trustee to perform the functions of a
25 managing entity.

26 (2) The court may attach such conditions and terms to its appointment of a trustee under sub-
27 section (1) of this section as the court considers necessary to protect the rights of timeshare owners
28 under the timeshare instrument.

29 (3) The trustee shall send a copy of the court's decision to the Real Estate [Commissioner]
30 **Agency**.

31 **SECTION 93.** ORS 94.871 is amended to read:

32 94.871. (1) Unless a lien payment trust is established under ORS 94.890, [no] a timeshare estate
33 [shall] **may not** be sold by a developer by means of a purchase money agreement as defined in ORS
34 94.890 unless a collection escrow is established within this state with a person or firm authorized
35 to receive escrows under the laws of this state and all of the following are deposited in the escrow:

36 (a) A copy of the title report or abstract, as it relates to the timeshare estate being sold.

37 (b) The original or an executed copy of the sales document relating to the purchase of the
38 timeshare estate clearly setting forth the legal description of the interest being purchased, the
39 principal amount of any blanket encumbrance outstanding on the date of the sales document and the
40 terms of the sales document.

41 (c) A commitment in a form satisfactory to the **Director of the** Real Estate [Commissioner]
42 **Agency** to give a partial release for the interest being sold from the terms and provisions of any
43 blanket encumbrance on or before full payment of the purchase price by the purchaser.

44 (d) A commitment in a form satisfactory to the [commissioner] **director** to give a release of any
45 other lien or encumbrance existing against the timeshare estate being sold.

1 (e) A warranty or bargain and sale deed in good and sufficient form conveying to the purchaser
2 merchantable and marketable title to the timeshare estate.

3 (2) The developer shall submit written authorization allowing the [*commissioner*] **agency** to in-
4 spect any escrow deposit established under subsection (1) of this section.

5 (3) In lieu of the procedures provided in subsection (1) of this section, the developer shall con-
6 form to an alternative requirement or method if the [*commissioner*] **director** finds that the alterna-
7 tive requirement or method carries out the intent and provisions of this section.

8 **SECTION 94.** ORS 94.873 is amended to read:

9 94.873. (1) All funds, negotiable instruments, purchase money agreements and credit card au-
10 thorizations and proceeds thereof received in this state by a developer from or on behalf of a pur-
11 chaser or prospective purchaser in connection with the purchase or reservation of a timeshare must
12 be placed in an escrow account with an escrow agent authorized under ORS 94.881 or the trustee
13 of a lien payment trust established under ORS 94.890.

14 (2) The establishment of an escrow account under subsection (1) of this section shall be by
15 written agreement between the developer and the escrow agent. The escrow agreement must provide
16 for the handling of a purchaser's funds, negotiable instruments, purchase money agreements and
17 credit card authorizations and proceeds as required by ORS 94.873 to 94.905.

18 (3) A purchaser's funds, negotiable instruments, purchase money agreements, credit card au-
19 thorizations and any proceeds may be released from escrow without a closing only as follows:

20 (a) If the purchaser gives a valid notice of cancellation under ORS 94.836, to the purchaser
21 within 15 days after the notice of cancellation is received.

22 (b) If the purchaser or developer properly terminates a sales agreement under its terms or ter-
23 minates a reservation agreement, to the purchaser or developer according to the terms of the sales
24 agreement or reservation agreement.

25 (c) If the purchaser or developer defaults in performing an obligation under the sales agreement,
26 to the purchaser or developer according to the terms of the sales agreement.

27 (4) After an escrow closing for the sale of a timeshare, a purchaser's funds, negotiable instru-
28 ments, purchase money agreements and credit card authorizations and proceeds shall be delivered
29 by the escrow agent:

30 (a) To the trustee of a lien payment trust established under ORS 94.890 to protect the purchaser
31 from any blanket encumbrance.

32 (b) As provided by an alternative arrangement approved by the **Director of the Real Estate**
33 [*Commissioner*] **Agency** under ORS 94.900.

34 (c) To the seller if the timeshare is conveyed to the purchaser free and clear of any blanket
35 encumbrance or as provided in ORS 94.876.

36 (5) Under no circumstances may the escrow agent release a purchaser's funds, negotiable in-
37 struments, purchase money agreements or credit card authorizations or proceeds from the escrow
38 account to anyone except the purchaser until:

39 (a) The five-day cancellation period under ORS 94.836 expires as to the purchaser whose funds,
40 instruments, agreements, authorizations or proceeds are being released;

41 (b) The escrow agent receives a written statement from the developer that no valid cancellation
42 notice under ORS 94.836 has been received from the purchaser involved or from the purchaser that
43 the purchaser has not given such a notice; and

44 (c) The escrow agent receives a written statement from the developer that no other cancellation
45 notice was received during the five-day cancellation period from the purchaser involved.

1 (6) The purpose of any escrow established under this section shall be to protect a purchaser's
 2 right to a refund if the purchaser cancels the timeshare sales agreement during the five-day can-
 3 cellation period under ORS 94.836, or if a prospective purchaser cancels a reservation agreement for
 4 the purchase of a timeshare.

5 (7) As used in this section "reservation agreement" means an agreement relating to the future
 6 sale of a timeshare that is not binding on the purchaser which grants the purchaser the right to
 7 cancel the agreement for any reason without penalty and to obtain a refund of any funds deposited
 8 at any time until the purchaser executes a timeshare sales agreement.

9 **SECTION 95.** ORS 94.876 is amended to read:

10 94.876. (1) Subject to the requirements of ORS 94.871 and 94.873, an escrow for the sale of a
 11 timeshare estate may close only if one of the following alternatives for protecting the purchaser is
 12 satisfied:

13 (a) The timeshare estate is conveyed to the purchaser free and clear of any blanket
 14 encumbrance;

15 (b) The timeshare property in which the timeshare estate is granted is conveyed to a trustee
 16 under a lien payment trust established under ORS 94.890 and every person holding an interest in a
 17 blanket encumbrance against the timeshare property executes and records a nondisturbance agree-
 18 ment;

19 (c) The timeshare estate is conveyed to the purchaser subject only to a blanket encumbrance in
 20 which every person holding an interest in the blanket encumbrance executes and records a nondis-
 21 turbance agreement or the **Director of the Real Estate [Commissioner] Agency** accepts a surety
 22 bond as an alternative arrangement under ORS 94.900 in an amount that is sufficient to satisfy the
 23 blanket encumbrance; or

24 (d) All requirements of an alternative arrangement approved by the [commissioner] **director**
 25 under ORS 94.900 are satisfied.

26 (2) Subject to the requirements of ORS 94.873, an escrow for the sale of a timeshare license may
 27 close only if one of the following alternatives for protecting the purchaser is satisfied:

28 (a) The timeshare property is conveyed to a trustee free and clear of any blanket encumbrance;

29 (b) The timeshare property is conveyed to a trustee under a lien payment trust established under
 30 ORS 94.890 and every person holding an interest in a blanket encumbrance against the timeshare
 31 property executes and records a nondisturbance agreement;

32 (c) Every person holding an interest in a blanket encumbrance against the timeshare property
 33 executes and records a nondisturbance agreement and the [commissioner] **director** accepts a re-
 34 corded surety bond in an amount that is sufficient to satisfy the blanket encumbrance; or

35 (d) The requirements of an alternative arrangement approved by the [commissioner] **director**
 36 under ORS 94.900 are satisfied.

37 **SECTION 96.** ORS 94.881 is amended to read:

38 94.881. (1) Funds placed into escrow under ORS 94.873 shall be placed into an escrow account
 39 established solely for that purpose with one of the following acting as an escrow agent:

40 (a) An attorney who is a member of the Oregon State Bar;

41 (b) An insured institution, as defined in ORS 706.008, that is authorized to accept deposits in this
 42 state;

43 (c) A trust company, as defined in ORS 706.008, that is authorized to transact trust business in
 44 this state; or

45 (d) An escrow agent licensed under ORS 696.505 to 696.590.

1 (2) In connection with sales of timeshares made outside of this state for the use of timeshare
 2 property located within this state, the escrow agent required under ORS 94.871 and 94.873 may be
 3 located in and the purchasers' funds, negotiable instruments, purchase money contracts and credit
 4 card authorizations may be held by the out-of-state escrow agent, if the law of the state in which
 5 the sales are made requires impoundment in that state and the out-of-state escrow agent is approved
 6 by the Real Estate [*Commissioner*] **Agency**.

7 **SECTION 97.** ORS 94.890 is amended to read:

8 94.890. (1) A lien payment trust may be established with a trust company as defined in ORS
 9 706.008 that is authorized to transact trust business in this state, for the conveyance of timeshare
 10 property to the trustee under ORS 94.876 if the trust instrument provides for at least the following:

11 (a) Title to the timeshare property must be transferred to the trustee before the purchaser's
 12 funds, negotiable instruments, purchase money agreements or credit card authorizations or proceeds
 13 are disbursed by the escrow agent.

14 (b) The trustee shall not convey or transfer all or any portion of the timeshare property except
 15 for an accommodation in which no owner has any further right of occupancy or as permitted at
 16 termination of the trust.

17 (c) The trustee shall not encumber the timeshare property without the consent of the **Director**
 18 **of the Real Estate** [*Commissioner*] **Agency**.

19 (d) The association, if any, and all timeshare owners are made third party beneficiaries of the
 20 trust.

21 (e) Notice of the trustee's intention to resign must be given to the [*commissioner*] **director** at
 22 least 90 days before the resignation takes effect.

23 (f) The trust instrument may not be amended to adversely affect the interests or rights of a
 24 timeshare owner without the written approval of the association or, if no association, a majority of
 25 the timeshare owners.

26 (g) [*Require the deposit into trust of*] A lien payment deposit, as required by subsection (3) of this
 27 section, **must be deposited into the trust** before the closing of the first timeshare sale.

28 (h) [*Require the deposit into trust before closing the first timeshare sale, and the intention to*
 29 *maintain for the duration of the trust,*] An installment payment reserve **must be deposited into the**
 30 **trust before closing the first timeshare sale, with the intent that the reserve be maintained**
 31 **for the duration of the trust**, consisting of funds in an amount sufficient at all times:

32 (A) To pay the total of three successive monthly installments of debt service on each blanket
 33 encumbrance or, if installments of debt services are not payable monthly or in equal installments,
 34 [*such funds as the commissioner determines reasonably necessary to assure*] **to ensure** that the trustee
 35 will have sufficient cash to make any payment under the blanket encumbrances when due; and

36 (B) To create a sinking fund to extinguish the debt at its maturity if the blanket encumbrance
 37 against the trust property is an interest only loan, contains a balloon payment provision or is oth-
 38 erwise not fully amortized under the terms for repayment.

39 (i) [*Authorize*] The trustee **must be authorized** to sell, transfer, hypothecate, encumber, or
 40 otherwise dispose of the purchase money agreement or any other asset composing the lien payment
 41 deposit or any portion thereof if, in the trustee's judgment, such action is necessary to enable the
 42 trustee to make all payments required under the blanket encumbrances to prevent foreclosure of the
 43 blanket encumbrance.

44 (j) [*Require*] The developer **must be required** to replenish the funds and assets in the trust
 45 whenever the lien payment deposit or the funds in the installment payment reserve fail to meet the

1 requirements set forth in this subsection.

2 (k) *[Provide that the trustee periodically shall]* **The trustee must periodically be required to**
 3 disburse funds in the trust as follows: *[First,]*

4 (A) To pay real property taxes, governmental assessments, and lease rent, if any; *[second,]*

5 (B) To pay current payments due on the blanket encumbrances, in their order of priority;
 6 *[third,]*

7 (C) To any sinking fund established for the payment of blanket encumbrances, including any
 8 prepayment penalties and release prices; *[fourth,]*

9 (D) To pay any service charge and cost payable to the trustee and its collection agent, if any,
 10 under the trust instrument; and *[fifth,]*

11 (E) To the developer or as directed by the developer.

12 (L) *[Contain]* Any other provisions required by the *[commissioner]* **agency** under rules adopted
 13 under ORS 94.915 (2) and (3) **must be included in the trust.**

14 (2) Every purchase money agreement delivered to the trustee of a lien payment trust must con-
 15 tain a notice to the holder that the trustee may make demand of the holder to deliver to the trustee
 16 all payments made by the owner after the trustee mails notice that the funds and other assets in the
 17 trust are inadequate to meet the lien payment deposit requirements. Following such demand, the
 18 holder must immediately deliver all subsequent payments of the owner to the trustee and continue
 19 to deliver the payments until the lien payment deposit is replenished.

20 (3)(a) The lien payment deposit shall consist of either nondelinquent purchase money agreements
 21 from timeshare owners in the timeshare plan or other assets deposited into the trust by the devel-
 22 oper and approved by the *[commissioner]* **director**. The purchase money agreements must have an
 23 aggregate remaining principal balance of not less than, and any other assets deposited must have
 24 a liquidated value of not less than, 110 percent of the difference between the aggregate remaining
 25 balance owing under blanket encumbrances against the timeshare property, including any prepay-
 26 ment penalties, release prices or similar charges, and the amount of money or its equivalent in the
 27 trust and available at any time to be applied to the reduction of the principal balance of the blanket
 28 encumbrance. The developer shall have the burden of establishing the liquidated value of assets
 29 other than purchase money agreements from timeshare owners in the timeshare plan.

30 (b) If the blanket encumbrance payment deposit consists of purchase money agreements, the
 31 payments required to be made by owners under the agreements shall:

32 (A) Be due on or before the date payments become due on the blanket encumbrances;

33 (B) If paid when due as provided in subsection (4) of this section, be equal to at least 110 percent
 34 of the amount required to be paid on the blanket encumbrances on such date; and

35 (C) Be sufficient to pay, in full, during the term of the purchase money agreements all amounts
 36 secured by the blanket encumbrances, including prepayment penalties and release prices, if any, and
 37 all service charges payable to the trustee, any collection agent, and any other servicing agent under
 38 the trust agreement.

39 (c) If the developer proposes to deposit into trust assets other than purchase money agreements,
 40 the assets must be sufficient to pay debt service installments on the blanket encumbrance as they
 41 become due and to create a sinking fund or other arrangement adequate to extinguish the debt se-
 42 cured by the blanket encumbrance at its maturity.

43 (4) For the purposes of this section, “purchase money agreement” means and includes a purchase
 44 money mortgage, a purchase money trust deed and a purchase contract.

45 (5) For the purpose of this section, a purchase money agreement is considered delinquent when

1 an installment payment is more than 59 days past due.

