

A-Engrossed
Senate Bill 141

Ordered by the Senate February 17
Including Senate Amendments dated February 17

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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.

Requires Real Estate Commissioner to establish system for licensing escrow agents. Requires escrow agents to submit application, fingerprints and criminal records checks prior to change in ownership interest in escrow agent, change in corporate officer in charge of escrow operations or change in other individuals in charge of escrow operations.

Expands causes for disciplinary action and for imposition of civil penalties for violation of escrow agent licensing statutes.

Modifies requirements related to deposits and disbursements of escrow money and property.

A BILL FOR AN ACT

1
2 Relating to the regulation of escrow agents; creating new provisions; and amending ORS 314.258,
3 696.505, 696.511, 696.527, 696.530, 696.532, 696.535, 696.578, 696.581 and 696.585.

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

5 **SECTION 1.** ORS 696.505 is amended to read:

6 696.505. As used in ORS 696.505 to 696.590[*unless the context requires otherwise*]:

7 (1) **“Close an escrow” means the final disbursement of all funds, property and documents**
8 **in an escrow as directed by written escrow instructions from the principals.**

9 [(1)] (2) “Collection escrow” means an escrow in which the escrow agent:

10 (a) Receives:

11 (A) Installment payments;

12 (B) Instruments evidencing or securing an obligation; or

13 (C) Instruments discharging the security interest; and

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

16 [(2)] “Commissioner” means the Real Estate Commissioner.]

17 (3) “Compensation” means [any] a fee, commission, salary, money or valuable consideration for
18 services rendered or to be rendered as well as the promise thereof and whether contingent or oth-
19 erwise.

20 (4) “Escrow” means [any] a transaction [wherein] **in which** any written instrument, money, evi-
21 dence of title to real or personal property or other thing of value is delivered, for the purpose of
22 paying an obligation or effecting the sale, transfer, encumbrance or lease of real or personal prop-
23 erty, to a person not otherwise having any right, title or interest therein, to be held by that person
24 as a neutral third party until the happening of a specified event or the performance of a prescribed

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 condition, when it is then to be delivered by the neutral third party to a grantee, grantor, promisee,
2 promisor, obligee, obligor, bailee, bailor or any agent or employee of any of them pursuant to the
3 written instructions of the principals to the transaction.

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

8 (6) "Escrow trust account" means a bank account that meets all of the following re-
9 **quirements:**

10 (a) **Is kept separate, distinct and apart from funds belonging to the escrow agent;**

11 (b) **Is designated as an escrow trust account; and**

12 (c) **Is used to deposit trust funds received by an escrow agent on behalf of a principal.**

13 *[(6) "Principal" means:]*

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

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

19 (7) "Principal" means:

20 (a) **The buyer, seller, lessor, lessee or exchanging party in an escrow transaction involv-**
21 **ing the sale, lease, lease-option or exchange of real property or personal property;**

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

25 (c) **The buyer, seller, lender, borrower, vendor or vendee in a collection escrow;**

26 (d) **A person directing the escrow agent to hold back funds from a closing escrow for**
27 **payment of obligations related to the closing or the financing of real property or personal**
28 **property;**

29 (e) **A person who deposits funds, property or documents in a one-sided escrow, as defined**
30 **by rule of the Real Estate Commissioner; or**

31 (f) **A subservicer.**

32 *[(7)]* (8) "Real estate closing escrow" means an escrow *[where]* **in which:**

33 (a) **The escrow fee is paid in whole or in part by the principals to a real estate transaction; and**
34 *[wherein]*

35 (b) **The unpaid purchase price is delivered to an escrow agent for disbursal pursuant to the**
36 **written instructions of the principals to the transaction simultaneously on the transfer of specified**
37 **title to the real property.**

38 *[(8)]* (9) "Subservicer" means an escrow agent, a financial institution or a trust company, as
39 those terms are defined in ORS 706.008, or a collection agency registered under ORS 697.015 when
40 providing, pursuant to written instructions, a portion of the escrow services for an escrow to an
41 escrow agent, or a person in the business of receiving escrows under the laws of another state, that
42 would otherwise provide the escrow services directly to the principals.

