

# Senate Bill 449

Sponsored by Senator METSGER

## 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**.

Removes tenancy in common or other undivided estate from definition of "security" when interests are owned by at least two but not more than 35 owners and when management agreement for rental real property subject to ownership interests contains certain terms.

## A BILL FOR AN ACT

1  
2 Relating to real estate; creating new provisions; and amending ORS 59.015 and 696.010.

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

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

5 696.010. As used in ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and  
6 696.995, unless the context requires otherwise:

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

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

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

14 (4)(a) "Branch office" means a business location other than the main office designated under  
15 ORS 696.200 (1), where professional real estate activity is regularly conducted or which is advertised  
16 to the public as a place where such business may be regularly conducted.

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

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

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

26 (7) "Competitive market analysis" means a method or process used by a real estate licensee in  
27 pursuing a listing agreement or in formulating an offer to acquire real estate in a transaction for  
28 the sale, lease, lease-option or exchange of real estate. The objective of competitive market analysis  
29 is a recommended listing, selling or purchase price or a lease or rental consideration. A competitive  
30 market analysis may be expressed as an opinion of the value of the real estate in a contemplated  
31 transaction. Competitive market analysis may include but is not limited to an analysis of market

**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 conditions, public records, past transactions and current listings of real estate.

2 (8) "Letter opinion" means a document that expresses a real estate licensee's conclusion re-  
3 garding a recommended listing, selling or purchase price or a rental or lease consideration of cer-  
4 tain real estate and that results from the licensee's competitive market analysis. The commissioner  
5 by rule shall specify the minimum contents of a letter opinion, including but not limited to the dis-  
6 tinction between a letter opinion and a real estate appraisal.

7 (9) "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 (10) "Principal real estate broker" means an individual who is licensed as a principal real estate  
37 broker and who employs, engages or supervises another real estate licensee.

38 (11) "Professional real estate activity" means any of the following actions, when engaged in for  
39 another and for compensation or with the intention or in the expectation or upon the promise of  
40 receiving or collecting compensation, by any person who:

41 (a) Sells, exchanges, purchases, rents or leases real estate.

42 (b) Offers to sell, exchange, purchase, rent or lease real estate.

43 (c) Negotiates, offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or  
44 leasing of real estate.

45 (d) Lists, offers, attempts or agrees to list real estate for sale.

1 (e) Offers, attempts or agrees to perform or provide a competitive market analysis or letter  
 2 opinion, to represent a taxpayer under ORS 305.230 or 309.100 or to give an opinion in any admin-  
 3 istrative or judicial proceeding regarding the value of real estate for taxation. Such activity per-  
 4 formed by a state certified appraiser or state licensed appraiser is not professional real estate  
 5 activity.

6 (f) Auctions, offers, attempts or agrees to auction real estate.

7 (g) Buys, sells, offers to buy or sell or otherwise deals in options on real estate.

8 (h) Engages in management of rental real estate.

9 (i) Purports to be engaged in the business of buying, selling, exchanging, renting or leasing real  
 10 estate.

11 (j) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange,  
 12 leasing or rental of real estate.

13 (k) Assists or directs in the negotiation or closing of any transaction calculated or intended to  
 14 result in the sale, exchange, leasing or rental of real estate.

15 (L) Except as otherwise provided in ORS 696.030 (1)(L), advises, counsels, consults or analyzes  
 16 in connection with real estate values, sales or dispositions, including dispositions through eminent  
 17 domain procedures.

18 (m) Advises, counsels, consults or analyzes in connection with the acquisition or sale of real  
 19 estate by an entity if the purpose of the entity is investment in real estate.