2 **SECTION 98.** ORS 94.895 is amended to read:

3 94.895. (1) Except as provided in subsection (2) of this section:

4 (a) If a trust is established for timeshare property subject to timeshare licenses, the trust for the
5 timeshare property shall be irrevocable during the time that any purchaser of a timeshare license
6 has a right to the use of the timeshare property.

7 (b) If a trust is established for timeshare property subject to timeshare estates, the trust for the
8 timeshare property shall be irrevocable until all blanket encumbrances are extinguished.

9 (2) The **Director of the Real Estate [Commissioner] Agency** may approve an alternative ar-
10 rangement that permits termination of the trust.

11 **SECTION 99.** ORS 94.900 is amended to read:

12 94.900. (1) If it is impossible or impractical for a developer to satisfy any of the requirements
13 of ORS 94.890 because of factors over which the developer has little or no control, the **Director**
14 **of the Real Estate [Commissioner] Agency** may accept arrangements other than those prescribed
15 by ORS 94.890 [*which in the commissioner's judgment will*] **that will, in the director's judgment,**
16 give rights and remedies affording equivalent benefits and protection to timeshare owners and
17 [*which*] **that** are at least comparable in scope though not necessarily in nature to those afforded by
18 ORS 94.890.

19 (2) If the [*commissioner*] **director** is asked to accept alternative arrangements under this section,
20 the [*commissioner*] **director** may contract with an attorney and with any other private consultant
21 the [*commissioner*] **director** considers necessary or advisable, in connection with the review of the
22 proposed arrangements for protecting purchasers. The attorney shall thoroughly review the
23 timeshare plan for the purpose of examining the purchaser protections, including the documentation
24 used in the timeshare plan and the disclosure thereof in the developer's public report. After com-
25 pleting the review the attorney shall provide a written analysis of the nature and extent of the
26 protection that the proposal affords a purchaser against blanket encumbrances. The cost of retaining
27 the attorneys and other consultants shall be paid by the developer.

28 **SECTION 100.** ORS 94.905 is amended to read:

29 94.905. Any surety bond furnished to the Real Estate [Commissioner] **Agency** under ORS 94.890
30 must be in an amount [*which*] **that** is not less than 110 percent of the remaining principal balance
31 of every indebtedness secured by a blanket encumbrance affecting the timeshare property. The
32 surety bond must be issued by a surety authorized to do business in Oregon and having sufficient
33 net worth to be acceptable to the [*commissioner*] **Director of the Real Estate Agency**. The bond
34 shall provide for payment, up to the limit of the bond, of all amounts secured by the blanket
35 encumbrance, including costs, expenses and legal fees of the lienholder, if for any reason the blanket
36 encumbrance is enforced. The obligee of the surety bond shall be the [*commissioner*] **director** on
37 behalf of the timeshare owners. The bond may be reduced periodically in proportion to the reduction
38 of the remaining principal balance of the indebtedness secured by the blanket encumbrances. Upon
39 being furnished with a surety bond satisfying the foregoing requirements, the developer shall pre-
40 pare and the [*commissioner*] **agency** shall execute and acknowledge a document in recordable form
41 accepting the surety bond and identifying the timeshare property to which it applies.

42 **SECTION 101.** ORS 94.915 is amended to read:

43 94.915. (1) Records of the sale of timeshares in a timeshare plan shall be subject to inspection
44 by the Real Estate [Commissioner] **Agency**.

45 (2) The **Director of the Real Estate Agency** shall adopt rules necessary to carry out ORS 94.803

1 and 94.807 to 94.945.

2 (3) The agency may cooperate with agencies performing similar functions in other jurisdictions
3 to develop uniform filing procedures, forms, disclosure standards and administrative practices.

4 **SECTION 102.** ORS 94.920 is amended to read:

5 94.920. (1) Every nonresident developer, at the time of filing the notice required by ORS 94.823,
6 also shall file with the **Director of the Real Estate [Commissioner] Agency** an irrevocable consent
7 that if, in any suit or action commenced against the nonresident developer in this state arising out
8 of a violation of ORS 94.803 and 94.807 to 94.945, personal service of summons or process cannot
9 be made upon the developer in this state after the exercise of due diligence, a valid service may be
10 made upon the developer by service on the [commissioner] **director**.

11 (2) The consent required under subsection (1) of this section shall be in writing executed and
12 verified by an officer of a corporation or association, a general partner of a partnership or by a
13 developer and shall set forth:

14 (a) The name of the developer.

15 (b) The address to which documents served upon the [commissioner] **director** are to be for-
16 warded.

17 (c) If the developer is a corporation or unincorporated association, that the officer exercising
18 the consent was authorized by resolution duly adopted by the board of directors.

19 (3) The address for forwarding documents served under this section may be changed by filing a
20 new consent in the form prescribed in subsection (2) of this section.

21 (4) Service of process on the [commissioner] **director** under this section shall be made by deliv-
22 ering to the [commissioner] **director** or a clerk on duty in any office of the [commissioner]
23 **director**, duplicate copies of the process, with duplicate copies of any papers required by law to be
24 delivered in connection with the service.

25 (5) When the [commissioner] **director** is served with process under the provisions of this section,
26 the [commissioner] **director** shall immediately forward by registered mail or by certified mail with
27 return receipt one of the copies with any accompanying papers, to the developer at the address set
28 forth in the consent.

29 (6) The [commissioner] **director** shall keep a record of each process, notice and demand served
30 under this section, and shall record the time of each service and the action taken by the [commis-
31 sioner] **director** on each service.

32 **SECTION 103.** ORS 94.925 is amended to read:

33 94.925. (1) In addition to any other penalty provided by law, the Real Estate [Commissioner]
34 **Agency** may impose a civil penalty for violation of the provisions of ORS 94.803 and 94.807 to
35 94.945. No civil penalty shall exceed \$1,000 per violation.

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

37 **SECTION 104.** ORS 94.930 is amended to read:

38 94.930. (1) If the **Director of the Real Estate [Commissioner] Agency** finds that an owner, de-
39 veloper or other person is violating any of the provisions of ORS 94.803 and 94.807 to 94.945, the
40 [commissioner] **director** may order the person to desist and refrain from violating the provisions or
41 requirements, or from the further sale of interests in the timeshare plan.

42 (2) If the [commissioner] **director** finds that a developer or other person is violating, has violated
43 or is about to violate[,] any of the provisions of ORS 94.803 and 94.807 to 94.945, the
44 [commissioner] **director** may bring an action in the circuit court of the county where the violation
45 or threatened violation has occurred or is about to occur, or in the county where the person resides

1 or carries on business, in the name of and on behalf of the people of the State of Oregon against the
 2 person participating in the violation, to enjoin the person from continuing or engaging in the vio-
 3 lation or doing any act in furtherance of the violation, and to apply for the appointment of a re-
 4 ceiver or conservator of the assets of the defendant if appropriate.

5 **SECTION 105.** ORS 94.940 is amended to read:

6 94.940. [No] A person [shall] **may not**, in connection with an offering, sale or lease of an interest
 7 in a timeshare plan:

8 (1) Employ any device, scheme or artifice to defraud;

9 (2) Make any untrue statement of a material fact;

10 (3) Fail to state a material fact necessary to make a statement clear;

11 (4) Issue, circulate or publish any prospectus, circular, advertisement, printed matter, document,
 12 pamphlet, leaflet or other literature containing an untrue statement of a material fact or that fails
 13 to state a material fact necessary to make the statements made in the literature not misleading;

14 (5) Issue, circulate or publish any advertising matter or make any written representation, unless
 15 the name of the person issuing, circulating or publishing the matter or making the representation
 16 is clearly indicated; or

17 (6) Make any statement or representation, or issue, circulate or publish any advertising matter
 18 containing any statement that the timeshare plan has been in any way approved or [*indorsed by the*
 19 *Real Estate Commissioner*] **endorsed by the Real Estate Agency** except in conjunction with a
 20 public report issued by the [*commissioner*] **agency** under ORS 94.828 (1), (2) and (4).

21 **SECTION 106.** ORS 94.953 is amended to read:

22 94.953. As used in ORS 94.953 to 94.989:

23 (1) "Blanket encumbrance" means any mortgage, deed of trust, option to purchase, vendor's lien
 24 or interest under a contract or agreement of sale, or other material financing lien or encumbrance
 25 which secures or evidences the obligation to pay money or to sell or convey on any campgrounds
 26 offered for sale, made available to purchasers by the membership camping operator or any portion
 27 thereof, and which authorizes, permits or requires the foreclosure or other disposition of the
 28 campground affected.

29 (2) "Campground" means real property owned or operated by a membership camping operator
 30 which is available for camping by purchasers of membership camping contracts.

31 (3) "Camping site" means a space:

32 (a) Designed and promoted for the purpose of locating a trailer, tent, tent trailer, recreational
 33 vehicle, pickup camper or other similar device used for camping; and

34 (b) With no permanent dwelling on it.

35 [(4) "*Commissioner*" means the *Real Estate Commissioner*.]

36 [(5)] (4) "Facilities" means any of the following amenities provided and located on property
 37 owned or operated by a membership camping operator: Camping sites, rental trailers, swimming
 38 pools, sport courts, recreation buildings and trading posts or grocery stores.

39 [(6)] (5) "Membership camping contract" means an agreement offered or sold within this state
 40 granting the purchaser the right or license to use for more than 30 days the campgrounds and fa-
 41 cilities of a membership camping operator and includes a membership which provides for such use.

42 [(7)] (6) "Membership camping contract broker" means a person who resells a membership
 43 camping contract to a new purchaser on behalf of the prior purchaser, but does not include a
 44 membership camping operator or its agents.

45 [(8)] (7) "Membership camping operator" means any person, other than an entity that is tax

1 exempt under section 501 (c)(3) of the Internal Revenue Code of 1954, as amended, that solicits
 2 membership camping contracts paid for by a fee or periodic payments and has as one purpose
 3 camping or outdoor recreation, including use of camping sites primarily by purchasers. “Member-
 4 ship camping operator” does not include:

5 (a) Mobile home and manufactured dwelling parks or camping or recreational vehicle parks
 6 which are open to the general public and do not solicit purchases of membership camping contracts,
 7 but rather contain only camping sites rented for per use fee; or

8 (b) Any person who engages in the business of arranging and selling reciprocal programs and
 9 who does not own campgrounds and facilities.

10 [(9)] (8) “Offer” means any solicitation reasonably designed to result in the entering into of a
 11 membership camping contract.

12 [(10)] (9) “Purchaser” means a person who enters into a membership camping contract and ob-
 13 tains the right to use campgrounds and outdoor facilities of a membership camping operator.

14 [(11)] (10) “Sale” or “sell” means entering into, or other disposition of, a membership camping
 15 contract for value; however, the term “value” does not include a fee to offset the reasonable costs
 16 of transfer of a membership camping contract.

17 [(12)] (11) “Salesperson” means any individual, other than a membership camping operator, who
 18 offers to sell or sells membership camping contracts by making a direct sales presentation to pro-
 19 spective purchasers, but does not include individuals engaged in the referral of persons without
 20 making any representations about the camping program or a direct sales presentation to prospective
 21 purchasers. “Salesperson” does not include a campground manager who is authorized in writing to
 22 act on behalf of a membership camping operator in the operation of a campground and in the
 23 supervision of campground employees and salespersons and who does not offer to sell or sell mem-
 24 bership camping contracts by making a direct sales presentation to prospective purchasers.

25 **SECTION 107.** ORS 94.959 is amended to read:

26 94.959. (1) A membership camping operator wishing to offer to sell or sell a membership camping
 27 contract in this state shall register the contract with the Real Estate [*Commissioner*] **Agency**. The
 28 application for registration shall include all of the following if it is applicable to the membership
 29 camping operator:

30 (a) Written disclosures, in [*any format the commissioner is satisfied*] **a format that** accurately
 31 and clearly communicates the required information[, *which*] **to the satisfaction of the Director**
 32 **of the Real Estate Agency, that** include:

33 (A) The name and address of the membership camping operator and any person who, directly
 34 or indirectly, through one or more intermediaries, controls, is controlled by or is under common
 35 control with the membership camping operator;

36 (B) A brief description of the membership camping operator’s experience in the camping club
 37 business;

38 (C) A brief description of the nature of the purchaser’s right or license to use the campground
 39 or facilities;

40 (D) The location and a brief description of the significant facilities and recreation services then
 41 available for use by purchasers and those which are represented to purchasers as being planned,
 42 together with a brief description of any significant facilities or recreation services that are or will
 43 be available to nonpurchasers and the price to nonpurchasers therefor;

44 (E) A brief description of the membership camping operator’s ownership of or other right to use
 45 the campground facilities represented to be available for use by purchasers, together with a brief

1 description of the duration of any lease, real estate contract, license franchise or other agreement
2 entitling the membership camping operator to use the property, and any material provisions of the
3 agreements which restrict a purchaser's use;

4 (F) A brief description of any material encumbrance, including any mortgage, deed of trust, op-
5 tion to purchase, vendor's lien or interest under a contract or agreement of sale, or other material
6 financing lien or encumbrance that secures or evidences the obligation to pay money or to sell or
7 convey, or which authorizes or requires the foreclosure or other disposition of the campground af-
8 fected;

9 (G) A brief description of any reciprocal agreement allowing purchasers to use camping sites,
10 facilities or other properties owned or operated by any person other than the membership camping
11 operator with whom the purchaser has entered into a membership camping contract;

12 (H) A summary or copy of the articles, bylaws, rules, restrictions or covenants regulating the
13 purchaser's use of each campground, the facilities located on each property, and any recreation
14 services provided, including a statement of whether and how the articles, bylaws, rules, restrictions
15 or covenants may be changed;

16 (I) A brief description of all payments of a purchaser under a membership camping contract,
17 including initial fees and any further fees, charges or assessments, together with any provisions for
18 changing the payments;

19 (J) A description of any restraints on the transfer of membership camping contracts;

20 (K) A brief description of the policies relating to the availability of camping sites and whether
21 reservations are required;

22 (L) A brief description of the membership camping operator's right to change or withdraw from
23 use all or a portion of the campgrounds or facilities and the extent to which the membership
24 camping operator is obliged to replace facilities or campgrounds withdrawn;

25 (M) A brief description of any grounds for forfeiture of a purchaser's membership camping con-
26 tract; and

27 (N) A copy of the membership camping contract form;

28 (b) A statement of the total number of membership camping contracts then in effect, both within
29 and without this state; and a statement of the total number of membership camping contracts in-
30 tended to be sold, both within and without this state, together with a commitment that the total
31 number will not be exceeded unless disclosed by amendment to the registration;

32 (c) If the campground or campgrounds owned or being purchased by the membership camping
33 operator at the time of registration are campgrounds on which the membership camping operator
34 or another membership camping operator previously registered a membership camping contract with
35 the State of Oregon and sold memberships under the registered contract and thereafter went out
36 of business or filed for bankruptcy, the new membership camping operator shall file with the [*com-*
37 *missioner*] **agency** at the time of registration a detailed plan whereunder all membership purchasers
38 from the prior membership camping operator or operators for the campground or campgrounds will
39 be offered memberships by the new membership camping operator despite any rejection or cancel-
40 lation of the previous contracts during bankruptcy proceedings of the prior membership camping
41 operator or operators. Procedures for written notice to the purchasers and the material terms and
42 conditions of membership offered by the new campground operator shall be included in the detailed
43 plan filed with the [*commissioner*] **agency**. The material terms and conditions including but not
44 limited to price and terms of payment offered by the new campground operator or operators shall
45 not be materially less favorable than the material terms and conditions offered to new purchasers;

1 and

2 (d) Any other material information the [*commissioner*] **director** may, by rule or order, require
3 for the protection of the purchasers.