43 (10) "Trust funds" means funds held by an escrow agent on behalf of a principal.

44 **SECTION 2.** ORS 696.511 is amended to read:

45 696.511. (1) A person may not directly or indirectly engage in or carry on, or purport to engage

1 in or carry on, **within this state**, the business of an escrow agent, or act in the capacity of an
2 escrow agent, unless the person holds an active license as an escrow agent under the provisions of
3 ORS 696.505 to 696.590.

4 *[(2)(a) Every escrow agent before engaging in the escrow business shall file in the office of the Real
5 Estate Commissioner an application for a license, in writing, verified by the applicant and in the form
6 prescribed by the commissioner. The application must include the location of the agent's main office
7 and all branch offices in this state, the name or style of doing business, the names, resident and busi-
8 ness addresses of all persons interested in the business as principals, partners, elected officers, trustees
9 and directors, specifying as to each the person's capacity and title, the general plan and character of
10 business and the length of time the agent has been engaged in business. Notification of changes in the
11 information contained in the application or in the ownership of the business must be immediately filed
12 with the commissioner.]*

13 **(2)(a) The Real Estate Commissioner shall establish by rule a system for licensing escrow
14 agents. The system shall establish, at a minimum, the following:**

15 **(A) The form and content of applications for initial licensing and license renewal.**

16 **(B) The requirements for submitting surety bonds under ORS 696.525 or evidence of de-
17 posits in lieu of a bond under ORS 696.527.**

18 **(C) The form and content of applications for changes in any of the following:**

19 **(i) Ownership interest in an escrow agent.**

20 **(ii) Corporate officers in charge of escrow operations for an escrow agent.**

21 **(iii) Other individuals in charge of escrow operations for an escrow agent.**

22 **(D) Schedules and procedures for issuing and renewing licenses.**

23 **(E) Schedules and procedures for approving changes in ownership interest in an escrow
24 agent, changes in corporate officers in charge of escrow operations or changes in other in-
25 dividuals in charge of escrow operations.**

26 **(F) The term of a license.**

27 **(G) The requirements for an escrow agent to notify the Real Estate Agency of changes
28 in the information contained in an application, including but not limited to office location
29 changes, branch office establishment, office closure and business operations cessation.**

30 **(H) The requirements for an applicant that is not an individual to provide a certificate
31 of existence or similar documentation.**

32 (b) If *[the]* **an applicant for a license as an escrow agent** is an individual, the applicant must
33 be 18 years of age or older.

34 (3) For the initial license of an escrow agent, the commissioner may require information and
35 evidence the commissioner considers necessary to demonstrate the applicant's qualifications to
36 transact escrow business including, but not limited to, information regarding the applicant's finan-
37 cial resources, the applicant's escrow business in another state or the experience or training of
38 employees in escrow business, or a testimonial of an escrow agent licensed in this state. Subject to
39 subsection (4) of this section, an applicant:

40 (a) Who is an individual must demonstrate a minimum of three years of experience in the ad-
41 ministration of escrows within Oregon or a state with comparable escrow laws; or

42 (b) Who is not an individual must demonstrate a minimum collective experience among its per-
43 sonnel of three years in the administration of escrows within Oregon or a state with comparable
44 escrow laws.

45 (4) The commissioner may waive the three-year experience requirement in subsection (3) of this

1 section for an applicant who demonstrates other qualifications sufficient to ensure the protection
2 of the public.

3 **(5)(a) For the purpose of this subsection, an escrow agent that is not an individual may**
4 **satisfy the requirements for fingerprints and a criminal records check by providing the fin-**
5 **gerprints of and conducting a criminal records check on an individual who:**

6 **(A) Has more than five percent ownership interest in the escrow agent;**

7 **(B) Is a corporate officer in charge of escrow operations for the escrow agent; or**

