

Senate Bill 140

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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**.

Modifies provisions relating to registered business names and branch offices of real estate licensees.

Allows Real Estate Commissioner to issue limited real estate licenses to applicants.

Requires client trust funds placed in escrow to be placed in licensed neutral escrow depository.

Removes requirement to publish addresses of real estate licensees subject to discipline.

Allows imposition of civil penalty of up to \$1,000 per day for failure to make real estate property management records available for inspection.

A BILL FOR AN ACT

1
2 Relating to real estate licensees; creating new provisions; and amending ORS 696.010, 696.026,
3 696.200, 696.241, 696.445 and 696.990.

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

5 **SECTION 1.** ORS 696.026 is amended to read:

6 696.026. (1)(a) [*A real estate broker or*] **A real estate licensee who is a sole practitioner,**
7 **principal real estate broker or real estate property manager** may conduct professional real estate
8 activity under:

9 (A) [*The broker's name,*] **The name of the licensee;**

10 (B) A registered business name; or

11 (C) A name prescribed by [*agency*] rule **of the Real Estate Agency.**

12 (b) **Only a real estate licensee who is a sole practitioner, principal real estate broker or**
13 **real estate property manager may register a business name.**

14 (2) The **registered** business name under which a [*broker*] **real estate licensee** conducts profes-
15 sional real estate activity has no license standing [*independent of the broker*].

16 [(2)] (3) The agency by rule shall adopt a registration system for business names. The system
17 shall allow the registration of any branch office of [*either*] a sole practitioner, [*or a*] principal real
18 estate broker **or real estate property manager.**

19 [(3)] (4) [*A real estate broker or principal real estate broker*] **A real estate licensee** operating
20 under a business name registered by the [*broker*] **licensee** need not be an owner or officer of any
21 organization otherwise lawfully entitled to use the registered business name or have an ownership
22 interest in the registered **business** name. However, all professional real estate activity conducted
23 by or on behalf of the [*broker*] **real estate licensee** must be conducted under the business name
24 registered by the [*broker*] **licensee.**

25 [(4)] (5)(a) [*A real estate broker or principal real estate broker*] **A real estate licensee who**
26 **registers a business name as provided by subsection (1) of this section** may register two or
27 more business names if the business names are for affiliated or subsidiary business organizations.

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 **(b)** *[If a real estate broker or principal real estate broker registers the]* **If a real estate licensee**
 2 **registers two or more** business names for *[two or more]* affiliated or subsidiary business organiza-
 3 tions, the *[broker]* **licensee** may conduct professional real estate activity separately under each
 4 business name.

5 **(6)** *[A real estate broker or principal real estate broker]* **A real estate licensee** must supervise
 6 and control the professional real estate activity conducted under the *[broker's name or registered*
 7 *business]* name **designated as provided by subsection (1) of this section.**

8 *[(5)]* **(7)** A real estate broker employed, engaged or supervised by a principal real estate broker
 9 for required training and supervision by the principal real estate broker may have an ownership
 10 interest in any business through which the principal **real estate** broker conducts professional real
 11 estate activity, but may not control or supervise the professional real estate activity of the principal
 12 **real estate** broker and may not interfere with or be responsible for the training and supervision
 13 of any other **real estate** broker.

14 *[(6)]* **(8)** A nonlicensed individual may have an ownership interest in any business through which
 15 a real estate broker or principal real estate broker engages in professional real estate activity, but
 16 may not control or supervise the professional real estate activity of any real estate broker or prin-
 17 cipal real estate broker licensed to control or supervise the professional real estate activity of
 18 *[such]* **the** business.

19 *[(7)]* **(9)** Two or more real estate brokers operating under the same registered business name
 20 who do not exercise any administrative or supervisory control over one another are solely respon-
 21 sible for their own professional real estate activity.

22 *[(8)]* **(10)** Notwithstanding any other provision of ORS 696.010 to 696.495, 696.600 to 696.785,
 23 696.800 to 696.870, 696.990 and 696.995, a **sole practitioner, principal real estate broker or real**
 24 **estate** broker associated with a principal **real estate** broker may create a corporation, limited li-
 25 ability company, limited liability partnership or any other lawfully constituted business organization
 26 for the purpose of receiving compensation *[from the principal broker]*. **A real estate broker asso-**
 27 **ciated with a principal real estate broker may only receive compensation from a principal**
 28 **real estate broker.** A business organization created under this subsection may not be licensed un-
 29 der ORS 696.022 or conduct in its own name professional real estate activity requiring a real estate
 30 license.