4 (2) The application shall be signed by the membership camping operator, an officer or general
5 partner of the membership camping operator or by another person holding a power of attorney for
6 such purpose from the membership camping operator. If the application is signed pursuant to a
7 power of attorney, a copy of the power of attorney shall be included with the application.

8 (3) The application shall be submitted with the registration fee.

9 (4) An application for registration to offer or sell membership camping contracts shall be
10 amended when a material change from the information previously filed occurs. Such amendment
11 shall be filed with the [*commissioner*] **agency** within 10 days after the membership camping operator
12 knows of such change.

13 (5) In place of the disclosures required with the application for registration, the [*commissioner*]
14 **director** may accept a public report or other disclosure from another state in which the membership
15 camping operator has registered.

16 **SECTION 108.** ORS 94.965 is amended to read:

17 94.965. The application for registration shall automatically become effective upon the expiration
18 of 45 calendar days following filing of a completed application with the Real Estate [*Commissioner*]
19 **Agency** unless:

20 (1) The application for registration is denied under ORS 94.968;

21 (2) The [*commissioner*] **agency** grants the registration effective as of an earlier date; or

22 (3) The applicant consents to a delay of the effective date.

23 **SECTION 109.** ORS 94.968 is amended to read:

24 94.968. (1) The **Director of the Real Estate** [*Commissioner*] **Agency** may order that a registra-
25 tion of an offer or sale of membership camping contracts be denied, suspended or revoked if the
26 [*commissioner*] **director** makes findings pursuant to ORS 183.430 that any of the following is true:

27 (a) The membership camping operator has failed to comply with any provisions of ORS 94.953
28 to 94.989 which materially affect the rights of purchasers or prospective purchasers of membership
29 camping contracts.

30 (b) The membership camping operator is representing to purchasers in connection with the offer
31 or sale of a membership camping contract that any campground or facilities are planned without
32 reasonable grounds to believe that the campground or facilities will be completed within a reason-
33 able time.

34 (c) The membership camping operator's offering of membership camping contracts works a fraud
35 on purchasers or owners of membership camping contracts.

36 (2) Proceedings for suspending, revoking or denying a registration shall be governed by ORS
37 chapter 183.

38 (3) If the [*commissioner*] **director** finds that immediate suspension of a registration is necessary
39 to protect purchasers or owners from fraud, the [*commissioner*] **director** may order any person
40 subject to ORS 94.953 to 94.989 to desist from such conduct and may suspend the registration im-
41 mediately. Affected persons shall be entitled to a hearing as in the case of license suspension under
42 ORS 183.430.

43 (4) If the [*commissioner*] **director** finds that a membership camping operator or other person is
44 violating any of the provisions of ORS 94.953 to 94.989, the [*commissioner*] **director** may order the
45 person to desist and refrain from violating the provisions and from the further offering and sale of

1 membership camping contracts.

2 (5) If the [*commissioner*] **director** finds that a membership camping operator or other person is
3 violating, has violated or is about to violate, any of the provisions of ORS 94.953 to 94.989, the
4 [*commissioner*] **director** may bring an action in the circuit court of the county where the violation
5 or threatened violation has occurred or is about to occur, or in the county where the person resides
6 or carries on business, in the name of and on behalf of the people of the State of Oregon against the
7 person participating in the violation, to enjoin the person from continuing or engaging in the vio-
8 lation or doing any act in furtherance of the violation, and to apply for the appointment of a re-
9 ceiver or conservator of the assets of the defendant if appropriate.

10 **SECTION 110.** ORS 94.971 is amended to read:

11 94.971. (1) The fee for registration or amendment of an offer or sale of a membership camping
12 contract shall be an amount sufficient to recover any administrative expenses in staff review and
13 action upon the registration or amendment. The fee is subject to the review of the Oregon Depart-
14 ment of Administrative Services. The **Director of the Real Estate** [*Commissioner*] **Agency** shall set
15 an estimated fee to be paid with the application. The final fee shall be paid before final registration
16 becomes effective.

17 (2) [*No*] A fee [*shall be*] **is not** required for an amendment unless additional work is required
18 **on disclosures** by the Real Estate Agency [*staff on disclosures*].

19 (3) The fee for registration or renewal of an existing registration of a broker or salesperson is
20 \$50.

21 **SECTION 111.** ORS 94.974 is amended to read:

22 94.974. (1) Except in a transaction exempt under ORS 94.962, any person who sells a membership
23 camping contract shall provide the prospective purchaser with those written disclosures required
24 under ORS 94.959. Disclosures shall be substantially accurate and complete and made to a prospec-
25 tive purchaser before the prospective purchaser signs a membership camping contract or gives any
26 consideration for the purchase of such contract. The person shall take a receipt from the prospective
27 purchaser upon delivery of the disclosures. Each receipt shall be kept on file by the membership
28 camping operator within this state subject to inspection by the Real Estate [*Commissioner or the*
29 *commissioner's authorized representative*] **Agency** for a period of three years from the date the re-
30 ceipt is taken.

31 (2) Records of the sale of membership camping contracts shall be subject to inspection by the
32 [*commissioner or the commissioner's authorized representative*] **agency**. Any list identifying
33 campground members obtained by the [*commissioner or the commissioner's authorized representative*
34 *shall be*] **agency is** exempt from disclosure, as trade secrets, to any person, public body or state
35 agency, under ORS 192.501.

36 **SECTION 112.** ORS 94.975 is amended to read:

37 94.975. [*No*] A person [*shall*] **may not**, in connection with an offering or sale of a membership
38 camping contract:

39 (1) Employ any device, scheme or artifice to defraud;

40 (2) Make any untrue statement of a material fact;

41 (3) Fail to state a material fact necessary to make a statement clear;

42 (4) Issue, circulate or publish any prospectus, circular, advertisement, printed matter, document,
43 pamphlet, leaflet or other literature containing an untrue statement of a material fact or that fails
44 to state a material fact necessary to make the statements made in the literature not misleading;

45 (5) Issue, circulate or publish any advertising matter or make any written representation, unless

1 the name of the person issuing, circulating or publishing the matter or making the representation
2 is clearly indicated; or

3 (6) Make any statement or representation, or issue, circulate or publish any advertising matter
4 containing any statement that the membership camping contract has been in any way approved or
5 [indorsed] **endorsed** by the Real Estate [Commissioner] **Agency**.

6 **SECTION 113.** ORS 94.980 is amended to read:

7 94.980. (1) A salesperson or membership camping contract broker may apply for registration by
8 filing with the Real Estate [Commissioner] **Agency** an application which includes the following in-
9 formation:

10 (a) A statement whether or not the applicant has been convicted of any misdemeanor or felony
11 involving theft, fraud or dishonesty or whether or not the applicant has been enjoined from, had any
12 civil penalty assessed for, or been found to have engaged in any violation of any act designed to
13 protect consumers; and

14 (b) A statement describing the applicant's employment history for the past five years and
15 whether or not any termination of employment during the last five years was occasioned by any
16 theft, fraud or act of dishonesty.

17 (2) Each applicant for initial registration shall submit to fingerprinting and provide to the
18 [commissioner] **agency** as part of the application a recent photograph of the applicant. The regis-
19 tration must be accompanied by a written acceptance of the applicant as a salesperson signed by
20 the membership camping operator with whom the salesperson will be associated.

21 (3) The [commissioner] **Director of the Real Estate Agency** may deny, suspend or revoke a
22 salesperson's or membership camping contract broker's application for registration or the
23 salesperson's or membership camping contract broker's registration if the [commissioner] **director**
24 finds that the order is necessary for the protection of purchasers or owners of membership camping
25 contracts and that the applicant or registrant:

26 (a) Has been convicted of any misdemeanor or felony or has been enjoined from, had any civil
27 penalty assessed for, or been found to have engaged in any violation of any act designed to protect
28 consumers;

29 (b) Has violated any material provision of ORS 94.925 to 94.983; or

30 (c) Has engaged in fraudulent or deceitful practices in any industry involving sales to consum-
31 ers.

32 (4) Registration shall be effective for a period of one year. Registration shall be renewed an-
33 nually by the filing of a form prescribed by the [commissioner] **director** for that purpose. The com-
34 pleted application for registration or renewal shall automatically become effective upon the
35 expiration of 30 business days following filing with the [commissioner] **agency**, unless:

36 (a) The application has been denied under subsection (3) of this section;

37 (b) The [commissioner] **agency** grants the registration effective as of an earlier date; or

38 (c) The applicant or registrant consents to delay of the effective date.

39 (5) During the effective period of a salesperson's registration, the salesperson may transfer to
40 a new membership camping operator by requesting the operator to return the salesperson's regis-
41 tration to the [commissioner] **agency** and filing with the [commissioner] **agency** a written acceptance
42 of the salesperson's transfer signed by the membership camping operator with whom the salesperson
43 will be associated following the transfer. Upon receipt of the salesperson's registration and payment
44 to the [commissioner] **agency** of a \$10 transfer fee, the [commissioner] **director** may issue a regis-
45 tration for the salesperson to the new membership camping operator. Upon the request of a

1 salesperson, a membership camping operator shall promptly return the registration of the
2 salesperson to the [commissioner] **agency**.

3 (6) A salesperson's registration granted under this section shall be issued to a membership
4 camping operator who signed the written acceptance accompanying the initial registration applica-
5 tion or transfer request. A salesperson's registration entitles the salesperson to sell membership
6 camping contracts only for any campground operated by the membership camping operator under
7 the supervision of the operator. If the salesperson terminates sales activity for any reason, the
8 membership camping operator shall return the registration of the salesperson to the [commissioner]
9 **agency** without delay.

10 (7) If an applicant for registration has an active real estate license outstanding, the applicant
11 must place the real estate license on inactive status before issuance of the registration by the
12 [commissioner] **director**. A salesperson or membership camping contract broker may not reactivate
13 an inactive real estate license during any term of registration as a salesperson or membership
14 camping contract broker.

15 **SECTION 114.** ORS 94.986 is amended to read:

16 94.986. With respect to any campground offered for sale in this state and acquired and put into
17 operation by a membership camping operator after September 1, 1985, the membership camping op-
18 erator shall not sell membership camping contracts in this state granting the right to use such
19 campground until one of the following requirements has been satisfied:

20 (1) Each person holding an interest in a blanket encumbrance executes and delivers to the Real
21 Estate [Commissioner] **Agency** a nondisturbance agreement and records [such] **the** agreement in the
22 real estate records of the county in which the campground is located. "Nondisturbance agreement"
23 means an instrument by which the holder of a blanket encumbrance agrees that the holder's rights
24 in the campground shall be subordinate to the rights of any membership camping contract pur-
25 chaser. Every nondisturbance agreement must contain a covenant by the lienholder that the
26 lienholder, its successors, and anyone who acquires the campground property through the blanket
27 lien shall not use, or cause or permit the property to be used in a manner that prevents a mem-
28 bership camping contract purchaser from using, the campground property in the manner contem-
29 plated by the membership camping contract. The lienholder's agreement not to disturb a membership
30 camping contract purchaser may require as a continuing condition that the purchaser perform all
31 obligations and make all payments due under any membership camping contract for the purchaser's
32 campground interest and, if the membership camping contract is held as a leasehold, under the lease
33 for the purchaser's campground interest. The nondisturbance agreement shall also contain provi-
34 sions setting forth each of the following:

35 (a) The nondisturbance agreement may be enforced by purchasers of membership camping con-
36 tracts. If the membership camping operator is not in default under its obligations to the holder of
37 the blanket encumbrance, the agreement may be enforced by both the membership camping operator
38 and the purchasers.

39 (b) The nondisturbance agreement is effective as between each purchaser and the holder of the
40 blanket encumbrance despite any rejection or cancellation of the purchaser's contract during bank-
41 ruptcy proceedings of the membership camping operator.

42 (c) The agreement is binding upon the successors in interest of both the membership camping
43 operator and the holder of the blanket encumbrance.

44 (d) A holder of the blanket encumbrance who obtains title or possession, or who causes a change
45 in title or possession in a campground by foreclosure or otherwise, and who does not continue to

1 operate the campground upon conditions no less favorable to members than existed prior to the
2 change of title or possession shall:

3 (A) Offer the title or possession of the campground to an association of members to operate the
4 campground; or

5 (B) Obtain a commitment from another entity that obtains title or possession to undertake the
6 responsibility for operation of the campground.

7 (2) If a financial institution, acting as hypothecation lender and providing the major
8 hypothecation loan to the membership camping operator, has a lien on, or security interest in, the
9 membership camping operator's interest in the campground, the financial institution shall execute
10 and deliver to the [commissioner] **agency** a nondisturbance agreement and record [such] **the** agree-
11 ment in the real estate records of the county in which the campground is located. In addition, each
12 person holding an interest in any blanket encumbrance superior to the interest held by the financial
13 institution shall execute, deliver and record an instrument stating that such person shall give the
14 financial institution notice of, and at least 30 days to cure, any default under the blanket
15 encumbrance before such person commences any foreclosure action affecting the campground. For
16 the purposes of this provision, a major hypothecation loan to a membership camping operator is a
17 loan or line of credit secured by substantially all of the contracts receivable arising from the mem-
18 bership camping operator's sale of membership camping contracts.

19 (3) There shall have been delivered to and accepted by the [commissioner] **Director of the Real**
20 **Estate Agency** a surety bond or letter of credit with the [commissioner] **director** as obligee for the
21 benefit of purchasers. The bond or letter of credit must be in an amount [which] **that** is not less than
22 105 percent of the remaining principal balance of every indebtedness secured by the blanket
23 encumbrance affecting the campground. Any such bond must be issued by a surety authorized to do
24 business in this state and having sufficient net worth to satisfy the indebtedness. Any such letter
25 of credit must be irrevocable and must be drawn upon a bank, savings and loan association or other
26 financial institution acceptable to the [commissioner] **director**. The bond or letter of credit shall
27 provide for payment of all amounts secured by the blanket encumbrance, including costs, expenses
28 and legal fees of the lienholder, if for any reason the blanket encumbrance is enforced. The bond
29 or letter of credit may be reduced periodically in proportion to the reduction of the amounts secured
30 by the blanket encumbrance.