8 **(C) Is in charge of escrow operations for the escrow agent.**

9 *[(5) (b) For [the] an initial escrow agent license [or license renewal of an escrow agent], the*
10 *commissioner shall require fingerprints and a state or nationwide criminal records check under ORS*
11 *181.534 of [an] the applicant [for an initial license and may require fingerprints and a state or na-*
12 *tionwide criminal records check under ORS 181.534 of an applicant for license renewal]. The commis-*
13 *sioner may require additional information [for an initial license or license renewal under this*
14 *subsection] from the applicant that the commissioner considers necessary for protecting the public.*
15 *[For purposes of requiring fingerprints and a criminal records check, "applicant" means an individual*
16 *who has more than five percent ownership interest in the escrow agency and the corporate officers in*
17 *direct control of escrow operations.]*

18 **(c) For license renewal as an escrow agent, the commissioner may require fingerprints**
19 **and a state or nationwide criminal records check under ORS 181.534 of the applicant. The**
20 **commissioner may require additional information from the applicant that the commissioner**
21 **considers necessary for protecting the public.**

22 **(d) For a change in individuals who will have ownership interest in an escrow agent, the**
23 **individuals who will be corporate officers in charge of escrow operations or any other indi-**
24 **viduals who will be in charge of escrow operations, the commissioner shall require finger-**
25 **prints and a state or nationwide criminal records check under ORS 181.534 of the individuals**
26 **who will have the ownership interest or who will be in charge. The commissioner may re-**
27 **quire additional information from the individuals that the commissioner considers necessary**
28 **for protecting the public.**

29 (6) For license renewal, an **applicant that is an** escrow agent shall provide:

30 (a) A certification of training, by which the applicant certifies that the applicant provides
31 escrow agency staff within Oregon with an average of six hours or more of training per year per
32 permanent, full-time employee in subjects that bear directly on the administration of escrows; *[and]*

33 (b) A statement identifying by name, address and telephone number one or more individuals who
34 can respond to the inquiries of or referrals by the commissioner or the commissioner's authorized
35 representative regarding the applicant's escrow business[.]; **and**

36 **(c) Other documents and information that the commissioner may require by rule.**

37 (7) *[The commissioner, if satisfied that the applicant should not be refused a license under ORS*
38 *696.535,] The commissioner shall issue or renew an escrow agent license, approve a change in*
39 **ownership interest in an escrow agent, approve a change in corporate officers in charge of**
40 **escrow operations of the escrow agent or approve a change in any other individuals in charge**
41 **of escrow operations of the escrow agent** for an applicant that complies with the requirements
42 of ORS 696.505 to 696.590 **and the rules adopted under ORS 696.505 to 696.590.**

43 (8) To qualify for issuance or renewal of an escrow agent license, an applicant shall pay any
44 outstanding civil penalties or other moneys due and owing to the Real Estate Agency except civil
45 penalties or other moneys due that are the subject of judicial or administrative review on the date

1 of the application for license or license renewal.

2 **SECTION 3. The amendments to ORS 696.511 by section 2 of this 2009 Act apply to:**

3 **(1) Applications for an initial escrow agent license or escrow agent license renewal that**
4 **are filed on or after the effective date of this 2009 Act.**

5 **(2) Changes in individuals who will have an ownership interest in an escrow agent,**
6 **changes in corporate officers who will be in charge of escrow operations for an escrow agent**
7 **and changes of any other individuals who will be in charge of escrow operations for an**
8 **escrow agent that become effective on or after the effective date of this 2009 Act.**

9 **SECTION 4.** ORS 696.527 is amended to read:

10 696.527. (1) Any escrow agent may satisfy the requirements of ORS 696.525 by depositing with
11 the State Treasurer, in an amount equal to the surety bond required, a deposit consisting only of
12 the following:

13 (a) Cash;

14 (b) Ample secured obligations of the United States, a state or a political subdivision thereof;

15 (c) Certificates of deposit, **assignments of certificates of deposit** or other investments de-
16 scribed in ORS 733.650 (4), to the extent that such investments are insured by the Federal Deposit
17 Insurance Corporation; *[or]*

18 **(d) A certified, annually renewable letter of credit executed by a financial institution and**
19 **satisfactory to the Real Estate Commissioner in the amount of the surety bond required by**
20 **ORS 696.525; or**

21 *[(d)]* (e) Any combination of paragraphs (a), (b) *[or]*, (c) **and (d)** of this subsection.