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

21 (12) “Real estate” *[includes]* **means:**

22 (a) Leaseholds and licenses to use including, but not limited to, timeshare estates and timeshare  
 23 licenses as defined in ORS 94.803[ *as well as any and every*];

24 (b) **An ownership interest in real property when:**

25 (A) **The interest is a tenancy in common or other undivided estate, including but not**  
 26 **limited to a fee or life estate;**

27 (B) **Interests in the real property are owned by at least two but not more than 35 owners;**  
 28 **and**

29 (C) **An agreement, if any, for the management of rental real property subject to the in-**  
 30 **terests, including an agreement for the management of a master lease that governs leases**  
 31 **or subleases, permits a majority of owners of the interests not to renew the agreement at**  
 32 **the end of the term of the agreement or to terminate the agreement after giving 180 days’**  
 33 **notice of termination; and**

34 (c) **Any other** interest or estate in real property, whether corporeal or incorporeal, whether  
 35 freehold or nonfreehold, whether held separately or in common with others and whether the real  
 36 property is situated in this state or elsewhere.

37 (13) “Real estate broker” means a person who engages in professional real estate activity and  
 38 who is licensed as a real estate broker.

39 (14) “Real estate licensee” means a real estate broker, principal real estate broker or real estate  
 40 property manager.

41 (15) “Real estate property manager” means a real estate licensee who is authorized to engage  
 42 in management of rental real estate.

43 (16) “Registered business name” means a name registered with the Real Estate Agency under  
 44 which the person registering the name engages in professional real estate activity.

45 (17) “Sole practitioner” means a real estate broker conducting professional real estate activity

1 not in conjunction with other real estate brokers or principal real estate brokers.

2 **SECTION 2.** ORS 59.015 is amended to read:

3 59.015. As used in the Oregon Securities Law, unless the context otherwise requires:

4 (1) "Broker-dealer" means a person who engages, all or part of the time, in effecting trans-  
5 actions in securities for the account of others or for the person's own account. "Broker-dealer" does  
6 not include:

7 (a) An issuer effecting sales in its own securities;

8 (b) The following institutions:

9 (A) A financial institution or trust company, as defined in ORS 706.008; or

10 (B) A financial holding company or a bank holding company, as defined in ORS 706.008, holding  
11 an institution described in subparagraph (A) of this paragraph; a savings and loan holding company  
12 as defined in section 408 of the National Housing Act, 12 U.S.C. section 1730a, holding an associ-  
13 ation described in subparagraph (A) of this paragraph; the subsidiaries and affiliates of the financial  
14 holding company, bank holding company or savings and loan holding company; or subsidiaries and  
15 affiliates of institutions described in subparagraph (A) of this paragraph, if the appropriate statutory  
16 regulatory authority is exercising control over, or is regulating or supervising the person in the sale  
17 of securities in accord with the purposes of the Oregon Securities Law;

18 (c) A person who has no place of business in this state effecting transactions in this state ex-  
19 clusively with broker-dealers;

20 (d) A person effecting sales exempted by ORS 59.035;

21 (e) A salesperson;

22 (f) A person effecting sales of securities owned by the person registered for sale pursuant to  
23 ORS 59.065;

24 (g) A person effecting sales of securities exempted by ORS 59.025 (7);

25 (h) A person licensed as a mortgage banker or a mortgage broker under ORS 59.840 to 59.980  
26 when effecting sales of securities involving real estate paper registered for sale pursuant to ORS  
27 59.065; or

28 (i) A person designated by rule or order by the director.

29 (2) "Control" means the possession, directly or indirectly, of the power to direct or cause the  
30 direction of the management and policies of a person, whether through the ownership of voting se-  
31 curities, by contract, or otherwise.

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

33 (4) "Federal covered investment adviser" means a person who is registered as an investment  
34 adviser pursuant to section 203 of the Investment Advisers Act of 1940, as amended.

35 (5) "Federal covered security" means any security that is a covered security under section 18  
36 of the Securities Act of 1933, as amended, and for which such Act provides that the director may  
37 require filing of a notice and payment of a fee.

38 (6) "Fraud," "deceit" and "defraud" are not limited to common-law deceit.

39 (7) "Guaranteed" means guaranteed as to payment of principal, interest or dividends.

