

Enrolled
Senate Bill 482

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Association of Realtors)

CHAPTER

AN ACT

Relating to real estate broker compensation; amending ORS 696.026, 696.241, 696.290, 696.301, 696.505, 696.520, 696.582 and 696.840.

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

SECTION 1. ORS 696.582 is amended to read:

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

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

(b) The written closing instructions of the principals which do not honor the amount and terms of payment in the notice of [*demand*] **compensation**.

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

Notice of [*Demand for*]
Real Estate [*Commission*] **Compensation**
To: _____
(Name of Escrow Company)
Re: _____
(Names of Principals to
Transaction)
Your Escrow Number: _____

The undersigned real estate broker or principal real estate broker states that such broker has a valid written [*commission*] **compensation** agreement with _____ (Name of Principal), one of the principals to the transaction referred to above, and that such principal is obligated to pay the broker the [*commission*] **compensation** on account of that transaction. The [*commission*] **compensation** amount is \$_____ and is to be paid on the following terms: _____. [*Demand*]

Request is hereby made that the [commission] **compensation** be paid in that amount and on those terms, out of escrow and as a part of your closing of that transaction.

(Name and Signature of Real Estate Broker
or Principal Real Estate Broker)

(3) An escrow agent in a transaction described in subsection (1) of this section may only disburse the moneys or other property to:

(a) The broker and principal, based upon a written agreement between those parties and directed to the escrow agent as disbursement instructions;

(b) Any persons, as directed by order of a court of competent jurisdiction; or

(c) The court, upon filing by the escrow agent of an interpleader action for the moneys or property.

(4) [At the time of filing a notice of demand] **If the filing of a notice of compensation with an escrow agent under subsection (1) of this section is made more than 10 days prior to the scheduled closing date, the real estate broker or principal real estate broker filing the notice shall deliver a copy of the notice to the principal identified in the notice. If the notice is filed within 10 days of the scheduled closing date, a copy of the notice shall be provided by the escrow agent to the principal identified in the notice at the time of closing.**

SECTION 2. ORS 696.505 is amended to read:

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

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

(a) Receives:

(A) Installment payments;

(B) Instruments evidencing or securing an obligation; or

(C) Instruments discharging the security interest; and

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

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

(3) **"Compensation" means any fee, commission, salary, money or valuable consideration for services rendered or to be rendered as well as the promise thereof and whether contingent or otherwise.**

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

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

[5] (6) "Principal" means:

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

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

[6] (7) "Real estate closing escrow" means an escrow where the escrow fee is paid in whole or in part by the principals to a real estate transaction and wherein the unpaid purchase price is

delivered to an escrow agent for disbursal pursuant to the written instructions of the principals to the transaction simultaneously on the transfer of specified title to the real property.

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

SECTION 3. ORS 696.026 is amended to read:

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

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

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

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

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

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

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

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

SECTION 4. ORS 696.241 is amended to read:

696.241. (1) Each sole practitioner and each principal real estate broker shall maintain in this state one or more separate bank accounts that shall be designated a Clients' Trust Account in which all trust funds received or handled by the sole practitioner or broker and the real estate licensees subject to the supervision of the broker on behalf of any other person shall be deposited unless,

pursuant to written agreement of all parties having an interest in the trust funds, the trust funds are immediately placed in a neutral escrow depository in this state.

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

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

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

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

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

(7) A sole practitioner or principal real estate broker is not entitled to any part of any interest earnings on trust funds deposited under subsection (5) of this section or to any part of the earnest money or other money paid to the sole practitioner or broker in connection with any real estate transaction as part or all of the sole practitioner's or broker's *[commission or fee]* **compensation** until the transaction has been completed or terminated. The question of the disposition of forfeited earnest money shall be negotiated between the sole practitioner or principal real estate broker and the seller at the time of executing any listing agreement or earnest money agreement. The result of such negotiation shall be filled in on the agreement form at the time of signing by the seller and either separately initialed by the seller or placed immediately above the signature of the seller.

