

## SENATE AMENDMENTS TO SENATE BILL 1101

By COMMITTEE ON FINANCE AND REVENUE

February 11

On page 1 of the printed bill, delete lines 5 through 30 and delete pages 2 and 3 and insert:

**SECTION 1.** ORS 314.258 is amended to read:

**“314.258. (1) As used in this section:**

**“(a) ‘Authorized agent’ means an agent who is responsible for closing and settlement services in a conveyance [of a real property interest].**

**“(b) ‘Closing and settlement services’ means services that are provided [for the benefit of a transferor or a transferee in connection with a conveyance of a real property interest, and the receipt or disbursement of moneys in connection with a sale, lease, encumbrance, mortgage or deed of trust in or related to real property.] by:**

**“(A) A licensed escrow agent in a real estate closing escrow as provided in ORS 696.505 to 696.590; or**

**“(B) An attorney for the benefit of a transferor or a transferee in a conveyance.**

**“(c) ‘Consideration’ includes the amount of cash paid for a conveyance and the amount of any lien, mortgage, contract, indebtedness or other encumbrance existing against the property conveyed to which the property remains subject or which the purchaser agrees to pay or assume.**

**“[(c)] (d) ‘Conveyance’ means [a sale, lease, encumbrance, mortgage or creation of a secured interest in real property.] a transfer or a contract to transfer fee title to any real estate located in the State of Oregon.**

**“(e) ‘Net proceeds’ means the net amount to be disbursed to the transferor, prior to reduction for withholding, as shown on the transferor’s settlement statement for the conveyance.**

**“[(d)] (f) ‘Real property interest’ means a United States real property interest, as defined in section 897(c) of the Internal Revenue Code, that is located in the State of Oregon.]**

**“(f) ‘Transferor’ means:**

**“(A) An individual who is not a resident of this state, as defined in ORS 316.027, on the closing date of the conveyance; or**

**“(B) A corporation taxed under section 11 of the Internal Revenue Code and subchapter C, chapter 1 of the Internal Revenue Code, that is not domiciled in this state or that is not registered or otherwise qualified to do business in this state on the closing date of the conveyance.**

**“(2)[(a) If there is a conveyance of a real property interest, the] An authorized agent providing closing and settlement services in a conveyance is required to withhold from consideration payable to a transferor an amount equal to the least of:**

**“[(A)] (a) Four percent of the consideration for the [real property interest being conveyed]**

1 **conveyance;**

2 *“(B) (b) [Four percent of] The net proceeds resulting from the conveyance; or*

3 *“(C) (c) [Ten] **Eight** percent of the gain includable in the transferor’s Oregon taxable in-*  
4 *come. **In arriving at this amount, the authorized agent may rely upon the transferor’s writ-***  
5 ***ten affirmation of the amount of includable gain.***

6 *“(b) For purposes of this subsection, a transferor is:]*

7 *“(A) An individual who is not a resident of this state at the time of both the closing date of the*  
8 *conveyance and the date on which proceeds of the conveyance are disbursed; or]*

9 *“(B) A C corporation that, immediately after the conveyance of the real property interest, is not*  
10 *doing business in this state.]*

11 *“(3)(a) Notwithstanding subsection (2) of this section,] An authorized agent is not required to*  
12 *withhold amounts under this section if [the authorized agent obtains a written affirmation executed*  
13 *by the transferor on a form prescribed by the Department of Revenue certifying under penalty of per-*  
14 *jury that]:*

15 *“(A) (a) The consideration for the conveyance does not exceed \$100,000;*

16 *“(B) The transferee is acquiring the real property interest through foreclosure; or]*

17 *“(b) **The conveyance is pursuant to a judicial foreclosure proceeding, a writ of execution,***  
18 ***a nonjudicial foreclosure of a trust deed or a nonjudicial forfeiture of a land sale contract;***

19 *“(c) **The conveyance is in lieu of foreclosure of a mortgage, trust deed or other security***  
20 ***instrument or a land sale contract with no additional monetary consideration;***

21 *“(d) **The transferor is a personal representative, executor, conservator, bankruptcy***  
22 ***trustee or other person acting under judicial review;***

23 *“(e) **The transferor delivers to the authorized agent a written assurance as provided in***  
24 ***section 6045(e) of the Internal Revenue Code that the sale or exchange qualifies for exclusion***  
25 ***of gain under section 121 of the Internal Revenue Code;***

26 *“(f) **The authorized agent obtains a written affirmation that the transferor is unlikely to***  
27 ***owe Oregon income tax as a result of the conveyance;***

28 *“(g) **The amount that would be withheld under subsection (2) of this section is less than***  
29 ***\$100, or less than a minimum amount established by rule by the Department of Revenue; or***