22 (2) The State Treasurer shall accept and hold the deposit for the faithful performance of escrow
23 activity by the escrow agent. No claimant or judgment creditor or the escrow agent shall have the
24 right to attach or levy upon any of the assets or securities held on deposit.

25 (3) The *[Real Estate]* commissioner, by order, may authorize the State Treasurer to use such
26 deposit, as follows:

27 (a) To satisfy any final judgment entered against the escrow agent for actual damages suffered
28 by any person by reason of the violation of any of the provisions of ORS 696.505 to 696.590, now or
29 hereafter enacted, or by reason of any fraud, dishonesty, misrepresentation or concealment of ma-
30 terial fact growing out of any escrow transaction;

31 (b) For use in the liquidation of the escrow agent under the provisions of ORS 696.555; or

32 (c) To release any or all of such deposit to the escrow agent when, in the opinion of the com-
33 missioner, such deposit is no longer necessary to protect the public.

34 (4) The commissioner may waive the requirement of the surety bond or deposit for any escrow
35 agent that:

36 (a) Demonstrates to the commissioner's satisfaction that the capital and surplus or net worth,
37 of such escrow agent as of the end of the previous business accounting year of the agent is equal
38 to, or greater than, the average month-end balance of custodial funds held by such agent during the
39 previous business accounting year; **or**

40 *[(b) Provides a certified, annually renewable letter of credit executed by a financial institution and*
41 *satisfactory to the commissioner in the amount of the surety bond required by ORS 696.525; or]*

42 *[(c)]* (b) Provides a certified, personal guarantee executed by one or more owners of the escrow
43 agency and satisfactory to the commissioner in the amount of the surety bond required by ORS
44 696.525.

45 (5) All other claims against the bond or deposit of an escrow agent must be paid by the com-

1 missioner only upon the receipt of a final court judgment against the escrow agent and only in the
2 amount of actual damages as ordered by the court.

3 **SECTION 5.** ORS 696.530 is amended to read:

4 696.530. (1) The license of an escrow agent expires on **the** June 30 [*next*] after the date of issu-
5 ance or on [*such*] **a** date [*as may be*] specified by rule of the Real Estate Commissioner. A license
6 may be renewed [*by filing a renewal application in writing, verified by the applicant and in the*
7 *form*] **as** prescribed by **rule of** the commissioner, [*and*] **which may include** paying [*the annual li-*
8 *cence fee for the next succeeding fiscal year*] **any required fees.**

9 (2) The filing fees are:

10 (a) For filing an original or a renewal application, \$300 for the main office and \$150 for each
11 branch office.

12 (b) For filing an application for a duplicate copy of a license, upon satisfactory showing of loss
13 of the license, the sum of \$20.

14 (c) For a name change or a change of address of an escrow agent, \$10 for the main office plus
15 \$10 for each affected branch office.

16 (3) The commissioner, by rule, may provide an opportunity for the late renewal of an expired
17 escrow agent license by an applicant who fails to renew the license by the date specified under
18 subsection (1) of this section.

19 **SECTION 6.** ORS 696.532 is amended to read:

20 696.532. (1) The Real Estate Commissioner may issue or renew a limited escrow agent license
21 if[:] **the commissioner determines it is in the public interest.**

22 [*(a) An applicant elects not to apply for an escrow agent license; or*]

23 [*(b) An applicant does not qualify for an escrow agent license.*]

24 (2) The commissioner may limit a license issued under this section:

25 (a) By term;

26 (b) To activities subject to supervision by a specific escrow agent;

27 (c) By conditions to be observed in the exercise of the privileges granted; or

28 (d) In other ways determined by the commissioner as necessary or appropriate to protect the
29 public.