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

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

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

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

SECTION 5. ORS 696.290 is amended to read:

696.290. (1) A real estate licensee shall not offer, promise, allow, give, pay or rebate, directly or indirectly, any part or share of the licensee's *[commission or]* compensation arising or accruing

from any real estate transaction or pay a finder's fee to any person who is not a real estate licensee licensed under ORS 696.022. However, a real estate broker or principal real estate broker may pay a finder's fee or a share of the [commission] **licensee's compensation** on a cooperative sale [where such] **when the** payment is made to a licensed real estate broker in another state or country, provided that the state or country in which that broker is licensed has a law permitting real estate brokers to cooperate with real estate brokers or principal real estate brokers in this state and that such nonresident real estate broker does not conduct in this state any acts constituting professional real estate activity and for which compensation is paid. If a country does not license real estate brokers, the payee must be a citizen or resident of the country and represent that the payee is in the business of real estate brokerage in the other country. A real estate broker associated with a principal real estate broker shall not accept compensation from any person other than the principal real estate broker with whom the real estate broker is associated at the time. A principal real estate broker shall not make payment to the real estate broker of another principal real estate broker except through the principal real estate broker with whom the real estate broker is associated. Nothing in this section prevents payment of [a commission or fee] **compensation** earned by a real estate broker or principal real estate broker while licensed, because of change of affiliation or inactivation of the broker's license.

(2) Nothing in subsection (1) of this section is intended to prohibit a real estate licensee who has a written property management agreement with the owner of a residential building or facility from authorizing the payment of a referral fee, rent credit or other compensation to an existing tenant of the owner or licensee, or a former tenant if the former tenant resided in the building or facility within the previous six months, as compensation for referring new tenants to the licensee.

(3) Nothing in subsection (1) of this section is intended to prevent an Oregon real estate broker or principal real estate broker from sharing [a commission] **compensation** on a cooperative non-residential real estate transaction with a person who holds an active real estate license in another state or country, provided:

(a) Before the out-of-state real estate licensee performs any act in this state that constitutes professional real estate activity, the licensee and the cooperating Oregon real estate broker or principal real estate broker agree in writing that the acts constituting professional real estate activity conducted in this state will be under the supervision and control of the cooperating Oregon broker and will comply with all applicable Oregon laws;

(b) The cooperating Oregon real estate broker or principal real estate broker accompanies the out-of-state real estate licensee and the client during any property showings or negotiations conducted in this state; and

(c) All property showings and negotiations regarding nonresidential real estate located in this state are conducted under the supervision and control of the cooperating Oregon real estate broker or principal real estate broker.

(4) Nothing in subsection (1) of this section is intended to prohibit a real estate licensee from directly compensating a licensed personal assistant if permitted by the terms, conditions and requirements of a licensed personal assistant agreement under ORS 696.028.

(5) As used in subsection (3) of this section, "nonresidential real estate" means any real property that is improved or available for improvement by commercial structures or five or more residential dwelling units.

SECTION 6. ORS 696.301 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 7. ORS 696.520 is amended to read:

696.520. The provisions of ORS 696.505 to 696.590 do not apply to and the term "escrow agent" does not include:

(1) Any person doing business under the laws of this state or the United States relating to banks, mutual savings banks, trust companies, savings and loan associations, consumer finance companies, or insurance companies except to the extent that the person provides real estate closing escrow services other than those permitted under subsection (3) of this section.

(2) An attorney at law rendering services in the performance of duties as attorney at law.

(3) Any firm or corporation lending money on real or personal property and which firm or corporation is subject to licensing, supervision or auditing by a federal or state agency but only to the extent of closing a loan transaction between such firm or corporation and a borrower, and seller, if a fee for escrow services is not charged to the seller.

(4) Any person doing any of the acts specified in ORS 696.505 [(3)] (4) under order of any court.

(5) Any real estate broker or principal real estate broker licensed under ORS 696.022 who performs the closing for the principals in a real estate transaction handled by the broker, if the principals are not charged a separate fee for escrow services.

(6) Any collection agency registered under ORS 697.015 that is engaged in any collection or billing activity without holding documents relating to the debt.

SECTION 8. ORS 696.840 is amended to read:

696.840. The payment of compensation or the obligation to pay compensation to a real estate licensee by the seller or the buyer is not necessarily determinative of a particular agency relationship between a real estate licensee and the seller or the buyer. After full disclosure of agency relationships, a listing agent, a selling agent or a real estate licensee or any combination of the three may agree to share any compensation [or *commission*] paid, or any right to any compensation [or

commission] for which an obligation arises as the result of a real property transaction, and the terms of the agreement shall not necessarily be determinative of a particular relationship. Nothing in this section shall prevent the parties from selecting a relationship not specifically prohibited by ORS 696.301, 696.392, 696.600 to 696.785, 696.800 to 696.870 and 696.995.

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Secretary of Senate

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President of Senate

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Speaker of House

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Secretary of State