31 **SECTION 2.** Section 3 of this 2009 Act is added to and made a part of ORS 696.010 to
 32 **696.495.**

33 **SECTION 3.** (1) The Real Estate Commissioner may issue a limited license to an applicant
 34 for a license as a real estate broker, sole practitioner, principal real estate broker or real
 35 estate property manager if the commissioner determines that the issuance is in the public
 36 interest. The commissioner may limit a license issued under this section:

37 **(a) By term;**

38 **(b) To acts subject to the supervision of a specific principal real estate broker;**

39 **(c) By conditions to be observed in the exercise and the privileges granted; or**

40 **(d) In other ways determined by the commissioner as necessary or appropriate to protect**
 41 **the public.**

42 **(2) A limited license issued under this section does not confer any property right in the**
 43 **privileges to be exercised under the license, and the holder of a limited license does not have**
 44 **the right to renewal of the limited license. A limited license may be suspended or revoked,**
 45 **or the real estate licensee may be reprimanded, by the commissioner on the grounds set out**

1 **in ORS 696.301 or for failure to comply with the limitations of the license.**

2 **SECTION 4.** ORS 696.200 is amended to read:

3 696.200. (1) **To establish a main office or a branch office under this section, a real estate**
 4 **licensee must be:**

- 5 (a) **A sole practitioner;**
- 6 (b) **A principal real estate broker; or**
- 7 (c) **A real estate property manager.**

8 [(1)] (2) *[Except for real estate brokers associated with a principal real estate broker, every real*
 9 *estate broker and principal real estate broker shall]* **Every real estate licensee identified in sub-**
 10 **section (1) of this section must:**

11 (a) Maintain in this state a place of business to be designated as the *[broker's]* **licensee's** main
 12 office; and

13 (b) Designate the place of business by a sign that contains the name under which the *[broker*
 14 *is licensed]* **licensee conducts professional real estate activity.**

15 [(2)] (3) The place of business **of a real estate licensee** must be specified in the application for
 16 a real estate license, and designated in the license. Prior to the change of a business location, the
 17 *[broker shall]* **real estate licensee must** notify the Real Estate Commissioner in writing of the new
 18 location. The change of a business location without notification to the commissioner is grounds for
 19 revocation of *[licenses previously issued]* **a license.**

20 [(3)] (4) *[A real estate broker or principal real estate broker]* **A real estate licensee identified**
 21 **in subsection (1) of this section** may establish one or more branch offices as separate business
 22 locations under the management of the *[broker]* **licensee.** A *[broker]* **real estate licensee** may
 23 conduct and supervise the business of more than one office, whether **a main office** or **a branch of-**
 24 **office.** The *[broker shall]* **real estate licensee must** register each branch office with the commissioner
 25 and designate each branch office by a sign that contains the name under which the *[broker is li-*
 26 *censed]* **licensee conducts professional real estate activity.**

27 [(4)] (5) Upon vacating any business location, the *[broker]* **real estate licensee** shall ensure that
 28 the sign containing the *[broker's]* **licensee's** name or the name under which the *[broker]* **licensee**
 29 has operated is removed from the location *[that the broker has vacated].*

30 (6) A *[broker]* **real estate licensee** may not display any name at the designated places of busi-
 31 ness *[named in the broker's license or licenses]* other than the name under which the *[broker is li-*
 32 *censed]* **licensee conducts professional real estate activity.**

33 **SECTION 5.** ORS 696.241 is amended to read:

34 696.241. (1) Each sole practitioner and each principal real estate broker shall maintain in this
 35 state one or more separate bank accounts that shall be designated a Clients' Trust Account in which
 36 all trust funds received or handled by the sole practitioner or broker and the real estate licensees
 37 subject to the supervision of the broker on behalf of any other person shall be deposited unless,
 38 pursuant to written agreement of all parties having an interest in the trust funds, the trust funds
 39 are immediately placed in a **licensed** neutral escrow depository in this state.

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

44 (3) Each sole practitioner or principal real estate broker shall authorize the agency, by a form
 45 approved by the commissioner, to examine any Clients' Trust Account, by a duly authorized repre-

1 tentative of the agency. The examination shall be made at such times as the commissioner may di-
2 rect.

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

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

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

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

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

31 (9) A sole practitioner or principal real estate broker may not knowingly keep or cause to be
32 kept any funds or money in any bank under the heading of Clients' Trust Account or any other name
33 designating such funds or money as belonging to the clients of any sole practitioner or principal real
34 estate broker, except actual trust funds deposited with the sole practitioner or broker.