31 (4) There have been delivered to and accepted by the [commissioner] **director** other financial
32 assurances [which the commissioner] **that the director** finds are acceptable to carry into effect the
33 intent and provisions of this section.

34 **SECTION 115.** ORS 94.987 is amended to read:

35 94.987. (1)(a) Upon petition by the Real Estate [Commissioner] **Agency** or a majority of active
36 purchasers not then in default under their membership camping contracts, a court of competent ju-
37 risdiction may declare a failure of management of the membership camping operator and appoint a
38 trustee to assume the membership camping operator's duties under the membership camping con-
39 tracts, if the court finds that:

40 (A) Irreparable injury to the rights of the purchasers is likely to occur unless a trustee is ap-
41 pointed; and

42 (B) There is no reasonable alternative to appointment of a trustee.

43 (b) For purposes of this subsection, "active purchaser" means a current, dues-paying member of
44 the membership camping operator.

45 (2) The court may attach such conditions and terms to its appointment of a trustee under sub-

1 section (1) of this section as the court considers necessary to protect the rights of the purchasers
 2 under the membership camping contract. The trustee shall provide a copy of the court's decision in
 3 such a case to the [commissioner] **agency**.

4 (3) If the court petitioned under subsection (1) of this section finds that there is a reasonable
 5 alternative to the appointment of a trustee, the court may order the membership camping operator
 6 to carry out the reasonable alternative and may attach to its order such terms and conditions as it
 7 considers necessary to protect the rights of the purchasers under the membership camping con-
 8 tracts.

9 **SECTION 116.** ORS 100.005 is amended to read:

10 100.005. As used in this chapter, unless the context requires otherwise:

11 (1) "Assessment" means any charge imposed or levied by the association of unit owners on or
 12 against a unit owner or unit pursuant to provisions of the declaration or the bylaws of the condo-
 13 minium or provisions of ORS 100.005 to 100.910.

14 (2) "Association of unit owners" means the association provided for under ORS 100.405.

15 (3) "Association property" means any real property or interest in real property acquired, held
 16 or possessed by the association under ORS 100.405.

17 (4) "Blanket encumbrance" means a trust deed or mortgage or any other lien or encumbrance,
 18 mechanic's lien or otherwise, securing or evidencing the payment of money and affecting more than
 19 one unit in a condominium, or an agreement affecting more than one such unit by which the devel-
 20 oper holds such condominium under an option, contract to sell or trust agreement.

21 (5) "Building" means a multiple-unit building or single-unit buildings, or any combination
 22 thereof, comprising a part of the property. "Building" also includes a floating structure described
 23 in ORS 100.020 (3)(b)(D).

24 [(6) "Commissioner" means the Real Estate Commissioner.]

25 [(7)] (6) "Common elements" means the general common elements and the limited common ele-
 26 ments.

27 [(8)] (7) "Common expenses" means:

28 (a) Expenses of administration, maintenance, repair or replacement of the common elements;

29 (b) Expenses agreed upon as common by all the unit owners; and

30 (c) Expenses declared common by ORS 100.005 to 100.625 or by the declaration or the bylaws
 31 of the particular condominium.

32 [(9)] (8) "Condominium" means:

33 (a) With respect to property located within this state:

34 (A) The land, if any, whether fee simple, leasehold, easement or other interest or combination
 35 thereof, and whether contiguous or noncontiguous;

36 (B) Any buildings, improvements and structures on the property; and

37 (C) Any easements, rights and appurtenances belonging to the property submitted to the pro-
 38 visions of ORS 100.005 to 100.625; and

39 (b) With respect to property located outside this state, the property that has been committed to
 40 the condominium form of ownership in accordance with the jurisdiction within which the property
 41 is located.

42 [(10)] (9) "Conversion condominium" means a condominium in which there is a building, im-
 43 provement or structure that was occupied prior to any negotiation and that is:

44 (a) Residential in nature, at least in part; and

45 (b) Not wholly commercial or industrial, or commercial and industrial, in nature.

1 [(11)] **(10)** “Declarant” means a person who records a declaration under ORS 100.100 or a sup-
2 plemental declaration under ORS 100.110.

3 [(12)] **(11)** “Declaration” means the instrument described in ORS 100.100 by which the condo-
4 minium is created and as modified by any amendment recorded in accordance with ORS 100.135 or
5 supplemental declaration recorded in accordance with ORS 100.120.

6 [(13)] **(12)** “Developer” means a declarant or any person who purchases an interest in a condo-
7 minium from declarant, successor declarant or subsequent developer for the primary purpose of re-
8 sale.

9 [(14)] **(13)** “Dwelling unit,” “premises,” “rental agreement” and “tenant” mean those terms as
10 defined in ORS 90.100.

11 [(15)] **(14)** “Flexible condominium” means a condominium containing property that may be re-
12 classified or withdrawn from the condominium pursuant to ORS 100.150 (1).

13 [(16)] **(15)** “General common elements,” unless otherwise provided in a declaration, means all
14 portions of the condominium that are not part of a unit or a limited common element, including but
15 not limited to the following:

16 (a) The land, whether fee simple, leasehold, easement, other interest or combination thereof,
17 together with any rights and appurtenances;

18 (b) The foundations, columns, girders, beams, supports, bearing and shear walls, roofs, halls,
19 corridors, lobbies, stairs, fire escapes, entrances and exits of a building;

20 (c) The basements, yards, gardens, parking areas and outside storage spaces;

21 (d) Installations of central services such as power, light, gas, hot and cold water, heating, re-
22 frigeration, air conditioning, waste disposal and incinerating;

23 (e) The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus
24 and installations existing for common use;

25 (f) The premises for the lodging of janitors or caretakers of the property; and

26 (g) All other elements of a building and the condominium necessary or convenient to their ex-
27 istence, maintenance and safety, or normally in common use.

28 [(17)] **(16)** “Leasehold” means the interest of a person, firm or corporation who is the lessee
29 under a lease from the owner in fee and who files a declaration creating a condominium under ORS
30 100.100.

31 [(18)] **(17)** “Limited common elements” means those common elements designated in the decla-
32 ration, as reserved for the use of a certain unit or number of units, to the exclusion of the other
33 units.

34 [(19)] **(18)** “Majority” or “majority of unit owners” means more than 50 percent of the voting
35 rights allocated to the units by the declaration.

36 [(20)] **(19)** “Negotiation” means any activity preliminary to the execution by either developer
37 or purchaser of a unit sales agreement, including but not limited to advertising, solicitation and
38 promotion of the sale of a unit.

39 [(21)] **(20)** “Nonwithdrawable property” means property which pursuant to ORS 100.150 (1)(b):

40 (a) Is designated nonwithdrawable in the declaration and on the plat; and

41 (b) Which may not be withdrawn from the condominium without the consent of all of the unit
42 owners.

43 [(22)] **(21)** “Percent of owners” or “percentage of owners” means the percent of the voting rights
44 determined under ORS 100.525.

45 [(23)] **(22)** “Purchaser” means an actual or prospective purchaser of a condominium unit pursu-

1 ant to a sale.

2 [(24)] **(23)** “Recording officer” means the county officer charged with the duty of filing and re-
3 cording deeds and mortgages or any other instruments or documents affecting the title to real
4 property.

5 [(25)] **(24)** “Reservation agreement” means an agreement relating to the future sale of a unit
6 [which] **that** is not binding on the purchaser and [which] **that** grants purchaser the right to cancel
7 the agreement without penalty and obtain a refund of any funds deposited at any time until pur-
8 chaser executes a unit sales agreement.

9 [(26)] **(25)** “Sale” includes every disposition or transfer of a condominium unit, or an interest
10 or estate therein, by a developer, including the offering of the property as a prize or gift when a
11 monetary charge or consideration for whatever purpose is required by the developer. “Interest or
12 estate” includes a lessee’s interest in a unit for more than three years or less than three years if
13 the interest may be renewed under the terms of the lease for a total period of more than three years.
14 “Interest or estate” does not include any interest held for security purposes or a timeshare regu-
15 lated or otherwise exempt under ORS 94.803 and 94.807 to 94.945.

16 [(27)] **(26)** “Special declarant right” means any right, in addition to the regular rights of the
17 declarant as a unit owner, reserved for the benefit of or created by the declarant under the decla-
18 ration, bylaws or the provisions of this chapter.

19 [(28)] **(27)** “Staged condominium” means a condominium [which] **that** provides for annexation of
20 additional property pursuant to ORS 100.115 and 100.120.

21 [(29)] **(28)** “Successor declarant” means the transferee of any special declarant right.

22 [(30)] **(29)** “Termination date” means that date described in ORS 100.105 (2)(b) or (7)(d).

23 [(31)] **(30)** “Transitional committee” means the committee provided for under ORS 100.205.

24 [(32)] **(31)** “Turnover meeting” means the meeting provided for under ORS 100.210.

25 [(33)] **(32)** “Unit” or “condominium unit” means a part of the property [which] **that**:

26 (a) Is described in ORS 100.020 (3);

27 (b) Is intended for any type of independent ownership; and

28 (c) The boundaries of which are described pursuant to ORS 100.105 (1)(d).

29 [(34)] **(33)** “Unit designation” means the number, letter or combination thereof designating a unit
30 in the declaration and on the plat.

31 [(35)] **(34)** “Unit owner” means, except to the extent the declaration or bylaws provide other-
32 wise, the person owning fee simple interest in a unit, the holder of a vendee’s interest in a unit
33 under a recorded installment contract of sale and, in the case of a leasehold condominium, the
34 holder of the leasehold estate in a unit.

35 [(36)] **(35)** “Unit sales agreement” means a written offer or agreement for the sale of a condo-
36 minium unit [which] **that**, when fully executed, will be binding on all parties. “Unit sales
37 agreement” includes but is not limited to an earnest money receipt and agreement to purchase and
38 other such agreements [which] **that** serve as an agreement of sale for a cash transaction or
39 [which] **that** are preliminary to the execution of an installment contract of sale, but does not include
40 a reservation agreement.

41 [(37)] **(36)** “Variable property” means property described in ORS 100.150 (2) and designated as
42 variable property in the declaration and on the plat.

43 [(38)] **(37)** “Voting rights” means the portion of the votes allocated to a unit by the declaration
44 in accordance with ORS 100.105 (1)(i).

45 **SECTION 117.** ORS 100.015 is amended to read:

1 100.015. The **Director of the** Real Estate [*Commissioner*] **Agency** may adopt [*such rules as*]
2 **rules that** are necessary for the administration of this chapter.

3 **SECTION 118.** ORS 100.105 is amended to read:

4 100.105. (1) A declaration shall contain:

5 (a) A description of the property, including property on which a unit or a limited common ele-
6 ment is located, whether held in fee simple, leasehold, easement or other interest or combination
7 thereof, that is being submitted to the condominium form of ownership and that conforms to the
8 description in the surveyor's certificate provided under ORS 100.115 (2).

9 (b) Subject to subsection (11) of this section, a statement of the interest in the property being
10 submitted to the condominium form of ownership, whether fee simple, leasehold, easement or other
11 interest or combination thereof.

12 (c) Subject to subsection (5) of this section, the name by which the property shall be known and
13 a general description of each unit and the building or buildings, including the number of stories and
14 basements of each building, the total number of units and the principal materials of which they are
15 constructed.

16 (d) The unit designation, a statement that the location of each unit is shown on the plat, a de-
17 scription of the boundaries and area in square feet of each unit and any other data necessary for
18 proper identification. The area of a unit shall be the same as shown for that unit on the plat de-
19 scribed in ORS 100.115 (2).

20 (e) A description of the general common elements.

21 (f) An allocation to each unit of an undivided interest in the common elements in accordance
22 with ORS 100.515 and the method used to establish the allocation.

23 (g) The designation of any limited common elements including:

24 (A) A general statement of the nature of the limited common element;

25 (B) A statement of the unit to which the use of each limited common element is reserved, pro-
26 vided the statement is not a reference to an assignment of use specified on the plat; and

27 (C) The allocation of use of any limited common element appertaining to more than one unit.

28 (h) The method of determining liability for common expenses and right to common profits in
29 accordance with ORS 100.530.

30 (i) The voting rights allocated to each unit in accordance with ORS 100.525 or in the case of
31 condominium units committed as property in a timeshare plan defined in ORS 94.803, the voting
32 rights allocated in the timeshare instrument.

33 (j) A statement of the use, residential or otherwise, for which the building or buildings and each
34 of the units is intended.

35 (k) A statement that the designated agent to receive service of process in cases provided in ORS
36 100.550 (1) is named in the Condominium Information Report, which will be filed with the Real Es-
37 tate Agency in accordance with ORS 100.250 (1)(a).

38 (L) The method of amending the declaration and the percentage of voting rights required to
39 approve an amendment of the declaration in accordance with ORS 100.135.

40 (m) A statement as to whether or not the association of unit owners pursuant to ORS 100.405
41 (5) and (8) has authority to grant leases, easements, rights of way, licenses and other similar inter-
42 ests affecting the general and limited common elements of the condominium and consent to vacation
43 of roadways within and adjacent to the condominium.

44 (n) If the condominium contains a floating structure described in ORS 100.020 (3), a statement
45 regarding the authority of the board of directors of the association, subject to ORS 100.410, to

1 temporarily relocate the floating structure without a majority vote of affected unit owners.

2 (o) Any restrictions on alienation of units. Any such restrictions created by documents other
3 than the declaration may be incorporated by reference in the declaration to the official records of
4 the county in which the property is located.

5 (p) Any other details regarding the property that the person executing the declaration considers
6 desirable. However, if a provision required to be in the bylaws under ORS 100.415 is included in the
7 declaration, the voting requirements for amending the bylaws shall also govern the amendment of
8 the provision in the declaration.

9 (2) In the event the declarant proposes to annex additional property to the condominium under
10 ORS 100.125, the declaration shall also contain a general description of the plan of development,
11 including:

12 (a) The maximum number of units to be included in the condominium.

13 (b) The date after which any right to annex additional property will terminate.

14 (c) A general description of the nature and proposed use of any additional common elements
15 which declarant proposes to annex to the condominium, if such common elements might substantially
16 increase the proportionate amount of the common expenses payable by existing unit owners.

