

# Enrolled House Bill 2910

Sponsored by Representative SCHAUFLER (at the request of Oregon Association of Realtors)

CHAPTER .....

AN ACT

Relating to professional real estate activity conducted by a real estate licensee; creating new provisions; amending ORS 696.010, 696.022, 696.174, 696.205, 696.241, 696.245, 696.280 and 296.290; and repealing ORS 696.028.

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

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

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

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

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

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

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

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

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

(6) "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.

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

(8) "Expired" means, in the context of a real estate licensee, that the license has not been renewed in a timely manner, but may still be renewed.

(9) "Inactive" means, in the context of a real estate licensee, that the license has been returned to the agency to be held until the licensee reactivates the license or the license expires or lapses.

(10) "Lapsed" means, in the context of a real estate licensee, that the license has not been renewed in a timely manner and is not eligible for renewal.

(11) "Letter opinion" has the meaning given that term in ORS 696.294.

(12) "Management of rental real estate" means:

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

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

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

(C) Negotiating with prospective tenants;

(D) Accepting deposits from prospective tenants;

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

(F) Charging and collecting rent or lease payments;

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

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

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

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

(K) Providing staff and services to accommodate the tax reporting and other financial or accounting needs of the real estate;

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

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

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

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

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

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

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

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

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

(13) "Nonlicensed individual" means an individual:

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

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

(14) "Principal real estate broker" means:

**(a)** An individual who holds an active license as a principal real estate broker [*and who employs, engages or supervises the professional real estate activity of another real estate licensee.*]; **or**

**(b) A sole practitioner who conducted professional real estate activity as a sole practitioner prior to January 1, 2010.**

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

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

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

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

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

(e) Offers, attempts or agrees to perform or provide a competitive market analysis or letter opinion, to represent a taxpayer under ORS 305.230 or 309.100 or to give an opinion in any administrative or judicial proceeding regarding the value of real estate for taxation, except when the activity is performed by a state certified appraiser or state licensed appraiser;

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

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

(h) Engages in management of rental real estate;

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

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

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

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

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

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

(16) "Real estate" includes leaseholds and licenses to use including, but not limited to, timeshare estates and timeshare licenses as defined in ORS 94.803, as well as any and every interest or estate in real property, whether corporeal or incorporeal, whether freehold or nonfreehold, whether held separately or in common with others and whether the real property is situated in this state or elsewhere.

(17) "Real estate broker" means an individual who engages in professional real estate activity and who holds an active license as a real estate broker.

(18) "Real estate licensee" means an individual who holds an active license as a real estate broker, principal real estate broker or real estate property manager.

(19) "Real estate property manager" means a real estate licensee who is authorized to engage in management of rental real estate.

(20) "Registered business name" means a name registered with the Real Estate Agency under which the individual registering the name engages in professional real estate activity.

(21) "Sole practitioner" means a real estate broker conducting professional real estate activity not in conjunction with other real estate brokers or principal real estate brokers **and who, prior to January 1, 2010:**

**(a) Acquired three years of active experience as a real estate broker; or**

**(b) Acquired three years of active experience as a real estate salesperson as defined in ORS 696.025 (1999 Edition) and successfully completed the real estate broker's examination required by rule of the agency.**

**SECTION 2.** ORS 696.022 is amended to read:

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

(a) The form and content of applications for licensing under each category of real estate professional licensed by the agency;

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

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

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

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

(2)(a) A real estate broker may engage in professional real estate activity. **Except as provided in paragraph (c) of this subsection**, a real estate broker may not employ, engage or supervise the professional real estate activity of another real estate licensee.

(b) In order to qualify for a real estate broker's license, an applicant must furnish proof satisfactory to the commissioner that the applicant has successfully completed the basic real estate broker's educational courses and the examination required by rule of the agency. Proof of completion of all required courses must be provided at the time of applying for the license.

*[(c) A real estate broker may conduct professional real estate activity as a sole practitioner after:]*

*[(A) The individual has acquired three years of active experience as a real estate broker; or]*

*[(B) The individual has acquired three years of active experience as a real estate salesperson as defined in ORS 696.025 (1999 Edition) and has successfully completed the real estate broker's examination required by rule of the agency.]*

**(c) A real estate broker who has acquired three years of active experience as a real estate broker may temporarily supervise the professional real estate activity of another real estate licensee due to unforeseen circumstances or the temporary absence of a sole principal real estate broker, as provided by rule of the agency. The temporary supervision of professional real estate activity allowed under this paragraph may not exceed 90 days.**

(3)(a) A principal real estate broker may engage in professional real estate activity. A principal real estate broker may conduct professional real estate activity in conjunction with other real estate brokers or principal real estate brokers. In addition, a principal real estate broker [*must*] **may** employ, engage or supervise the professional real estate activity of another real estate licensee.

(b) In order to qualify for a principal real estate broker's license, an applicant must meet the requirements of subsection (2)(b) of this section and must furnish proof satisfactory to the commissioner that the applicant has successfully completed the brokerage administration and sales supervision course, as required by agency rule, and has:

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

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

(4) In order to qualify for a real estate property manager's license, an applicant must furnish proof satisfactory to the commissioner that the applicant has successfully completed courses in the legal aspects of real estate, real estate property management and accounting, bookkeeping and trust accounting practices. The applicant also must have successfully completed a real estate property manager's license examination prescribed by rule of the agency. Proof of completion of all required courses must be provided at the time of applying for the license.

(5)(a) A license for a real estate broker, principal real estate broker or real estate property manager shall be granted only to an individual who is trustworthy and competent to conduct professional real estate activity in a manner that protects the public interest. As a condition of licensing, the commissioner may require proof of competence and trustworthiness that the commissioner deems necessary to protect the public interest.