35 (10) The agency by rule shall establish an optional procedure by which a sole practitioner or a
36 principal real estate broker may elect to disburse disputed funds held in relation to the sale, ex-
37 change or purchase of real estate from a Clients' Trust Account to the person who delivered the
38 funds to the sole practitioner or principal real estate broker. The procedure shall allow disbursal
39 not more than 20 days after a request is made for the disbursal. A disbursal pursuant to the proce-
40 dure does not affect the claim of any other person to the funds.

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

43 **SECTION 6.** ORS 696.445 is amended to read:

44 696.445. (1) Pursuant to ORS 696.385 (2), the Real Estate Agency shall provide for the advance-
45 ment of education and research in connection with the educational requirements for the securing

1 of licenses for real estate licensees under ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to
 2 696.870 and 696.995.

3 (2) The Real Estate Commissioner may assign and reassign staff in the agency to perform such
 4 duties as the commissioner considers necessary to carry out subsection (1) of this section, including
 5 but not limited to the preparation and distribution of a periodic publication to be known as the
 6 Oregon Real Estate News Journal and the preparation and publication of other printed matter of
 7 an educational nature for the benefit of real estate licensees.

8 (3) The commissioner shall publish in the Oregon Real Estate News Journal the names [*and*
 9 *addresses of all applicants for real estate or escrow licenses whose licenses have been refused,*] **and**
 10 **the city and state** of real estate licensees who have been reprimanded, of real estate and escrow
 11 **agent** licensees whose licenses have been suspended or revoked and of real estate and escrow **agent**
 12 licensees who have been assessed civil penalties. Each such publication shall include a brief de-
 13 scription of the situation involved and the grounds for the commissioner’s action.

14 **SECTION 7.** ORS 696.990 is amended to read:

15 696.990. (1) Violation of any provision of ORS 696.010 to 696.130, 696.200, 696.205, 696.241 to
 16 696.375, 696.392, 696.395 to 696.430, 696.490, 696.600 to 696.785 and 696.995 is a Class A misdemeanor.

17 (2) Any officer, director or shareholder or agent of a corporation, or member or agent of a
 18 partnership or association, who personally participates in or is an accessory to any violation of ORS
 19 696.010 to 696.130, 696.200, 696.205, 696.241 to 696.375, 696.392, 696.395 to 696.430, 696.490, 696.600
 20 to 696.785 and 696.995 by the partnership, association or corporation, is subject to the penalties
 21 prescribed in subsection (1) of this section.

22 (3) A violation of any one of the provisions of ORS 696.505 to 696.590 is a Class A misdemeanor.

23 (4) Any person that violates ORS 696.020 (2) may be required by the Real Estate Commissioner
 24 to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined
 25 by the commissioner of:

26 (a) Not less than \$100 nor more than \$500 for the first offense of unlicensed professional real
 27 estate activity; and

28 (b) Not less than \$500 nor more than \$1,000 for the second and subsequent offenses of unlicensed
 29 professional real estate activity.

30 (5) In addition to the civil penalty set forth in subsection (4) of this section, any person that
 31 violates ORS 696.020 may be required by the commissioner to forfeit and pay to the General Fund
 32 of the State Treasury a civil penalty in an amount determined by the commissioner but not to ex-
 33 ceed the amount by which such person profited in any transaction that violates ORS 696.020.

34 **(6)(a) Except as provided in paragraph (b) of this subsection, a real estate licensee who**
 35 **is a real estate property manager or principal real estate broker and who is engaging in or**
 36 **who has engaged in the management of rental real estate may be required to forfeit and pay**
 37 **to the General Fund of the State Treasury a civil penalty of up to \$1,000 per day of violation,**
 38 **or a lesser penalty in an amount determined by the commissioner, if the licensee fails to**
 39 **comply with rules that require the licensee to produce for inspection records related to the**
 40 **management of rental real estate that are maintained by the licensee as provided by ORS**
 41 **696.280.**

42 **(b) A civil penalty imposed under this subsection may not exceed \$10,000.**

43 [(6)] (7) Civil penalties under this section shall be imposed as provided in ORS 183.745.

44 [(7)] (8) The civil penalty provisions of subsections [(4) and (5)] (4) to (6) of this section are in
 45 addition to and not in lieu of the criminal penalties for unlicensed professional real estate activity

1 in subsections (1) and (2) of this section.