30 (3) A limited licensee [*shall*] **must** comply with **the limitations of the license and** the re-
31 quirements of ORS 696.505 to 696.590 **and rules adopted under ORS 696.505 to 696.590.** [*and*
32 *shall:*]

33 [*(a) Restrict the escrow business of the licensee to those escrows specified in the application; or*]

34 [*(b) Limit its escrow business to collection escrows.*]

35 **SECTION 7.** ORS 696.535 is amended to read:

36 696.535. [*(1) The Real Estate Commissioner may refuse to issue or may suspend or revoke any li-*
37 *cence by entering an order to that effect with the commissioner's findings in respect thereto if, upon*
38 *examination into the affairs of the applicant or licensee in the performance of routine duties, upon field*
39 *examination or upon hearing, the commissioner determines that the applicant or licensee:]*

40 **(1) The Real Estate Commissioner may suspend or revoke the license of an escrow agent,**
41 **reprimand an escrow agent who is licensed, refuse to issue an escrow agent license to an**
42 **applicant or refuse to renew the license of an escrow agent, if the escrow agent or applicant:**

43 (a) [*Has,*] **Is insolvent** under generally accepted accounting principles[, *a deficit net worth*];

44 (b) [*Has demonstrated unworthiness*] **Demonstrated untrustworthiness or incompetence** to
45 transact the business of an escrow agent;

1 (c) *[Does not]* **Failed to** conduct business in accordance with law or *[has]* violated any *[pro-*
2 *visions]* **provision** of ORS 696.505 to 696.590 **or any rule adopted under ORS 696.505 to 696.590;**

3 (d) *[Has]* Committed fraud in connection with any transaction governed by ORS 696.505 to
4 696.590 **or the rules adopted under ORS 696.505 to 696.590;**

5 (e) *[Has]* Made any misrepresentations or false statement of an essential or material fact to, or
6 concealed any essential or material fact from, any person in the course of the escrow business;

7 (f) *[Has]* Knowingly made or caused to be made to the commissioner any false representation
8 of a material fact, or *[has]* suppressed or withheld from the commissioner any information the ap-
9 plicant or licensee possesses that, if submitted, would have disqualified the applicant or licensee
10 from original or renewed licensing under ORS 696.505 to 696.590 **or rules adopted under ORS**
11 **696.505 to 696.590;**

12 (g) *[Has]* **In a real estate transaction,** failed to account to the principals or persons entitled
13 *[thereto in a real estate transaction for the moneys,]* **to an accounting of the funds, property or**
14 documents or other things of value received in the transaction;

15 (h) *[Has not delivered, after]* **Failed to deliver within** a reasonable time[,] to persons entitled
16 *[thereto, moneys,]* **to receive funds, property or** documents or other things of value held or agreed
17 to be delivered by the licensee, as and when paid for and due to be delivered;

18 (i) *[Has]* Caused uncompensated material loss to principals by engaging in a pattern of failures
19 to act with neutrality between principals in multiple escrows;

20 (j) *[Has]* Refused to permit *[an examination by]* the commissioner *[of]* **to examine** the escrow
21 agent's books and affairs, or *[has]* refused or failed, within a reasonable time, to furnish any infor-
22 mation, records or files or make any report that may be required by the commissioner under the
23 provisions of ORS 696.505 to 696.590 **or rules adopted under ORS 696.505 to 696.590;** *[or]*

24 (k) Has been convicted of a *[felony or any misdemeanor]* **crime** that is substantially related to
25 the escrow agent's competency or trustworthiness to engage in the business of an escrow agent[.];

26 **(L) Committed an act of fraud or engaged in dishonest conduct substantially related to**
27 **the fitness of the applicant or licensee to conduct the activities of an escrow agent, without**
28 **regard to whether the act or conduct occurred in the course of escrow activity; or**

29 **(m) Failed to maintain a surety bond required under ORS 696.525 or other surety required**
30 **under ORS 696.527.**

31 (2) It is sufficient cause for refusal or revocation of a license in case of a partnership or cor-
32 poration or any unincorporated association, if any member of a partnership or any officer or director
33 of the corporation or association has been guilty of any act or omission which would be cause for
34 refusing or revoking the registration of an individual agent.

35 **SECTION 8.** ORS 696.585 is amended to read:

36 696.585. (1) Any person who violates any provision of ORS 696.505 to *[696.545]* **696.590**, or any
37 lawful rule or final order of the Real Estate Commissioner or any final judgment made by any court
38 upon application of the commissioner, may be required to forfeit and pay to the General Fund of the
39 State Treasury, a civil penalty in an amount determined by the commissioner of not more than
40 \$3,000 for each offense. Each violation shall be deemed a separate offense.