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

(6) A license may be issued under this section only to an individual who is 18 years of age or older.

(7) In order to qualify for a real estate broker's license, a real estate salesperson licensed in another state or country must successfully complete a course of study and pass a real estate broker's license examination, both as prescribed by agency rule.

(8) In order to satisfy the educational requirements under subsections (2) to (4) and (7) of this section, a course must be approved by the commissioner. The commissioner shall determine the final examination score acceptable as evidence of successful completion for each required course.

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

**SECTION 3.** ORS 696.205 is amended to read:

696.205. (1) If a real estate licensee [*who is a sole practitioner or*] who is the sole principal real estate broker of a real estate business dies or becomes incapacitated, the Real Estate Commissioner may issue a temporary license to the executor, administrator or personal representative of the estate of the deceased real estate licensee or to the court-appointed fiduciary of the incapacitated real estate licensee, or to some other individual designated by the commissioner, in order to continue to transact the real estate business in the case of the incapacitated real estate licensee or to wind up the affairs of the deceased or incapacitated real estate licensee. The term of a temporary license issued under this section may not exceed one year from the date of issuance unless the commissioner, in the discretion of the commissioner, extends the term of the temporary license based on sufficient cause provided by the temporary licensee to the commissioner.

(2) The Real Estate Agency may adopt administrative rules to administer this section or to authorize an individual to transact or wind up real estate business on behalf of the deceased or incapacitated real estate licensee.

**SECTION 4.** ORS 696.174 is amended to read:

696.174. (1) To qualify an active license for renewal, the real estate licensee must present evidence of attendance during the preceding two license years at 30 clock-hours of real estate oriented continuing education courses, of which a minimum of 15 clock-hours shall be in required course topics.

(2)(a) The Real Estate Commissioner, with advice from real estate professionals, educators and the public, may accept a broad range of topics for real estate oriented continuing education courses. Required course topics shall be flexible so as to allow for changes in the real estate profession.

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

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

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

**SECTION 5.** 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 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] **these** 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) A [sole practitioner or] principal real estate broker may not 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 an optional procedure by which [a sole practitioner or] a principal real estate broker may elect to disburse disputed funds held in relation to the sale, exchange or purchase of real estate 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. A disbursement pursuant to the procedure does not affect the claim of any other person to the funds.

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

**SECTION 6.** ORS 696.245 is amended to read:

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

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NOTICE OF CLIENTS' TRUST ACCOUNT

To: (name of bank) \_\_\_\_\_

Under the Oregon Real Estate License Law, I am the [sole practitioner,] principal real estate broker or designated real estate appraiser for (licensed name of broker or business) \_\_\_\_\_.

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

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

Dated: (insert date)

\_\_\_\_\_  
(signature of broker)

ACKNOWLEDGMENT OF RECEIPT

I, \_\_\_\_\_, a duly authorized representative of (bank) \_\_\_\_\_, do hereby acknowledge receipt of the above NOTICE OF CLIENTS' TRUST ACCOUNT on (date) \_\_\_\_\_.

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(title)

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(2) The acknowledged copy of the notice described in subsection (1) of this section shall be retained by the [sole practitioner or] principal real estate broker as provided in ORS 696.241 for the retention of trust account records, subject to inspection by the Real Estate Commissioner or the commissioner's authorized representative.

**SECTION 7.** ORS 696.280 is amended to read:

696.280. (1) A real estate broker or principal real estate broker shall maintain within this state, except as provided in subsection (4) of this section, complete and adequate records of all professional real estate activity conducted by or through the broker. The Real Estate Agency shall specify by rule the records required to establish complete and adequate records of a broker's professional real estate activity. The only documents the agency may require by rule a real estate broker or principal real estate broker to use or generate are documents that are otherwise required by law or are voluntarily generated during a real estate transaction.

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

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

(3) The records shall at all times be open for inspection by the Real Estate Commissioner or the commissioner's authorized representatives. The records of each transaction shall be maintained by the licensee for a period of not less than six years after the date the transaction closed or failed. The records may be maintained in any format that allows for inspection and copying by the commissioner or the commissioner's representatives, as determined by the commissioner by rule.

(4) The agency may prescribe by rule terms and conditions under which a real estate broker or principal real estate broker may maintain records outside this state.

**SECTION 8.** ORS 696.290 is amended to read:

696.290. (1) A real estate licensee *[shall]* **may** not offer, promise, allow, give, pay or rebate, directly or indirectly, any part or share of the licensee's 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 licensee's compensation on a cooperative sale 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]* **may** 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]* **may** 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 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]* **prohibits** 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)(a) Nothing in subsection (1) of this section *[is intended to prevent]* **prevents** an Oregon real estate broker or principal real estate broker from sharing compensation on a cooperative nonresidential real estate transaction with a person who holds an active real estate license in another state or country, provided:

*[(a)]* (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)]* (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)]* (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] (b) As used in **this** 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 9. Notwithstanding ORS 696.270, the Real Estate Agency may not charge a fee for the initial issuance of a principal real estate broker’s license to a sole practitioner who conducted professional real estate activity as a sole practitioner prior to January 1, 2010.**

**SECTION 10. ORS 696.028 is repealed.**

**Passed by House May 8, 2009**

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Chief Clerk of House

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Speaker of House

**Passed by Senate June 2, 2009**

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President of Senate

**Received by Governor:**

.....M,....., 2009

**Approved:**

.....M,....., 2009

.....  
Governor

**Filed in Office of Secretary of State:**

.....M,....., 2009

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Secretary of State