2 [(8)] (9) For the purposes of subsection (4) of this section, any violation of ORS 696.020 (2) that
3 results from a failure of a real estate licensee to renew a license within the time allowed by law
4 constitutes a single offense of unlicensed professional real estate activity for each 30-day period af-
5 ter expiration of the license during which the individual engages in professional real estate activity.
6 A civil penalty imposed for a violation of ORS 696.020 (2) that results from a failure of a real estate
7 licensee to renew a license within the time allowed by law is not subject to the minimum dollar
8 amounts specified in subsection (4) of this section.

9 [(9)] (10) Subsection (5) of this section does not apply to a violation of ORS 696.020 (2) that re-
10 sults from a failure of a real estate licensee to renew a license within the time allowed by law.

11 **SECTION 8.** ORS 696.010 is amended to read:

12 696.010. As used in ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and
13 696.995, unless the context requires otherwise:

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

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

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

21 (4)(a) "Branch office" means a business location, other than the main office designated under
22 ORS 696.200 [(1)] (2), where professional real estate activity is regularly conducted or that is ad-
23 vertised to the public as a place where such business may be regularly conducted.

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

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

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

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

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

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

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

- 1 (11) "Letter opinion" has the meaning given that term in ORS 696.294.
- 2 (12) "Management of rental real estate" means:
- 3 (a) Representing the owner of real estate in the rental or lease of the real estate and includes
- 4 but is not limited to:
- 5 (A) Advertising the real estate for rent or lease;
- 6 (B) Procuring prospective tenants to rent or lease the real estate;
- 7 (C) Negotiating with prospective tenants;
- 8 (D) Accepting deposits from prospective tenants;
- 9 (E) Checking the qualifications and creditworthiness of prospective tenants;
- 10 (F) Charging and collecting rent or lease payments;
- 11 (G) Representing the owner in inspection or repair of the real estate;
- 12 (H) Contracting for repair or remodeling of the real estate;
- 13 (I) Holding trust funds or property received in managing the real estate and accounting to the
- 14 owner for the funds or property;
- 15 (J) Advising the owner regarding renting or leasing the real estate;
- 16 (K) Providing staff and services to accommodate the tax reporting and other financial or ac-
- 17 counting needs of the real estate;
- 18 (L) Providing copies of records of acts performed on behalf of the owner of the real estate; and
- 19 (M) Offering or attempting to do any of the acts described in this paragraph for the owner of
- 20 the real estate; or
- 21 (b) Representing a tenant or prospective tenant when renting or leasing real estate and includes
- 22 but is not limited to:
- 23 (A) Consulting with tenants or prospective tenants about renting or leasing real estate;
- 24 (B) Assisting prospective tenants in renting or leasing real estate;
- 25 (C) Assisting prospective tenants in qualifying for renting or leasing real estate;
- 26 (D) Accepting deposits or other funds from prospective tenants for renting or leasing real estate
- 27 and holding the funds in trust for the prospective tenants;
- 28 (E) Representing tenants or prospective tenants renting or leasing real estate; and
- 29 (F) Offering or attempting to do any of the acts described in this paragraph for a tenant or
- 30 prospective tenant.
- 31 (13) "Nonlicensed individual" means an individual:
- 32 (a) Who has not obtained a real estate license; or
- 33 (b) Whose real estate license is lapsed, expired, inactive, suspended, surrendered or revoked.
- 34 (14) "Principal real estate broker" means an individual who holds an active license as a princi-
- 35 pal real estate broker and who employs, engages or supervises the professional real estate activity
- 36 of another real estate licensee.
- 37 (15) "Professional real estate activity" means any of the following actions, when engaged in for
- 38 another and for compensation or with the intention or in the expectation or upon the promise of
- 39 receiving or collecting compensation, by any person who:
- 40 (a) Sells, exchanges, purchases, rents or leases real estate;
- 41 (b) Offers to sell, exchange, purchase, rent or lease real estate;
- 42 (c) Negotiates, offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or
- 43 leasing of real estate;
- 44 (d) Lists, offers, attempts or agrees to list real estate for sale;
- 45 (e) Offers, attempts or agrees to perform or provide a competitive market analysis or letter

1 opinion, to represent a taxpayer under ORS 305.230 or 309.100 or to give an opinion in any admin-
 2 istrative or judicial proceeding regarding the value of real estate for taxation, except when the ac-
 3 tivity is performed by a state certified appraiser or state licensed appraiser;

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

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

6 (h) Engages in management of rental real estate;

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

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

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

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

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

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

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

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

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

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

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

32 (21) "Sole practitioner" means a real estate broker conducting professional real estate activity
 33 not in conjunction with other real estate brokers or principal real estate brokers.

34