41 (2) In addition to the civil penalty set forth in subsection (1) of this section, any person who
42 violates any provision of ORS 696.505 to 696.590, any lawful rule or final order of the commissioner
43 or any final judgment made by a court upon application to the commissioner, may be required to
44 forfeit and pay to the General Fund of the State Treasury, a civil penalty in an amount determined
45 by the commissioner but not to exceed the amount by which such person profited in any transaction

1 *[which]* **that** violates any such provision, rule, order or judgment.

2 (3) Civil penalties under this section *[are]* **shall be** imposed *[as]* **in the manner** provided *[in]*
3 **by** ORS 183.745.

4 (4) The provisions of this section are in addition to and not in lieu of any other enforcement
5 provision contained in ORS 696.505 to 696.590.

6 **SECTION 9. The amendments to ORS 696.535 and 696.585 by sections 7 and 8 of this 2009**
7 **Act apply to conduct occurring on or after the effective date of this 2009 Act.**

8 **SECTION 10.** ORS 696.578 is amended to read:

9 696.578. (1) All *[money deposited in escrow]* **funds received by an escrow agent** to be delivered
10 upon the close of the escrow or upon any other contingency *[shall be]* **are trust funds that must**
11 **be** deposited and maintained in a bank authorized to do business within this state. **The funds must**
12 **be deposited in a federally insured account designated as an escrow trust account** and kept
13 separate, distinct and apart from funds belonging to the escrow agent. *[Such funds, when deposited,*
14 *are to be designated as trust funds, escrow accounts, or under some other appropriate name*
15 *indicating]* **The designation of an account as an escrow trust account indicates** that the funds
16 are not the funds of the escrow agent.

17 (2) Trust funds received by an escrow agent may be placed by the agent in a federally insured
18 interest-bearing bank account, designated *[a clients']* **as an escrow** trust account, but only with the
19 prior written approval of all parties having an interest in the trust funds. The earnings of *[such]* **the**
20 interest-bearing account may inure to the benefit of the escrow agent if expressly approved in
21 writing before deposit of the trust funds by all parties having an interest in the trust funds.

22 (3) With prior written notice to all parties who have an interest in the trust funds, an escrow
23 agent may place trust funds received by the escrow agent in a federally insured interest-bearing
24 bank account that is designated *[a clients']* **as an escrow** trust account and the earnings of which
25 inure to the benefit of a public benefit corporation, as defined in ORS 65.001, for distribution to or-
26 ganizations and individuals for first-time homebuying assistance and for development of affordable
27 housing. The escrow agent shall select a qualified public benefit corporation to receive the interest
28 earnings.

29 (4) Any bank services, as defined by rule by the Real Estate Commissioner, provided to the
30 escrow agent *[shall]* **may** not be considered to affect the impartiality or neutrality of the escrow
31 agent. Such services are permitted with approval in the written closing instructions of the princi-
32 pals.

33 (5) *[Clients']* Trust funds may be invested in secured obligations of the United States, if:

34 (a) The depositing principal gives prior written approval to the escrow agent for such invest-
35 ment after receiving written disclosure as may be required by rule adopted by the commissioner;

36 (b) The depositing principal releases the escrow agent from any liability for loss of *[such]* **the**
37 **trust** funds;

38 (c) The depositing principal agrees that any loss of **trust** funds *[shall]* **may** not be a claim
39 against the bond, deposit[, *letter of credit*] or personal guarantee of the agent under ORS 696.525 and
40 696.527; and

41 (d) The escrow agent does not have any interest in the investment or earnings from the invest-
42 ment.

43 (6) If the **trust** funds to be invested represent earnest money in a transaction, both principals
44 in the transaction must give prior written approval for the investment and are both considered de-
45 positing principals.

1 **SECTION 11.** ORS 696.581, as amended by section 2, chapter 54, Oregon Laws 2008, is amended
2 to read:

3 696.581. (1) An escrow agent may not accept funds, property or documents in any escrow
4 transaction without dated, written escrow instructions from the principals to the transaction or a
5 dated executed agreement in writing between the principals to the transaction.