17 (d) A statement that the method used to establish the allocation of undivided interest in the
18 common elements, the method used to determine liability for common expenses and right to common
19 profits and the method used to allocate voting rights for each unit annexed shall be as stated in the
20 declaration in accordance with subsection (1)(f), (h) and (i) of this section.

21 (e) [*Such*] Other information [*as*] **required by** the Real Estate [*Commissioner shall require in*
22 *order*] **Agency** to carry out the purposes of ORS 100.015, 100.635 to 100.730 and 100.740 to 100.910.

23 (3) Except where expressly prohibited by the declaration and subject to the requirements of ORS
24 100.135 (2) and subsections (9) and (10) of this section:

25 (a) Not later than two years following the termination dates specified in subsections (2)(b) and
26 (7)(d) of this section, such termination dates may be extended for a period not exceeding two years;
27 and

28 (b) The general description under subsection (2)(c) of this section and the information included
29 in the declaration in accordance with subsection (7)(c), (g) and (h) of this section may be changed
30 by an amendment to the declaration.

31 (4) The information included in the declaration in accordance with subsection (2)(a) and (d) of
32 this section and subsection (7)(a), (b), (e), (f) and (k) of this section may not be changed unless all
33 owners agree to the change and record an amendment to the declaration in accordance with this
34 chapter.

35 (5) The name of the property shall include the word "condominium" or "condominiums" or the
36 words "a condominium."

37 (6) A condominium may not bear a name [*which*] **that** is the same as or deceptively similar to
38 the name of any other condominium located in the same county.

39 (7) If the condominium is a flexible condominium containing variable property, the declaration
40 shall also contain a general description of the plan of development, including:

41 (a) A statement that the rights provided for under ORS 100.150 (1) are being reserved.

42 (b) A statement:

43 (A) Of any limitations on rights reserved under ORS 100.150 (1), including whether the consent
44 of any unit owner shall be required, and if so, a statement of the method by which the consent shall
45 be ascertained; or

- 1 (B) That there are no limitations on rights reserved under ORS 100.150 (1).
- 2 (c) A statement of the total number of tracts of variable property within the condominium, in-
3 cluding:
- 4 (A) A designation of each tract as withdrawable or nonwithdrawable variable property;
- 5 (B) Identification of each variable tract by a label in accordance with ORS 100.115 (2)(i);
- 6 (C) A statement of the method of labeling each tract depicted on the plat in accordance with
7 ORS 100.115 (2)(i); and
- 8 (D) A statement of the total number of tracts of each type of variable property.
- 9 (d) The termination date, which is the date or time period after which any right reserved under
10 ORS 100.150 (1) will terminate, and a statement of the circumstances, if any, that will terminate any
11 right on or before the date or time period specified. The date or time period may not exceed seven
12 years from the recording of the conveyance of the first unit in the condominium to a person other
13 than the declarant. Recording shall be in the county in which the property is located.
- 14 (e) The maximum number of units that may be created.
- 15 (f) A statement that the method used to establish the allocations of undivided interest in the
16 common elements, the method used to determine liability for common expenses and right to common
17 profits and the method used to allocate voting rights as additional units are created shall be the
18 same as stated in the declaration in accordance with subsection (1)(f), (h) and (i) of this section.
- 19 (g) A general description of all existing improvements and the nature and proposed use of any
20 improvements that may be made on variable property if the improvements might substantially in-
21 crease the proportionate amount of the common expenses payable by existing unit owners.
- 22 (h) A statement of whether or not the declarant reserves the right to create limited common
23 elements within any variable property, and if so, a general description of the types that may be
24 created.
- 25 (i) A statement that the plat shows the location and dimensions of all withdrawable variable
26 property that is labeled "WITHDRAWABLE VARIABLE PROPERTY."
- 27 (j) A statement that if by the termination date all or a portion of the withdrawable variable
28 property has not been withdrawn or reclassified, the withdrawable property shall automatically be
29 withdrawn from the condominium as of the termination date.
- 30 (k) A statement of the rights of the association under ORS 100.155 (2).
- 31 (L) A statement of whether or not all or any portion of the variable property may not be with-
32 drawn from the condominium and, if so, with respect to the nonwithdrawable variable property:
- 33 (A) A statement that the plat shows the location and dimensions of all nonwithdrawable prop-
34 erty that is labeled "NONWITHDRAWABLE VARIABLE PROPERTY."
- 35 (B) A description of all improvements that may be made and a statement of the intended use of
36 each improvement.
- 37 (C) A statement that, if by the termination date all or a portion of the variable property desig-
38 nated as "nonwithdrawable variable property" has not been reclassified, the property shall auto-
39 matically be reclassified as of the termination date as a general common element of the
40 condominium and any interest in such property held for security purposes shall be automatically
41 extinguished by such classification.
- 42 (D) A statement of the rights of the association under ORS 100.155 (3).
- 43 (m) A statement by the local governing body or appropriate department thereof that the with-
44 drawal of any variable property designated as "withdrawable variable property" in the declaration
45 in accordance with paragraph (L) of this subsection, will not violate any applicable planning or

1 zoning regulation or ordinance. The statement may be attached as an exhibit to the declaration.

2 (8) The plan of development for any variable property included in the declaration or any sup-
3 plemental declaration of any stage in accordance with subsection (7) of this section shall be subject
4 to any plan of development included in the declaration in accordance with subsection (2) of this
5 section, except that the time limitation specified in subsection (7)(d) of this section shall govern any
6 right reserved under ORS 100.150 (1) with respect to any variable property.

7 (9) The information included in the declaration in accordance with subsection (7)(j), (k) and (m)
8 of this section may not be deleted by amendment.

9 (10) Approval by the unit owners shall not be required to redesignate variable property as
10 "nonwithdrawable variable property" by supplemental declaration or amendment if such redesi-
11 gnation is required by the local governing body or appropriate department thereof to comply with
12 any planning or zoning regulation or ordinance. If as a result of such redesignation the information
13 required to be included in the supplemental declaration or an amendment under subsection (7)(L)(B)
14 of this section is inconsistent with the information included in the declaration or supplemental
15 declaration in accordance with subsection (7)(g) of this section, an amendment to the declaration
16 approved by at least 75 percent of owners shall be required.

17 (11) The statement of an interest in property other than fee simple submitted to the condomin-
18 ium form of ownership and any easements, rights or appurtenances belonging to property submitted
19 to the condominium form of ownership, whether leasehold or fee simple, shall include:

20 (a) A reference to the recording index numbers and date of recording of the instrument creating
21 the interest; or

22 (b) A reference to the law, administrative rule, ordinance or regulation that creates the interest
23 if the interest is created under law, administrative rule, ordinance or regulation and not recorded
24 in the office of the recording officer of the county in which the property is located.

25 **SECTION 119.** ORS 100.110 is amended to read:

26 100.110. (1) Before a declaration, supplemental declaration or an amendment thereto may be re-
27 corded, it must be approved as provided in this section by the county assessor and the **Director**
28 **of the Real Estate [Commissioner] Agency**. Before a declaration or supplemental declaration may
29 be recorded, it must be approved by the tax collector of the county in which the property is located.
30 A declaration or amendment thereto may not be approved unless the requirements of subsections (2)
31 to (6) of this section are met. Approval shall be evidenced by execution of the declaration or
32 amendment or by a written approval attached thereto.

33 (2) The county assessor of the county in which the property is located shall approve a declara-
34 tion, supplemental declaration or amendment thereto if:

35 (a) The name complies with ORS 100.105 (5) and (6); and

36 (b) The plat and floor plans comply with the requirements of ORS 100.115.

37 (3) The tax collector of the county in which the property is located shall approve the declaration
38 or supplemental declaration, or an amendment that adds property to the condominium or changes
39 the boundary of a unit for which a plat is required under ORS 100.115 (9)(a), if:

40 (a) All ad valorem taxes, special assessments, fees, or other charges required by law to be placed
41 upon the tax roll which have or will become a lien upon the property during the tax year have been
42 paid;

43 (b) Advance payment of ad valorem taxes, special assessments, fees or other charges which are
44 not on the tax roll and for which payment is required under paragraph (a) of this subsection has
45 been made to the tax collector utilizing the procedures contained in ORS 92.095 and 311.370; and

1 (c) The additional taxes, penalty, and any interest attributable thereto, required because of dis-
2 qualification of the property from any special assessment have been paid.

3 (4) Subject to subsection (5) of this section, the [*commissioner*] **director** shall approve the dec-
4 laration or amendment thereto if:

5 (a) The declaration or the amendment thereto complies with the requirements of ORS 100.105
6 and 100.135;

7 (b) The bylaws adopted under ORS 100.410 comply with the requirements of ORS 100.410 and
8 100.415;

9 (c) The plat and floor plans comply with the requirements of ORS 100.115;

10 (d) The declaration is for a conversion condominium and the declarant has submitted:

11 (A) An affidavit that the notice of conversion was given in accordance with ORS 100.305 and
12 that the notice period has expired;

13 (B) An affidavit that the notice of conversion was given in accordance with ORS 100.305 and
14 copies of the written consent of any tenants who received the notice of conversion before expiration
15 of the notice; or

16 (C) Any applicable combination of the requirements of subparagraphs (A) and (B) of this para-
17 graph; and

18 (e) A paper copy of the plat executed by the declarant and prepared in conformance with ORS
19 100.115 and a certification of plat execution, on a form prescribed and furnished by the [*commis-
20 sioner*] **director**, have been submitted stating that the paper copy is a true copy of the plat signed
21 by the declarant. The certification may be executed by the declarant, the professional land surveyor
22 who signed the surveyor's certificate on the plat, the attorney for the declarant, a representative
23 of the title insurance company that issued the information required under ORS 100.640 (5) or 100.660
24 (2)(d) or another person authorized by the declarant in writing to execute the certification.

25 (5) Approval by the [*commissioner shall not be*] **director is not** required for an amendment to
26 a declaration transferring the right of use of a limited common element pursuant to ORS 100.515 (5).

27 (6) Before the [*commissioner*] **director** approves the declaration or amendment thereto under
28 this section:

29 (a) The declarant shall pay to the [*commissioner*] **Real Estate Agency** a fee determined by the
30 [*commissioner*] **director** under ORS 100.670; and

31 (b) For an amendment, the Condominium Information Report and the Annual Report described
32 in ORS 100.260 shall be designated current by the [*Real Estate*] agency as provided in ORS 100.255
33 and the fee required under ORS 100.670 shall be paid.

34 (7) If the declaration or amendment thereto approved by the [*commissioner*] **director** under
35 subsection (4) of this section is not recorded in accordance with ORS 100.115 within two years from
36 the date of approval by the [*commissioner*] **director**, the approval shall automatically expire and the
37 declaration or amendment [*thereto*] must be resubmitted for approval in accordance with this section.
38 The [*commissioner's*] **director's** approval shall set forth the date on which the approval will expire.

39 **SECTION 120.** ORS 100.135 is amended to read:

40 100.135. (1) Unless otherwise provided in the declaration, an amendment to the declaration may
41 be proposed by a majority of the board of directors of the association of unit owners or by at least
42 30 percent of the unit owners.

43 (2) Except as otherwise provided in ORS 100.005 to 100.625, an amendment of the declaration is
44 not effective unless:

45 (a) The amendment is approved by the unit owners as provided in this section and the **Director**

1 **of the Real Estate [Commissioner] Agency** and county assessor according to ORS 100.110; and

2 (b) The amendment, certified by the chairperson and secretary of the association of unit owners
3 as being adopted in accordance with the declaration and the provisions of this section and ac-
4 knowledged in the manner provided for acknowledgment of deeds, is recorded notwithstanding a
5 provision in a declaration, including a declaration recorded before January 1, 2002, that requires
6 amendments to be executed and acknowledged by all owners approving the amendment.

7 (3) Except as otherwise provided in ORS 100.105 or 100.130 or this section, the declaration may
8 be amended only with the approval of at least 75 percent of owners, or such greater percentage as
9 may be required by the declaration.

10 (4) Unless the declaration requires a greater percentage:

11 (a) The declaration and plat may be amended to change a general common element to a limited
12 common element or change the boundary of a limited common element with the approval of at least
13 75 percent of owners and approval of the owners of all units to which the limited common element
14 appertains.

15 (b) The declaration may be amended to change a limited common element, or portion thereof,
16 to a general common element with the approval of the owners of all units to which the limited
17 common element appertains and the board of directors.

18 (5)(a) Except as otherwise provided in ORS 100.120, 100.130, 100.515, 100.600, 100.605 and 100.625
19 and paragraph (b) of this subsection or other provisions of the Oregon Condominium Act, an
20 amendment that changes the boundary of the property or a unit shall be approved by all unit own-
21 ers. Such amendment shall constitute a conveyance and shall include words of conveyance. In ad-
22 dition to the certification required under subsection (2)(b) of this section, an amendment to the
23 boundary of a unit shall also be executed by the owners of all affected units.

24 (b) An amendment that adds property owned by the association to the condominium as a com-
25 mon element shall constitute a conveyance and shall:

26 (A) Be approved by at least 75 percent of owners;

27 (B) Contain words of conveyance;

28 (C) Be executed by the chairperson and secretary of the association on behalf of the unit owners
29 and be certified in accordance with subsection (2)(b) of this section; and

30 (D) Be accompanied by a plat amendment in accordance with ORS 100.115.

31 (c) Nothing in paragraph (b) of this subsection is intended to require property acquired or held
32 by the association pursuant to ORS 100.405 (4)(i) to be added to the condominium.

33 (6) Except as otherwise provided in ORS 100.005 to 100.625, an amendment may not change the
34 allocation of undivided interest in the common elements, the method of determining liability for
35 common expenses, the method of determining the right to common profits or the method of deter-
36 mining voting rights of any unit unless such amendment has been approved by the owners of the
37 affected units.

38 (7) The declaration may not be amended to limit or diminish any right of a declarant reserved
39 under ORS 100.105 (2) or (7) or any other special declarant right without the consent of the
40 declarant. However, the declarant may waive the declarant's right of consent.

41 (8) Nothing in this section shall affect any other approval that may be required by the declara-
42 tion, bylaws or other instrument.

43 (9) During a period of declarant control reserved under ORS 100.200, voting on an amendment
44 under this section must be without regard to any weighted vote or other special voting allocation
45 reserved by the declarant unless the declaration provides that the declarant has the right to exer-

1 cise the voting rights with respect to specifically described amendments. Nothing in this subsection
 2 prohibits a declarant from reserving the right that declarant’s consent is required for an amendment
 3 during a period of declarant control reserved in the declaration.