40 (8)(a) "Investment adviser representative" means any partner, officer, director or person occu-  
41 pying a similar status or performing a similar function, or other individual, except clerical or  
42 ministerial personnel, who is employed by or associated with:

43 (A) A state investment adviser that is licensed or required to be licensed in this state and who  
44 does any of the following:

45 (i) Makes any recommendations or otherwise renders advice regarding securities;

- 1 (ii) Manages accounts or portfolios of clients;  
2 (iii) Determines which recommendation or advice regarding securities should be given;  
3 (iv) Solicits, offers or negotiates for the sale of or sells investment advisory services; or  
4 (v) Supervises employees acting under this subparagraph; or

5 (B) A federal covered investment adviser, subject to the limitations of section 203A of the In-  
6 vestment Advisers Act of 1940, as amended, as the director may designate by rule or order.

7 (b) "Investment adviser representative" does not include a person designated by rule or order  
8 of the director.

9 (9) "Issuer" means a person who issues, proposes to issue or has issued a security and includes  
10 an issuer to be formed. With respect to certificates of deposit, voting-trust certificates or  
11 collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated  
12 investment trust not having a board of directors or persons performing similar functions or of the  
13 fixed, restricted management or unit type, the "issuer" is the person or persons performing the acts  
14 and assuming the duties of depositor or manager pursuant to the provisions of the trust or other  
15 instrument or agreement under which the security is issued.

16 (10) "License" means a license as provided under the Oregon Securities Law.

17 (11) "Mortgage banker" means a mortgage banker as defined in ORS 59.840.

18 (12) "Mortgage broker" means a mortgage broker as defined in ORS 59.840.

19 (13) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an  
20 offer to buy, a security or interest in a security for value. Every sale or offer of a warrant or right  
21 to purchase or subscribe to another security of the same or another issuer, as well as every sale  
22 or offer of a security which gives the holder a present or future right or privilege to convert into  
23 another security of the same or another issuer, is considered to include an offer of the other secu-  
24 rity.

25 (14) "Person" includes an individual, a joint venture, a partnership, a cooperative, a limited li-  
26 ability company, an association, a joint stock company, a corporation, a trust, an unincorporated  
27 organization or a government or political subdivision of a government.

28 (15) "Real estate paper" means any obligation secured or purportedly secured by an interest in  
29 real property. Real estate paper includes, but is not limited to, mortgage-backed securities,  
30 collateralized mortgage obligations, and real estate mortgage investment conduits.

31 (16) "Registered" means registered as provided in the Oregon Securities Law.

32 (17)(a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a  
33 security or interest in a security for value. Any security given or delivered with, or as a bonus on  
34 account of, a purchase of securities or any other thing shall constitute a part of the subject of the  
35 purchase and shall have been offered and sold for value. A gift of assessable stock by or for any  
36 issuer or promoter shall constitute a sale.

37 (b) For purposes of the authority of the director under ORS 59.245 and 59.255, the terms "sale"  
38 and "sell" include the terms "offer" and "offer to sell."

39 (c) "Sale" and "sell" do not include:

40 (A) A bona fide pledge or loan of securities;

41 (B) A bona fide security dividend, whether the corporation distributing the dividend is the issuer  
42 of the security or not, if nothing of value is given by the recipients for the dividend other than  
43 payments in connection with the elimination of fractional shares; or

44 (C) An act incident to a judicially approved reorganization in which a security is issued in ex-  
45 change for one or more outstanding securities, claims or property interests, or partly in such ex-

1 change and partly for cash.

2 (18)(a) "Salesperson" means a person, other than a broker-dealer, who represents or purports to  
3 represent a broker-dealer, issuer or owner of securities in effecting or attempting to effect in any  
4 manner transactions in securities.

5 (b) "Salesperson" does not include:

6 (A) A person who represents an issuer in effecting sales in a security exempted by ORS 59.025;

7 (B) A person who represents an issuer in effecting sales exempted by ORS 59.035;

8 (C) A person who represents an issuer in effecting sales with existing partners or directors of  
9 the issuer, if no commission or other remuneration is paid or given directly or indirectly for solici-  
10 iting any person in this state;

11 (D) An employee of an institution or organization described in subsection (1)(b) of this section  
12 to the extent the employee is not a dual employee of the institution and a broker-dealer;

13 (E) A person effecting transactions in this state limited to those transactions described in sec-  
14 tion 15(h)(2) and (3) of the Securities Exchange Act of 1934, as amended; or

15 (F) A person designated by rule or order by the director.