30 *“(h) **The authorized agent is an attorney and a licensed escrow agent involved with the***  
31 ***conveyance withholds as required by this section.***

32 *“(C) The transferor:]*

33 *“(i) If an individual, is a resident of this state;]*

34 *“(ii) If a corporation, has a permanent place of business in this state; or]*

35 *“(iii) Has professionally competent knowledge or advice that the transferor will not owe tax under*  
36 *ORS chapter 316, 317 or 318 for the tax year because the conveyance is an exchange that qualifies for*  
37 *deferral under section 1031 or 1033 of the Internal Revenue Code or is a nontaxable transaction under*  
38 *Oregon tax law.]*

39 *“(b) If withholding is not retained and remitted to the department pursuant to this section, the*  
40 *authorized agent shall retain the written affirmation described in this subsection for six years from the*  
41 *date of the closing of the conveyance transaction and shall present the written affirmation to the de-*  
42 *partment immediately upon request in writing from the department.]*

43 *“(4) For purposes of this section, a corporation is not doing business in this state if:]*

44 *“(a) The corporation has not been issued a certificate of existence or a certificate of authorization*  
45 *by the Secretary of State as described in ORS 60.027; and]*

1       “(b) *The corporation does not maintain a permanent office with a staff of at least one employee in*  
2 *this state or does not own or lease property in this state other than the property that is the subject of*  
3 *the conveyance.*]

4       “[(5)(a)] **(4)(a)** Amounts withheld pursuant to this section are held in trust for the State of  
5 Oregon and shall be paid to the department in the time and manner prescribed by the department  
6 by rule.

7       “(b) If an authorized agent fails to remit an amount withheld [*or required to be withheld*] by the  
8 agent under this section by the time remittance is required, the department may [*enforce collection*  
9 *in the same manner as the department enforces the collection of amounts withheld by employers under*  
10 *ORS 316.162 to 316.221*] **recover from the authorized agent the amount withheld with interest**  
11 **at the rate established under ORS 305.220.**

12       “(c) **If an authorized agent fails to withhold when withholding is required under this**  
13 **section, the department may recover a penalty not to exceed the greater of:**

14       “(A) **\$500; or**

15       “(B) **10 percent of the amount required to be withheld under this section, but not more**  
16 **than \$2,500.**

17       “[(c)] **(d)** [*Notwithstanding paragraph (b) of this subsection,*] The department may not proceed  
18 with collection actions against the authorized agent if the authorized agent:

19       “[(A) *Presents the department with the written affirmation described in subsection (3) of this sec-*  
20 *tion; and*]

21       “(A) **Withholds the required amount in connection with a conveyance and timely remits**  
22 **the funds to the department;**

23       “(B) **Is not required to withhold an amount under this section; or**

24       “[(B)] (C) **Demonstrates to the department that the authorized agent obtained [the] a written**  
25 **affirmation as described in this section or an assurance as provided in section 6045(e) of the**  
26 **Internal Revenue Code** prior to disbursal of funds due the transferor resulting from the  
27 conveyance.

28       “(e) **A transferor may claim the amount withheld by an authorized agent on the**  
29 **transferor’s personal income tax return or corporate income tax return or excise tax return.**

30       “(f) **Notwithstanding ORS 696.581 (2), an authorized agent may withhold funds under this**  
31 **section without written instructions to withhold from the transferor.**

32       “(g) **A written affirmation, as provided under this section, shall be executed by the**  
33 **transferor or the transferor’s tax advisor under penalty of perjury and shall contain the**  
34 **transferor’s taxpayer identification number. The authorized agent shall retain for six years**  
35 **from the date of the closing of the conveyance any written affirmation obtained by the agent**  
36 **in connection with the conveyance. The department shall prescribe by rule the form and**  
37 **content of the written affirmation and procedures for submission of the information con-**  
38 **tained in the written affirmation.**

39       “(h) **It shall be a defense to any claim by the department or by a transferor against an**  
40 **agent that the agent has acted in reasonable reliance upon representations made by the**  
41 **transferor or the transferor’s tax advisor.**

42       “**SECTION 2.** The amendments to ORS 314.258 by section 1 of this 2008 Act apply to  
43 conveyances occurring on or after January 1, 2008. Any withholding made or exemption ac-  
44 cepted by an agent in accordance with ORS 314.258 before the effective date of this 2008 Act  
45 is deemed to be in compliance with this 2008 Act.

1       **SECTION 3. This 2008 Act takes effect on the 91st day after the date on which the**  
2       **special session of the Seventy-fourth Legislative Assembly adjourns sine die.”.**  
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