4 (10) An amendment to a declaration or a supplemental declaration shall be conclusively pre-
 5 sumed to have been regularly adopted in compliance with all applicable procedures relating to such
 6 amendment unless an action is brought within one year after the date such amendment was recorded
 7 or the face of the recorded amendment indicates that the amendment received the approval of fewer
 8 votes than are required for such approval. However, nothing in this subsection shall prevent the
 9 further amendment of an amended declaration or plat in accordance with ORS 100.005 to 100.625.

10 (11)(a) The board of directors, by resolution and without the further approval of the unit owners,
 11 may cause a restated declaration to be prepared and recorded to codify individual amendments that
 12 have been adopted in accordance with this section.

13 (b) A declaration restated under this subsection must:

14 (A) Include all previously adopted amendments that are in effect and may not include any other
 15 changes except to correct scriveners’ errors or to conform format and style;

16 (B) Include a statement that the board of directors has adopted a resolution in accordance with
 17 paragraph (a) of this subsection and is causing the declaration to be restated and recorded under
 18 this subsection;

19 (C) Include a reference to the recording index numbers and date of recording of the initial
 20 declaration and all previously recorded amendments that are in effect and are being codified;

21 (D) Include a certification by the chairperson and secretary of the association that the restated
 22 declaration includes all previously adopted amendments that are in effect, that amendments were
 23 approved by the county assessor and tax collector if required under ORS 100.110 and that no other
 24 changes were made except, if applicable, to correct scriveners’ errors or to conform format and
 25 style;

26 (E) Be executed and acknowledged by the chairperson and secretary of the association and re-
 27 corded in the deed records of each county in which the condominium is located; and

28 (F) Be approved by the [commissioner] **director**, and by the county assessor and the tax collec-
 29 tor under ORS 100.110 if the restated declaration includes any amendments required to be approved
 30 by the county assessor and the tax collector under ORS 100.110 but not previously approved.

31 (c) The board of directors shall cause a copy of the recorded restated declaration, including the
 32 recording information, to be filed with the [commissioner] **Real Estate Agency**.

33 **SECTION 121.** ORS 100.260 is amended to read:

34 100.260. (1) The Condominium Information Report required under ORS 100.250 (1)(a) shall set
 35 forth:

36 (a) The name of the association;

37 (b) The name of the condominium and the county in which the condominium is located;

38 (c) The mailing address, including the street and number, if any, and county of the association;

39 (d) The date the condominium declaration was recorded and the recording index numbers;

40 (e) The name and residence or business address, including the street and number, of the person
 41 designated as agent to receive service of process in cases provided in ORS 100.550 (1) and any other
 42 legal proceeding relating to the condominium or association; and

43 (f) The number and type of units as follows:

44 No._____ Living Units

45 No._____ Commercial/Office Units

1 No. _____ Other (describe) _____
 2 _____

3 (2) The Annual Report required under ORS 100.250 (1)(b) shall set forth:

- 4 (a) The information required under subsection (1)(a), (b), (c) and (e) of this section;
- 5 (b) The names and addresses of the chairperson and secretary of the association; and
- 6 (c) If the designated agent is changed, a statement that the new agent has consented to the
 7 appointment.

8 (3) The amendment required under ORS 100.250 (1)(c) shall set forth:

- 9 (a) The name of the association as shown on the current records of the Real Estate Agency;
- 10 (b) The name of the condominium and county in which the condominium is located;
- 11 (c) A statement of the information as changed; and
- 12 (d) If the current designated agent is to be changed, the name of the new designated agent and
 13 residence or business address, including the street and number, and a statement that the new agent
 14 has consented to the appointment.

15 (4) The filing by the Real Estate Agency of an amendment [*which*] **that** changes the designated
 16 agent shall terminate the existing designated agent on the effective date of the filing and establish
 17 the newly appointed designated agent as that of the association.

18 (5) The reports and amendment described in this section and an application for termination de-
 19 scribed in ORS 100.280 shall be made on forms prescribed and furnished by the **Director of the** Real
 20 Estate Agency and must be accompanied by the correct filing fee and shall:

- 21 (a) Contain information current as of 30 days before delivery for filing;
- 22 (b) Be executed by the designated agent and until the turnover meeting by the declarant and
 23 thereafter by the chairperson or secretary of the association;
- 24 (c) State beneath or opposite the signature the name of the person and the capacity in which
 25 the person signs; and
- 26 (d) Contain any additional identifying information that the **Director of the** Real Estate Agency
 27 may require by rule.

28 **SECTION 122.** ORS 100.290 is amended to read:

29 100.290. The **Director of the** Real Estate Agency may adopt rules as are necessary or proper
 30 for the administration of ORS 100.250 to 100.280.

31 **SECTION 123.** ORS 100.310 is amended to read:

32 100.310. (1) Prior to the sale of any dwelling unit [*which*] **that** is to be retained as a unit in the
 33 conversion condominium without substantial alteration in its physical layout, the declarant shall
 34 first offer to sell the respective unit to the tenant who occupies the unit. The offer shall:

- 35 (a) Terminate 60 days after its receipt or upon written rejection of the offer by the tenant,
 36 whichever occurs earlier.
- 37 (b) Be accompanied by a copy of all applicable disclosure statements issued by the Real Estate
 38 [*Commissioner*] **Agency** pursuant to ORS 100.700.

39 (c) Not constitute a notice to terminate the tenancy.

40 (2) The tenant's dwelling unit may not be shown to any prospective purchasers of a conversion
 41 condominium unit without the tenant's permission before the termination of the tenancy.

42 (3) The declarant shall not sell the unit to a person other than the tenant during the 60 days
 43 following the termination of an offer to the tenant under subsections (1) and (2) of this section at
 44 a price or on terms more favorable to the purchaser than the price or terms offered to the tenant.

45 (4) After the property has been submitted to the provisions of the Oregon Condominium Act, the

1 declarant, until a unit is offered for sale in accordance with subsections (1) and (2) of this section,
 2 shall notify in writing any prospective tenant, prior to the commencement of the tenancy, that the
 3 property has been submitted to the provisions of the Oregon Condominium Act and the rights of a
 4 tenant under subsections (1) to (3) of this section.

5 **SECTION 124.** ORS 100.410 is amended to read:

6 100.410. (1) The declarant shall adopt on behalf of the association of unit owners the initial by-
 7 laws that govern the administration of the condominium. The bylaws shall be recorded simultane-
 8 ously with the declaration as an exhibit or as a separate instrument.

9 (2) Unless otherwise provided in the declaration or bylaws, amendments to the bylaws may be
 10 proposed by a majority of the board of directors or by at least 30 percent of the owners.

11 (3) Subject to subsections (4) and (5) of this section and ORS 100.415 (20), an amendment of the
 12 bylaws is not effective unless the amendment is:

13 (a) Approved by at least a majority of the unit owners; and

14 (b) Certified by the chairperson and secretary of the association of unit owners as being adopted
 15 in accordance with the bylaws and the provisions of this section, acknowledged in the manner pro-
 16 vided for acknowledgment of instruments and recorded.

17 (4) In condominiums that are exclusively residential:

18 (a) The bylaws may not provide that greater than a majority of the unit owners is required to
 19 amend the bylaws except for amendments relating to age restrictions, pet restrictions, limitations
 20 on the number of persons who may occupy units and limitations on the rental or leasing of units.

21 (b) An amendment relating to a matter specified in paragraph (a) of this subsection is not ef-
 22 fective unless approved by at least 75 percent of the owners or a greater percentage specified in the
 23 bylaws.

24 (5) The bylaws may not be amended to limit or diminish any special declarant right without the
 25 consent of the declarant. However, the declarant may waive the declarant's right of consent.

26 (6)(a) For five years after the recording of the initial bylaws, before any amended bylaw may
 27 be recorded, the amended bylaw must be approved by the **Director of the Real Estate** [*Commis-*
 28 *sioner*] **Agency**. The [*commissioner*] **director** shall approve such amendment if the requirements of
 29 ORS 100.415 and this section have been satisfied.

30 (b) The approval by the [*commissioner*] **director** under paragraph (a) of this subsection is not
 31 required for bylaws restated under subsection (10) of this section unless the bylaws are restated
 32 during the five-year period after the recording of the initial bylaws.

33 (7) Before the [*commissioner*] **director** approves amended bylaws or restated bylaws under this
 34 section, the person submitting the amended bylaws or restated bylaws shall pay to the
 35 [*commissioner*] **Real Estate Agency** the fee provided by ORS 100.670.

36 (8) Notwithstanding a provision in the bylaws, including bylaws adopted prior to July 14, 2003,
 37 that requires an amendment to be executed, or executed and acknowledged, by all owners approving
 38 the amendment, amendments to the bylaws under this section become effective after approval by the
 39 owners if executed and certified on behalf of the association by the chairperson and secretary in
 40 accordance with subsection (3)(b) of this section.

41 (9) An amendment to the bylaws must be conclusively presumed to have been regularly adopted
 42 in compliance with all applicable procedures relating to the amendment unless an action is brought
 43 within one year after the effective date of the amendment or the face of the amendment indicates
 44 that the amendment received the approval of fewer votes than required for the approval. Nothing
 45 in this subsection prevents the further amendment of an amended bylaw.

1 (10)(a) The board of directors, by resolution and without the further approval of unit owners,
2 may cause restated bylaws to be prepared and recorded to codify individual amendments that have
3 been adopted in accordance with this section.

4 (b) Bylaws restated under this subsection must:

5 (A) Include all previously adopted amendments that are in effect, state that the amendments
6 were approved by the [commissioner] **director** as required under this section and state that no other
7 changes were made except, if applicable, to correct scriveners' errors or to conform format and
8 style;

9 (B) Include a statement that the board of directors has adopted a resolution in accordance with
10 paragraph (a) of this subsection and is causing the bylaws to be restated and recorded under this
11 subsection;

12 (C) Include a reference to the recording index numbers and date of recording of the initial by-
13 laws and all previously recorded amendments that are in effect and are being codified;

14 (D) Include a certification by the chairperson and secretary of the association that the restated
15 bylaws include all previously adopted amendments that are in effect, that amendments were ap-
16 proved by the [commissioner] **director** if required under this section and that no other changes were
17 made except, if applicable, to correct scriveners' errors or to conform format and style;

18 (E) Be executed and acknowledged by the chairperson and secretary of the association and re-
19 corded in the deed records of each county in which the condominium is located; and

20 (F) If required under subsection (6) of this section, be approved by the [commissioner] **director**.

21 (c) The board of directors shall cause a copy of the recorded restated bylaws, including the re-
22 cording information, to be filed with the [commissioner] **Real Estate Agency**.

23 **SECTION 125.** ORS 100.635 is amended to read:

24 100.635. Except as provided by ORS 100.660 and 100.665, prior to negotiating within this state
25 for the sale of a condominium unit located in another state, or prior to the sale of any condominium
26 unit located within this state, the developer shall file the following information with the Real Estate
27 [Commissioner] **Agency**:

28 (1) General information on the condominium, including:

29 (a) The name and address of the condominium and the county in which the condominium is lo-
30 cated; and

31 (b) The name, address and telephone number of the developer.

32 (2) Two copies of the disclosure statement for the condominium prepared in accordance with
33 ORS 100.655.

34 (3) The documents for and other information on the condominium as required by ORS 100.640.

35 (4) The filing shall be accompanied by a fee as provided in ORS 100.670.

36 **SECTION 126.** ORS 100.640 is amended to read:

37 100.640. The following documents and information shall be submitted to the Real Estate [Com-
38 missioner] **Agency** as part of the filing required under ORS 100.635:

39 (1) A copy of the proposed or recorded declaration or supplemental declaration of condominium
40 ownership drawn in conformance with ORS 100.105 or 100.120, or the law applicable in the state
41 where the condominium was created;

42 (2) A copy of the proposed or recorded bylaws drawn in conformance with ORS 100.415 or the
43 law applicable in the state where the condominium was created;

44 (3) A copy of the full size plat prepared in conformance with ORS 100.115 (2) or the law appli-
45 cable in the state where the condominium was created, or a copy of the site plan;

1 (4) A statement from the county assessor or county surveyor that the name for the condominium
2 is acceptable under ORS 100.105 (6);

3 (5) A copy of a preliminary title report, title insurance policy or condominium guarantee that
4 has been issued within the preceding 30 days, including a map showing the location of property de-
5 scribed in the report, policy or guarantee or other evidence of title satisfactory to the
6 [commissioner] **Director of the Real Estate Agency**;

7 (6) A copy of all restrictive covenants, reservations or other documents that may create an
8 encumbrance on or limit the use of the property other than those restrictions contained in the
9 declaration or bylaws;

10 (7) A copy of the reserve study required by ORS 100.175 and other sources of information that
11 serve as a basis for calculating reserves in accordance with ORS 100.175 (3), unless the information
12 is contained in the disclosure statement;

13 (8) The following sample forms:

14 (a) Unit sales agreement, including the notice to purchaser of cancellation rights in accordance
15 with ORS 100.730 and 100.740, the statement required by ORS 93.040 (1) and any warranty required
16 under ORS 100.185; and

17 (b) A receipt for documents required under ORS 100.725;

18 (9) If required by ORS 100.680:

19 (a) A copy of the escrow agreement drawn in conformance with ORS 100.680 and executed by
20 both the declarant and the escrow agent. If individual escrow agreements or instructions are to be
21 executed by the purchaser, other than the standard escrow instruction required by the escrow agent,
22 submit sample form and a letter from the escrow agent, agreeing to the establishment of the escrows
23 and the procedure set forth in the sample form; and

24 (b) A unit sales agreement drawn in conformance with ORS 100.680;

25 (10) If any of the sales will be by means of an installment contract of sale:

26 (a) A copy of the escrow agreement or escrow instructions executed by the developer and the
27 escrow agent providing for the establishment of collection escrows and the deposit of documents in
28 accordance with ORS 100.720; and

29 (b) The proposed installment contract of sale form, if available;

30 (11) Any other documents by which the purchasers will be bound;

31 (12) Any report or disclosure statement issued for the condominium, by the federal government
32 and any other state; and

33 (13) A statement of any additional facts or information [which] **that** the developer desires to
34 submit to the [commissioner] **agency**.

35 **SECTION 127.** ORS 100.645 is amended to read:

36 100.645. (1) The information required by ORS 100.635 shall be kept current by the developer.
37 Any material change in the information furnished to the Real Estate [Commissioner] **Agency** shall
38 be reported by the developer within 10 days after the change occurs. The report shall be accompa-
39 nied by a filing fee as required by ORS 100.670.

40 (2) A developer shall be responsible for the accuracy of and for providing all information re-
41 quired by ORS 100.635 and any information required under this section for as long as the developer
42 retains any unsold interest in the condominium to which the information pertains.