16 (c) A person who is a partner, director or officer of a broker-dealer, issuer or owner of securi-  
17 ties, or a person who occupies a similar status or performing similar functions, is a "salesperson"  
18 only if the person otherwise comes within this definition.

19 (19)(a) "Security" means a note, stock, treasury stock, bond, debenture, evidence of indebtedness,  
20 certificate of interest or participation in a pension plan or profit-sharing agreement, collateral-trust  
21 certificate, preorganization certificate or subscription, transferable share, investment contract,  
22 voting-trust certificate, certificate of deposit for a security, certificate of interest or participation  
23 in an oil, gas, or mining title or lease or in payments out of production under such title or lease,  
24 real estate paper sold by a broker-dealer, mortgage banker, mortgage broker or a person described  
25 in subsection (1)(b) of this section to persons other than persons enumerated in ORS 59.035 (4), or,  
26 in general, any interest or instrument commonly known as a "security," or any certificate of interest  
27 or participation in, temporary or interim certificates for, receipt for, guarantee of, or warrant or  
28 right to subscribe to or purchase any of the foregoing.

29 (b) "Security" does not include:

30 (A) An insurance or endowment policy or annuity contract under which an insurance company  
31 promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or  
32 some other specified period;

33 (B) A beneficial interest in a voluntary inter vivos trust unless the trust is created solely for  
34 the purpose of voting or is part of an attempt to evade the provisions of ORS 59.005 to 59.451; [or]

35 (C) A beneficial interest in a testamentary trust[.]; **or**

36 **(D) Real estate as defined in ORS 696.010 (12)(b).**

37 (20)(a) "State investment adviser" means a person who, for compensation:

38 (A) Engages all or part of the time of the person, in this state, in the business of advising others,  
39 either directly or by mail or through publication or writing, as to the value of securities or as to  
40 the advisability of investing in, purchasing or selling securities;

41 (B) Engages all or part of the time of the person, in this state, in the business of managing an  
42 investment or trading account in securities for other persons; or

43 (C) Issues or promulgates, as part of a regular business in this state, analyses or reports con-  
44 cerning securities.

45 (b) "State investment adviser" does not include:

1 (A) An investment adviser representative;

2 (B) An institution or organization described in subsection (1)(b) of this section;

3 (C) A licensed broker-dealer whose performance of investment advisory services is solely inci-  
4 dental to the conduct of business as a broker-dealer and who receives no special compensation for  
5 such services;

6 (D) A salesperson licensed to a broker-dealer whose performance of investment advisory services  
7 is solely incidental to that person's activities as a salesperson and who receives no special com-  
8 pensation for such services;

9 (E) A publisher of or contributor to a bona fide newspaper, newsmagazine, investment manual  
10 or service, or business or financial publication of general, regular and paid circulation;

11 (F) A person whose only clients are federal covered investment advisers, state investment ad-  
12 visers, broker-dealers, mortgage bankers, mortgage brokers, banks, savings institutions or trust  
13 companies, insurance companies, investment companies as defined in the Investment Company Act  
14 of 1940, as amended, pension or profit-sharing trusts, or other financial institutions or institutional  
15 buyers, whether acting for themselves or as trustees;

16 (G) A duly licensed lawyer, engineer or accountant whose performance of investment advisory  
17 services is solely incidental to the practice of the profession;

18 (H) A person whose advice, analyses or reports relate only to securities exempted by ORS 59.025  
19 (1);

20 (I) A federal covered investment adviser in compliance with ORS 59.165 (7);

21 (J) A person, advising others, that has no place of business in this state and during the pre-  
22 ceding 12-month period has had fewer than six clients, other than those persons included in sub-  
23 paragraph (F) of this paragraph, who are residents of this state; or

24 (K) Such other persons as the director may by rule or order designate.

25 **SECTION 3. The amendments to ORS 59.015 and 696.010 by sections 1 and 2 of this 2007**  
26 **Act apply to real estate offered for sale or sold before, on or after the effective date of this**  
27 **2007 Act.**

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