

SENATE AMENDMENTS TO SENATE BILL 482

By COMMITTEE ON BUSINESS, TRANSPORTATION AND WORKFORCE DEVELOPMENT

March 26

1 On page 1 of the printed bill, line 2, after “696.026” delete the rest of the line and insert “,
2 696.241, 696.290, 696.301, 696.505, 696.520, 696.582 and 696.840.”.

3 On page 2, after line 21, insert:

4 “**SECTION 2.** ORS 696.505 is amended to read:

5 “696.505. As used in ORS 696.505 to 696.590, unless the context requires otherwise:

6 “(1) ‘Collection escrow’ means an escrow in which the escrow agent:

7 “(a) Receives:

8 “(A) Installment payments;

9 “(B) Instruments evidencing or securing an obligation; or

10 “(C) Instruments discharging the security interest; and

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

13 “(2) ‘Commissioner’ means the Real Estate Commissioner.

14 “(3) ‘**Compensation**’ means any fee, commission, salary, money or valuable consideration
15 for services rendered or to be rendered as well as the promise thereof and whether contin-
16 gent or otherwise.

17 “[3] (4) ‘Escrow’ means any transaction wherein any written instrument, money, evidence of
18 title to real or personal property or other thing of value is delivered, for the purpose of paying an
19 obligation or effecting the sale, transfer, encumbrance or lease of real or personal property, to a
20 person not otherwise having any right, title or interest therein, to be held by that person as a
21 neutral third party until the happening of a specified event or the performance of a prescribed
22 condition, when it is then to be delivered by the neutral third party to a grantee, grantor, promisee,
23 promisor, obligee, obligor, bailee, bailor or any agent or employee of any of them pursuant to the
24 written instructions of the principals to the transaction.

25 “[4] (5) ‘Escrow agent’ means any person who engages in the business of receiving escrows for
26 deposit or delivery and who receives or is promised any fee, commission, salary or other valuable
27 consideration, whether contingent or otherwise, for or in anticipation of performance.

28 “[5] (6) ‘Principal’ means:

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

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

34 “[6] (7) ‘Real estate closing escrow’ means an escrow where the escrow fee is paid in whole
35 or in part by the principals to a real estate transaction and wherein the unpaid purchase price is

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

3 “[7] (8) ‘Subservicer’ means an escrow agent, a financial institution or a trust company, as
4 those terms are defined in ORS 706.008, or a collection agency registered under ORS 697.015 when
5 providing, pursuant to written instructions, a portion of the escrow services for an escrow to an
6 escrow agent, or a person in the business of receiving escrows under the laws of another state, that
7 would otherwise provide the escrow services directly to the principals.”.

8 In line 22, delete “2” and insert “3”.

9 On page 3, after line 15, insert:

10 “**SECTION 4.** ORS 696.241 is amended to read:

11 “696.241. (1) Each sole practitioner and each principal real estate broker shall maintain in this
12 state one or more separate bank accounts that shall be designated a Clients’ Trust Account in which
13 all trust funds received or handled by the sole practitioner or broker and the real estate licensees
14 subject to the supervision of the broker on behalf of any other person shall be deposited unless,
15 pursuant to written agreement of all parties having an interest in the trust funds, the trust funds
16 are immediately placed in a neutral escrow depository in this state.

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

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

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

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

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

42 “(7) A sole practitioner or principal real estate broker is not entitled to any part of any interest
43 earnings on trust funds deposited under subsection (5) of this section or to any part of the earnest
44 money or other money paid to the sole practitioner or broker in connection with any real estate
45 transaction as part or all of the sole practitioner’s or broker’s [*commission or fee*] **compensation**

1 until the transaction has been completed or terminated. The question of the disposition of forfeited
2 earnest money shall be negotiated between the sole practitioner or principal real estate broker and
3 the seller at the time of executing any listing agreement or earnest money agreement. The result
4 of such negotiation shall be filled in on the agreement form at the time of signing by the seller and
5 either separately initialed by the seller or placed immediately above the signature of the seller.

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

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

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

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

19 “**SECTION 5.** ORS 696.290 is amended to read:

20 “696.290. (1) A real estate licensee shall not offer, promise, allow, give, pay or rebate, directly
21 or indirectly, any part or share of the licensee’s [*commission or*] compensation arising or accruing
22 from any real estate transaction or pay a finder’s fee to any person who is not a real estate licensee
23 licensed under ORS 696.022. However, a real estate broker or principal real estate broker may pay
24 a finder’s fee or a share of the [*commission*] **licensee’s compensation** on a cooperative sale [*where*
25 *such*] **when the** payment is made to a licensed real estate broker in another state or country, pro-
26 vided that the state or country in which that broker is licensed has a law permitting real estate
27 brokers to cooperate with real estate brokers or principal real estate brokers in this state and that
28 such nonresident real estate broker does not conduct in this state any acts constituting professional
29 real estate activity and for which compensation is paid. If a country does not license real estate
30 brokers, the payee must be a citizen or resident of the country and represent that the payee is in
31 the business of real estate brokerage in the other country. A real estate broker associated with a
32 principal real estate broker shall not accept compensation from any person other than the principal
33 real estate broker with whom the real estate broker is associated at the time. A principal real estate
34 broker shall not make payment to the real estate broker of another principal real estate broker
35 except through the principal real estate broker with whom the real estate broker is associated.
36 Nothing in this section prevents payment of [*a commission or fee*] **compensation** earned by a real
37 estate broker or principal real estate broker while licensed, because of change of affiliation or in-
38 activation of the broker’s license.

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

44 “(3) Nothing in subsection (1) of this section is intended to prevent an Oregon real estate broker
45 or principal real estate broker from sharing [*a commission*] **compensation** on a cooperative non-

1 residential real estate transaction with a person who holds an active real estate license in another
2 state or country, provided:

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

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

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

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

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

20 “**SECTION 6.** ORS 696.301 is amended to read:

21 “696.301. Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real
22 estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal
23 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
30 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

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 relation-
36 ship 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 clos-
43 ing, that the buyer and seller received a complete detailed closing statement showing the amount
44 and 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.

6 “(14) Committed an act of fraud or engaged in dishonest conduct substantially related to the
7 fitness 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 7.** ORS 696.520 is amended to read:

13 “696.520. The provisions of ORS 696.505 to 696.590 do not apply to and the term ‘escrow agent’
14 does not include:

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

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

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

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

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

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

30 “**SECTION 8.** ORS 696.840 is amended to read:

31 “696.840. The payment of compensation or the obligation to pay compensation to a real estate
32 licensee by the seller or the buyer is not necessarily determinative of a particular agency relation-
33 ship between a real estate licensee and the seller or the buyer. After full disclosure of agency re-
34 lationships, a listing agent, a selling agent or a real estate licensee or any combination of the three
35 may agree to share any compensation [*or commission*] paid, or any right to any compensation [*or*
36 *commission*] for which an obligation arises as the result of a real property transaction, and the terms
37 of the agreement shall not necessarily be determinative of a particular relationship. Nothing in this
38 section shall prevent the parties from selecting a relationship not specifically prohibited by ORS
39 696.301, 696.392, 696.600 to 696.785, 696.800 to 696.870 and 696.995.”