43 **SECTION 128.** ORS 100.650 is amended to read:

44 100.650. (1) Every nonresident developer, at the time of filing the information required by ORS
45 100.635, shall also file with the **Director of the Real Estate [Commissioner] Agency** an irrevocable

1 consent that if, in any suit or action commenced against the nonresident developer in this state
 2 arising out of a violation of any provision of this chapter, personal service of summons or process
 3 upon the nonresident developer cannot be made in this state after the exercise of due diligence, a
 4 valid service may thereupon be made upon the nonresident developer by service on the [*commis-*
 5 *sioner*] **director**.

6 (2) The consent shall be in writing executed and verified by an officer of a corporation or as-
 7 sociation, a general partner of a partnership or by an individual developer and shall set forth:

8 (a) The name of the developer.

9 (b) The address to which documents served upon the [*commissioner*] **director** are to be for-
 10 warded.

11 (c) If the developer is a corporation or unincorporated association, that the consent signed by
 12 such officer was authorized by resolution duly adopted by the board of directors.

13 (3) The address for forwarding documents served under this section may be changed by filing a
 14 new consent in the form prescribed in subsection (2) of this section.

15 (4) Service **of process** on the [*commissioner of any such process*] **director** shall be made by de-
 16 livery to the [*commissioner*] **director** or a clerk on duty in any office of the [*commissioner*]
 17 **director**, duplicate copies of such process, with duplicate copies of any papers required by law to
 18 be delivered in connection with [*such*] **the** service.

19 (5) When the [*commissioner*] **director** is served with [*any such*] **the** process, the [*commissioner*]
 20 **director** shall immediately cause one of the copies[*thereof*], with any accompanying papers, to be
 21 forwarded by registered mail or by certified mail with return receipt to the developer at the address
 22 set forth in the consent.

23 (6) The [*commissioner*] **director** shall keep a record of all processes, notices and demands served
 24 upon the [*commissioner*] **director** under this section[,] and [*shall*] record [*therein*] the time of [*such*]
 25 service and the action [*with reference thereto*] **referenced in the service of process**.

26 **SECTION 129.** ORS 100.655 is amended to read:

27 100.655. (1) The disclosure statement submitted to the Real Estate [*Commissioner*] **Agency** as
 28 part of a filing under ORS 100.635 shall contain the following information:

29 (a) The name and address of the condominium, and the name, address and telephone number of
 30 the developer;

31 (b) A general narrative description of the condominium stating the total number of units, a de-
 32 scription of the types of units, the total number of units that may be included in the condominium
 33 pursuant to ORS 100.105 (2), and a precise statement of the nature of the interest which is being
 34 offered;

35 (c) If at the time of filing:

36 (A) The construction of the project is not completed, general disclosure of the status of con-
 37 struction and the actual or scheduled dates of completion of buildings, recreational facilities and
 38 other common elements, including a statement describing any recreational facilities or improvements
 39 to the common elements that the developer reserves the right to develop or promises to develop, or
 40 a statement that there are no such facilities or improvements; or

41 (B) The construction of the project is completed, the actual dates of completion of buildings,
 42 recreational facilities and other common elements if known by the developer;

43 (d) The nature and significant terms of any financing offered by the developer to purchasers of
 44 the condominium units;

45 (e) Copies of any warranties for structural elements and mechanical and other systems or a brief

1 description of such warranties;

2 (f)(A) A current or projected budget of the association of unit owners for the operation and
 3 maintenance and any other common expenses of the condominium, including an amount for a subsidy
 4 of the association by the declarant, if any, by a contribution of funds, goods or services;

5 (B) A brief statement of the method of determining liability for common expenses and the right
 6 to common profits; and

7 (C) The following notice in at least 12-point type that is either all capitals or boldface:

8
 9
 10 **NOTICE TO PROSPECTIVE PURCHASERS**

11
 12 **THE PROJECTION OF THE BUDGET OF THE ASSOCIATION OF UNIT OWNERS FOR THE**
 13 **OPERATION AND MAINTENANCE AND OTHER COMMON EXPENSES OF THE CONDOMIN-**
 14 **IUM IS ONLY AN ESTIMATE, PREPARED WITH DUE CARE.**

15
 16
 17 (g) If a provision for reserves under ORS 100.175 is included in the budget disclosed under par-
 18 agraph (f) of this subsection:

19 (A) A statement identifying the information constituting the basis for the reserve assessment
 20 under ORS 100.175 (3)(b); and

21 (B) A statement that the information constituting the basis for the reserve assessment identified
 22 under ORS 100.175 (3)(b) is available for review upon written request to the declarant or the desig-
 23 nated person, unless included in the disclosure statement;

24 (h) In the case of a conversion condominium, a statement of:

25 (A) The present condition of all structural components and major mechanical and utility instal-
 26 lations in the condominium, including the approximate date of construction and a reasonable esti-
 27 mate of the remaining useful life of, at a minimum, the roof, siding, plumbing, electrical, HVAC
 28 system, asphalt, sidewalks and decks;

29 (B) Whether or not the assessment of conditions under subparagraph (A) of this paragraph,
 30 which shall be in at least 12-point type that is all capitals or boldface, was prepared by a licensed
 31 engineer, architect or home inspector; and

32 (C) The statutory procedure required to create a conversion condominium;

33 (i) A cross-reference to the portions of the declaration, any supplemental declaration and bylaws
 34 containing the general power and authority of the board of directors, the method of apportionment
 35 of voting rights among the members of the association of unit owners and a statement of the nature
 36 and extent of control of the board of directors retained by the developer by voting rights or other-
 37 wise;

38 (j) A list of the documents by which purchasers may be bound, including the declaration, bylaws,
 39 ground leases, management agreement, easements, covenants, restrictions and conditions;

40 (k) A statement of whether there are any restrictions on alienation of units or any use or oc-
 41 cupancy restrictions, such as limitations on residential or commercial use, pets, age of occupants
 42 or number of occupants, and a cross-reference to those portions of the declaration, any supplemental
 43 declaration, bylaws or any other document containing the principal provisions relating to those re-
 44 strictions; and

45 (L) If the condominium is a staged condominium:

1 (A) Whether the declarant reserves the right to annex additional property to the condominium
 2 pursuant to ORS 100.125 and, if so:

3 (i) The maximum number of units;

4 (ii) The date after which annexation right terminates;

5 (iii) The description of additional common elements declarant reserves right to annex to the
 6 property and whether such common elements might substantially increase the proportionate amount
 7 of common expenses by current unit owners; and

8 (iv) The effect of annexation of additional units on allocation of interest in the common elements
 9 and voting rights.

10 (B) If the condominium or any stage being filed under ORS 100.635 contains or may contain any
 11 variable property, a statement of the rights reserved by the declarant under ORS 100.150 (1) and the
 12 results specified in ORS 100.155 if such rights are not exercised.

13 (2) In lieu of the disclosure statement required under subsection (1) of this section, the [*com-*
 14 *missioner*] **agency** may accept a disclosure report issued or approved by another state or govern-
 15 mental agency.

16 (3) No disclosure statement is required for condominiums described in ORS 100.660.

17 (4) The declarant is not liable to the association or the owners with respect to a statement of
 18 condition or estimate of useful life contained in the disclosure statement if:

19 (a) The declarant did not have actual knowledge of any inaccuracies in the statement at the
 20 time of delivery of the disclosure statement to the purchaser; and

21 (b) The declarant relied upon reports prepared by licensed engineers or architects in making the
 22 statement or, if the condominium has four or fewer units, reports prepared by licensed engineers,
 23 architects or home inspectors.

24 **SECTION 130.** ORS 100.660 is amended to read:

25 100.660. A developer of a condominium located in this state, that consists exclusively of units
 26 to be used for nonresidential purposes or that consists of units to be offered for sale as a security
 27 under ORS 59.005 to 59.451, 59.660 to 59.830, 59.991 and 59.995, shall submit to the Real Estate
 28 [*Commissioner*] **Agency** a filing that consists of:

29 (1) General information on the condominium including:

30 (a) The name and address of the condominium and the county in which the condominium is lo-
 31 cated; and

32 (b) The name, address and telephone number of the developer and any agent of the developer;
 33 and

34 (2) The following documentation:

35 (a) The original executed declaration or supplemental declaration and a copy [*thereof*], drawn in
 36 conformance with ORS 100.105 and 100.120, if applicable;

37 (b) The original executed bylaws, and a copy thereof, drawn in conformance with ORS 100.415;

38 (c) A copy of the full size plat prepared in conformance with ORS 100.115;

39 (d) A copy of a current preliminary title report or title insurance policy or condominium guar-
 40 antee that has been issued within the preceding 30 days, including a map showing the location of
 41 property described therein, or other evidence of title satisfactory to the [*commissioner*] **Director**
 42 **of the Real Estate Agency**;

43 (e) A copy of all restrictive covenants, reservations or other documents containing provisions
 44 that may create an encumbrance on or limit the use of the property other than those restrictions
 45 contained in the declaration, supplemental declaration or bylaws; and

1 (f) A statement from the county assessor that the name for the condominium is acceptable under
2 ORS 100.105 (5).

3 **SECTION 131.** ORS 100.665 is amended to read:

4 100.665. A vendor under a land sale contract, a mortgagee of a mortgage or a beneficiary of a
5 trust deed who becomes a developer by reason of acquiring a unit or units in a condominium
6 through foreclosure of its lien or acceptance of a deed in lieu thereof, is not required to submit a
7 filing to the Real Estate [*Commissioner*] **Agency** under ORS 100.635, or to distribute a disclosure
8 statement under ORS 100.705 or provide the notice to purchaser required under ORS 100.740 if the
9 vendor, mortgagee or beneficiary sells, in a single sale, all of the units so acquired to a developer
10 who agrees to comply with the provisions of ORS 100.635 and 100.705 before negotiating a sale of
11 the unit or units to others.

12 **SECTION 132.** ORS 100.670 is amended to read:

13 100.670. (1) A developer or other person required to file materials or information with the Real
14 Estate [*Commissioner*] **Agency** under ORS 100.005 to 100.910 shall pay to the [*commissioner*] **agency**
15 a fee as required under subsections (2) and (3) of this section for the review, approval and handling
16 of the filings by the [*commissioner*] **agency** at the time of the initial filing with the [*commissioner*]
17 **agency**.

18 (2) A fee charged by the [*commissioner*] **agency** under subsection (1) of this section shall be
19 determined by the [*commissioner*] **Director of the Real Estate Agency** to cover the costs of the
20 [*commissioner's*] **agency's** review, approval or revision activity. The fee shall be based upon an
21 hourly rate that is subject to prior approval of the Oregon Department of Administrative Services
22 and a report to the Emergency Board prior to adopting the fee and shall be within the budget au-
23 thorized by the Legislative Assembly as that budget may be modified by the Emergency Board.

24 (3) The [*commissioner*] **agency** shall collect a deposit of \$100 from a developer at the time of
25 submitting a filing described in subsection (1) of this section. The amount of the deposit shall be
26 deducted from the final fee computed as provided in subsection (2) of this section.

27 **SECTION 133.** ORS 100.675 is amended to read:

28 100.675. (1)(a) Upon receipt of an informational filing, submitted as required under ORS 100.005
29 to 100.910 and the prescribed filing fee, within five working days after receipt of the filing the Real
30 Estate [*Commissioner*] **Agency** shall inventory the filing and acknowledge whether the filing con-
31 tains all required documents and information. If the filing contains all required documents and in-
32 formation, the [*commissioner*] **agency** shall issue a notice acknowledging their receipt.

33 (b) If the filing under paragraph (a) of this subsection does not contain the required documents
34 and information, the [*commissioner*] **agency** shall issue a notice of receipt of a partial filing, a
35 statement itemizing the required documents and information that must be submitted, and a statement
36 that the filing will not be acknowledged as containing all required documents and information until
37 the itemized documents and information have been received and inventoried by the [*commissioner*]
38 **agency**.

39 (c) Within 45 days from the date that the filing has been inventoried and acknowledged as con-
40 taining all the required documents and information, the [*commissioner*] **agency** shall review the fil-
41 ing to determine whether the documents and information submitted conform to the statutory
42 requirements of ORS 100.005 to 100.910 and, upon determination of their conformity shall adopt and
43 issue the disclosure statement filed under ORS 100.655.

44 (2) For any document filed with the [*commissioner*] **agency** that requires the [*commissioner's*]
45 **agency's** approval under ORS 100.005 to 100.910, the [*commissioner*] **agency** shall issue a notice of

1 receipt for the filing within five days following receipt by the [commissioner] **agency** of the docu-
 2 ment. The document shall be considered approved by the [commissioner] **agency** on the expiration
 3 of 45 days following issuance by the [commissioner] **agency** of the notice of receipt, unless within
 4 the 45-day period:

5 (a) The [commissioner] **agency** notifies the person making the filing in writing of the portions
 6 of the document that do not comply with the applicable requirements of ORS 100.005 to 100.910; or

7 (b) The [commissioner] **agency** notifies the person making the filing in writing that the document
 8 complies with the applicable requirements of ORS 100.005 to 100.910 and is approved.

9 **SECTION 134.** ORS 100.680 is amended to read:

10 100.680. (1) Unless the developer of a condominium has complied with subsections (2) and (3) of
 11 this section, the developer and a purchaser may not enter into a unit sales agreement before the
 12 recording of the declaration or supplemental declaration and plat under ORS 100.115 or, if the con-
 13 dominium is located outside of this state, before the condominium has been created under the laws
 14 of the jurisdiction within which the condominium is located.

15 (2) Any purchaser's funds, the unit sales agreement, any notes or security documents and any
 16 loan commitments shall be placed in an escrow located within this state with a person or firm au-
 17 thorized under ORS 696.505 to 696.582. The escrow instructions may not allow distribution of the
 18 purchaser's funds until the declaration or any applicable supplemental declaration is recorded and
 19 the legal title or other interest bargained for has been transferred to the purchaser as provided in
 20 the unit sales agreement. If any funds of the purchaser are invested, the funds shall be invested in
 21 federally insured accounts or other investments approved by the **Director of the Real Estate**
 22 **[Commissioner] Agency**. If the developer defaults under the unit sales agreement, the purchaser's
 23 funds held in escrow and all income earned from investment of the funds held in escrow shall be
 24 returned.

25 (3) A unit sales agreement shall contain:

26 (a) The unit designation;

27 (b) The full amount of the purchase price, including the amount and form of earnest money paid
 28 by the purchaser;

29 (c) The name and address of the escrow agent to hold the purchaser's funds and a reference to
 30 the escrow instructions controlling the escrow;

31 (d) If the purchaser's funds are to be invested, the name of the financial institution where the
 32 funds will be deposited and to whom any interest earnings will accrue under all possible circum-
 33 stances;

34 (e) The date of closing with any conditions and requirements of closing;

35 (f) The closing procedure;

36 (g) Any authority of the developer to terminate the sale and, in the case of termination, any
 37 forfeiture provisions;

38 (h) If the developer specifies any contingency, the date other than closing when all purchaser's
 39 funds and interest earnings will be returned to the purchaser if the contingency is not met;

40 (i) Provision that the purchaser will recover any funds paid to the developer and any interest
 41 earnings upon default by the developer;

42 (j) Any rights reserved by the developer to modify the declaration, any supplemental declaration,
 43 bylaws, plat or other documents by which the purchaser is or will be bound;

44 (k) Notice to the purchaser of cancellation rights under ORS 100.730 and 100.740;

45 (L) For the sale of newly constructed units, any express warranty required under ORS 100.185;

1 and

2 (m) Any other provisions deemed necessary by the developer and purchaser.

3 (4) In lieu of the requirements of subsection (2) of this section, the *[commissioner]* **director** may
4 approve *[any]* **an** alternative requirement or method *[which the commissioner finds will assure]* **that**
5 **the director finds will ensure** the same protection to the purchaser as the protection provided by
6 the escrow.

7 **SECTION 135.** ORS 100.700 is amended to read:

8 100.700. The Real Estate *[Commissioner]* **Agency** may make an on-site inspection of any condo-
9 minium and require a report of the *[commissioner's]* **agency's** findings from *[such]* **the** inspection to
10 be included in the disclosure statement for use in the sale of the condominium.

11 **SECTION 136.** ORS 100.705 is amended to read:

12 100.705. (1) Except as provided in ORS 100.665, *[no]* **a** developer or agent of a developer *[shall]*
13 **may not** enter into a unit sales agreement prior to the issuance of the disclosure statement for the
14 condominium.

15 (2) A copy of the disclosure statement for a condominium shall be given to the prospective
16 purchaser of a unit in the condominium by the developer or an agent of the developer, not later than
17 the date the unit sales agreement is fully executed by all parties. The developer shall take a receipt
18 from the prospective purchaser upon delivery of a copy of the disclosure statement, and such re-
19 cepts shall be kept on file within this state in the possession of the developer or the agent of the
20 developer subject to inspection by the Real Estate *[Commissioner]* **Agency** for a period of three
21 years from the date the receipt is taken.

22 (3) The disclosure statement shall not be used for advertising purposes unless it is used in its
23 entirety. No portion of the disclosure statement shall be underscored, highlighted, italicized or
24 printed in larger or heavier type than the balance of the statement unless the true copy of the
25 statement so emphasizes such portion.

26 (4) The *[commissioner]* **agency** may furnish at cost copies of the disclosure statement for the use
27 of developers.

28 (5) Violations of this section shall be subject to the provisions of ORS 646.605 to 646.656, in
29 addition to other sanctions provided by law.

30 **SECTION 137.** ORS 100.710 is amended to read:

31 100.710. When an on-site inspection under ORS 100.700 is to be made of a condominium situated
32 in the State of Oregon, or situated outside the state *[which]* **that** will be offered for sale within this
33 state, the Real Estate *[Commissioner]* **Agency**, in addition to the fee provided in ORS 100.670, may
34 require the developer to advance a deposit. *[Such]* **The** deposits shall not exceed \$200 per day for
35 making the on-site inspection. Any unexpended portion of the deposit shall be refunded to the de-
36 veloper.

37 **SECTION 138.** ORS 100.720 is amended to read:

38 100.720. (1) *[No]* **A** condominium unit *[shall]* **may not** be sold by a developer by means of a land
39 sale contract unless a collection escrow is established within this state with a person or firm au-
40 thorized to receive escrows under the laws of this state and all of the following are deposited in the
41 escrow:

42 (a) A copy of the title report or abstract, as it relates to the property being sold.

43 (b) The original sales document or a true copy thereof relating to the purchase of the condo-
44 minium unit.

45 (c) A commitment to give a partial release for the condominium unit being sold from the terms

1 and provisions of any blanket encumbrance. The commitment shall be in a form satisfactory to the
 2 **Director of the Real Estate [Commissioner] Agency.**

3 (d) A document in good and sufficient form transferring the interest purchased.

4 (2) The developer shall submit written authorization allowing the [commissioner] **director** to
 5 inspect all escrow deposits established pursuant to subsection (1) of this section.

6 (3) In lieu of the procedures provided in subsection (1) of this section, the developer shall con-
 7 form to [such] **the** alternative requirement or method [which the commissioner may deem] **that the**
 8 **director deems** acceptable to carry into effect the intent and provisions of this section.

9 **SECTION 139.** ORS 100.725 is amended to read:

10 100.725. (1) Before the unit sales agreement is fully executed by all parties, the developer shall
 11 deliver to the purchaser a copy of the declaration and bylaws of the condominium and any supple-
 12 ments and amendments thereto affecting the unit.

13 (2) When the unit sales agreement is fully executed by all parties, the developer shall deliver
 14 to the purchaser a copy of the fully executed agreement which contains the "Notice to Purchaser"
 15 required by ORS 100.740.

16 (3) The developer shall deliver to the purchaser prior to the conveyance of the unit by deed,
 17 lease or contract any ground leases, leases with the association for recreation or parking facilities
 18 and escrow instructions applying to the transaction.

19 (4) The developer shall take a receipt from the purchaser upon the delivery of the documents
 20 referred to in subsection (1) of this section, and such receipts shall be kept on file within this state
 21 by the developer or the agent of the developer subject to inspection by the Real Estate [Commis-
 22 sioner] **Agency** for a period of three years from the date the receipt is taken.

23 **SECTION 140.** ORS 100.740 is amended to read:

24 100.740. (1) Subject to ORS 100.730 (8), a unit sales agreement shall contain, either upon the first
 25 page or upon a separate sheet attached to such first page, the following notice in at least 12-point
 26 type that is all capitals or boldface:

27
 28
 29 **NOTICE TO PURCHASER**

30
 31 **(RIGHT OF CANCELLATION)**

32
 33 **BY SIGNING A UNIT SALES AGREEMENT YOU ARE INCURRING A CONTRACTUAL OB-**
 34 **LIGATION TO PURCHASE AN INTEREST IN A CONDOMINIUM. HOWEVER, YOU HAVE THE**
 35 **RIGHT TO CANCEL THIS AGREEMENT FOR ANY REASON FOR FIVE BUSINESS DAYS (EX-**
 36 **CLUDING SATURDAYS AND HOLIDAYS) AFTER WHICHEVER OF THE FOLLOWING IS LAST**
 37 **TO OCCUR:**

38
 39 **(1) SIGNING BY THE PURCHASER OF THE UNIT SALES AGREEMENT;**

40
 41 **(2) SIGNING BY THE PURCHASER OF THE RECEIPT FOR THE DISCLOSURE STATEMENT,**
 42 **IF ANY; OR**

43
 44 **(3) SIGNING BY THE PURCHASER OF THE RECEIPT FOR A COPY OF THE CONDOMIN-**
 45 **IUM DECLARATION AND BYLAWS AND ANY AMENDMENTS OR SUPPLEMENTS THERETO**

1 AFFECTING THE UNIT.

2

3

4 TO CANCEL THIS AGREEMENT, YOU MUST GIVE WRITTEN NOTICE TO THE DEVELOPER
5 OR THE AGENT OF THE DEVELOPER AT THE FOLLOWING ADDRESS:

6

7

8

9

10

11

12

(SUGGESTED PROCEDURE)

13

14
15 BEFORE EXECUTING THIS AGREEMENT, OR BEFORE THE CANCELLATION PERIOD
16 ENDS, YOU SHOULD DO THE FOLLOWING:

17

18 (1) CAREFULLY EXAMINE THE DISCLOSURE STATEMENT, IF ANY, ISSUED BY THE
19 REAL ESTATE [COMMISSIONER] AGENCY ON THE CONDOMINIUM AND ALL ACCOMPA-
20 NYING INFORMATION DELIVERED BY THE DEVELOPER. OREGON LAW REQUIRES THE
21 DEVELOPER TO DELIVER TO YOU A COPY OF THE DECLARATION AND BYLAWS OF THE
22 CONDOMINIUM AND ANY SUPPLEMENTS AND AMENDMENTS THERETO AFFECTING THE
23 UNIT PRIOR TO THE TIME THE UNIT SALES AGREEMENT IS FULLY EXECUTED BY ALL
24 PARTIES. A COPY OF THE DECLARATION AND BYLAWS, AND ANY SUPPLEMENTS AND
25 AMENDMENTS THERETO, ARE AVAILABLE FROM THE ASSOCIATION FOR EXAMINATION
26 AND DUPLICATION, AT A REASONABLE FEE, UPON YOUR WRITTEN REQUEST.

27

28 (2) INQUIRE OF YOUR LENDER WHETHER YOU CAN GET ADEQUATE FINANCING ON
29 AN ACCEPTABLE BASIS.

30

31 (3) INQUIRE OF THE DEVELOPER AND THE LENDER WHAT THE AMOUNT OF THE
32 CLOSING COSTS WILL BE.

33

34

35 OREGON LAW REQUIRES THAT YOU IMMEDIATELY BE GIVEN A COPY OF THIS NOTICE
36 AND A COPY OF THE UNIT SALES AGREEMENT WHEN IT HAS BEEN FULLY EXECUTED
37 BY ALL PARTIES.

38

39

40
41 (2) Except as provided in ORS 100.665, a copy of the notice set forth in subsection (1) of this
42 section shall be given to each purchaser at the time of or immediately following the purchaser's
43 signing of the unit sales agreement, for the use of the purchaser.

44

SECTION 141. ORS 100.750 is amended to read:

45

100.750. Records of the sale of any condominium unit shall be subject to inspection by the Real

1 Estate [*Commissioner*] **Agency** and shall be made available to the [*commissioner*] **agency** in Oregon
 2 at the request of the [*commissioner*] **agency**.

3 **SECTION 142.** ORS 100.770 is amended to read:

4 100.770. [*No*] **A** developer or agent of a developer [*shall*] **may not**, in connection with the sale
 5 of a condominium unit, directly or indirectly:

6 (1) Employ any device, scheme or artifice to defraud;

7 (2) Make any untrue statement of a material fact or fail to state a material fact necessary to
 8 make the statement made, in the light of the circumstances under which it is made, not misleading;

9 (3) Engage in any act, practice or course of business which operates or would operate as a fraud
 10 or deception upon any person;

11 (4) Issue, circulate or publish any prospectus, circular, advertisement, printed matter, document,
 12 pamphlet, leaflet or other literature, including a public report issued pursuant to ORS 100.700, which
 13 contains an untrue statement of a material fact or fails to state a material fact necessary in order
 14 to make the statements therein made, in the light of the circumstances under which they are made,
 15 not misleading;

16 (5) Issue, circulate or publish any advertising matter or make any written representation, in-
 17 cluding a public report issued pursuant to ORS 100.700, unless the name of the person issuing, cir-
 18 culating or publishing the matter or making the representation is clearly indicated; or

19 (6) Make any statement or representation, or issue, circulate or publish any advertising matter
 20 containing any statement to the effect that the condominium has been in any way approved or
 21 [*indorsed*] **endorsed** by the Real Estate [*Commissioner*] **Agency**.

22 **SECTION 143.** ORS 100.785 is amended to read:

23 100.785. (1) Subject to the provisions of ORS 100.720, a condominium unit may not be conveyed
 24 by a developer subject to a blanket encumbrance.

25 (2) Notwithstanding subsection (1) of this section, the developer shall conform to an alternative
 26 requirement or method [*which*] **that the Director of** the Real Estate [*Commissioner may deem*]
 27 **Agency deems** acceptable to afford a purchaser the protection provided by the prohibition in sub-
 28 section (1) of this section.

29 **SECTION 144.** ORS 100.900 is amended to read:

30 100.900. (1) In addition to any other penalties provided by law, the Real Estate [*Commissioner*]
 31 **Agency** may impose a civil penalty for violation of the provisions of ORS 100.015, 100.635 to 100.730
 32 and 100.740 to 100.780 or any of the rules adopted thereunder. [*No*] **A** civil penalty [*shall*] **may not**
 33 exceed \$1,000 per violation.

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

35 (3) All penalties recovered shall be paid into the State Treasury and credited to the General
 36 Fund.

37 **SECTION 145.** ORS 100.905 is amended to read:

38 100.905. (1) [*Whenever*] **If the Director of** the Real Estate [*Commissioner*] **Agency** finds that any
 39 developer or other person is violating any of the provisions of ORS 100.015, 100.635 to 100.730 and
 40 100.740 to 100.780 or the rules adopted thereunder or of the alternative requirements of the [*com-*
 41 *missioner*] **director** prescribed pursuant to ORS 100.720 (3), the [*commissioner*] **director** may order
 42 the persons to desist and refrain from violating [*such*] **the** provisions or requirements, or from the
 43 further sale of condominium units.

44 (2) [*Whenever the commissioner*] **If the director** finds that any developer or other person is vi-
 45 olating, or has violated or is about to violate, any of the provisions of ORS 100.015, 100.635 to

1 100.730 and 100.740 to 100.780 or the rules adopted thereunder or the alternative requirements of
2 the [commissioner] **director** prescribed pursuant to ORS 100.720 (3), the [commissioner] **director** may
3 bring proceedings in the circuit court within the county in which the violation or threatened vio-
4 lation has occurred or is about to occur, or in the county where such person, firm or corporation
5 resides or carries on business, in the name of and on behalf of the people of the State of Oregon
6 against such person, firm or corporation, and any other person or persons concerned in or in any
7 way participating or about to participate in such violation, to enjoin such person, firm or corpo-
8 ration or any other person from continuing such violation or engaging therein or doing any act or
9 acts in furtherance thereof, and to apply for the appointment of a receiver or conservator of the
10 assets of the defendant where such appointment is appropriate.

11 **SECTION 146.** ORS 100.990 is amended to read:

12 100.990. Subject to ORS 153.022, any person who violates any of the provisions of ORS 100.015,
13 100.635 to 100.730 and 100.740 to 100.780 or any rules adopted thereunder or [any] alternative re-
14 quirements of the **Director of the Real Estate [Commissioner] Agency** prescribed pursuant to ORS
15 100.720 (3), shall be punished by a fine not exceeding \$10,000, or by imprisonment in the custody of
16 the Department of Corrections for a period not exceeding three years, or in the county jail not ex-
17 ceeding one year, or by both [such] fine and imprisonment.

18 **SECTION 147.** **ORS 696.385 is repealed.**

19