6 **(2) Except as provided in this section, an escrow agent must follow dated, written escrow**
7 **instructions executed by the principals or a dated executed written agreement between the**
8 **principals to a transaction.**

9 [(2)] (3) Except as provided in ORS 314.258, an escrow agent may not close an escrow or dis-
10 burse any funds or property in an escrow without obtaining dated, separate escrow instructions in
11 writing from the principals to the transaction adequate to administer and close the transaction or,
12 in the case of disbursement, to disburse the funds and property.

13 [(3)] (4) The following statement or its substantial equivalent shall appear on or be attached to
14 all written escrow instructions prepared by an escrow agent for signature of the principals to a
15 transaction. The statement shall be in at least 10-point bold type. The statement shall either appear
16 immediately above the signatures of the principals or be separately initialed by the principals:
17 _____
18

19 It is understood by the parties signing the above or attached instructions that the instructions
20 are the complete instructions between this firm as an escrow agent and you as a principal to the
21 escrow transaction. These instructions may not include all the terms of the agreement which is the
22 subject of this escrow. Read these instructions carefully, and do not sign them unless they are ac-
23 ceptable to you.
24 _____
25

26 [(4)] (5) An escrow agent may not solicit or accept any original, amended or supplemental
27 escrow instructions containing any blank to be filled in after signing. An escrow agent *[shall]* **may**
28 not allow any alteration of original, amended or supplemental escrow instructions, unless the alter-
29 ation is signed or initialed by all principals who signed or initialed the instructions before the al-
30 teration.

31 [(5)] (6) An escrow agent may accept *[client]* **trust** funds, in excess of earnest money required
32 in transaction documents to be held, as individual funds of the principal who has paid them into
33 escrow. Such individual **trust** funds may be disbursed with only the separate written instructions
34 of the principal who deposited the funds into escrow.

35 [(6)] (7) An escrow agent may open a one-sided escrow, as defined by rule by the Real Estate
36 Commissioner, **by receiving the funds, property or documents for an escrow.** Such escrow funds
37 may be disbursed with only the separate written instructions of the principal who deposited the
38 funds into escrow.

39 [(7)] (8) Except as authorized in ORS 105.475, notwithstanding the requirement for dated, sepa-
40 rate escrow instructions to close an escrow or disburse funds or property in an escrow, an escrow
41 agent:

42 (a) May disburse earnest money deposited based on an agreement of the parties executed after
43 the initial sales agreement; and

44 (b) May not impose additional requirements on the principals to the transaction, including a
45 requirement that the principals sign a release of liability in favor of the escrow agent.

1 **(9) Notwithstanding any provision of this section, an escrow agent may disburse funds,**
2 **property or documents deposited in escrow in accordance with an order of a court of com-**
3 **petent jurisdiction.**

4 **SECTION 12. The amendments to ORS 696.578 and 696.581 by sections 10 and 11 of this**
5 **2009 Act apply to funds and property received, disbursed or otherwise maintained on or after**
6 **the effective date of this 2009 Act.**

7 **SECTION 13.** ORS 314.258, as amended by section 1, chapter 54, Oregon Laws 2008, is amended
8 to read:

9 314.258. (1) As used in this section:

10 (a) "Authorized agent" means an agent who is responsible for closing and settlement services
11 in a conveyance.

12 (b) "Closing and settlement services" means services that are provided by:

13 (A) A licensed escrow agent in a real estate closing escrow as provided in ORS 696.505 to
14 696.590; or

15 (B) An attorney for the benefit of a transferor or a transferee in a conveyance, if, simultaneously
16 with the conveyance, the attorney deposits the unpaid purchase price into the attorney's client trust
17 account for disbursement pursuant to the written instructions of, or the agreement between, the
18 transferor and transferee.

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

22 (d) "Conveyance" means a transfer or a contract to transfer fee title to any real estate located
23 in the State of Oregon.

24 (e) "Net proceeds" means the net amount to be disbursed to the transferor, prior to reduction
25 for withholding, as shown on the transferor's settlement statement for the conveyance.

26 (f) "Transferor" means:

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

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

32 (2) An authorized agent providing closing and settlement services in a conveyance is required
33 to withhold from consideration payable to a transferor an amount equal to the least of:

34 (a) Four percent of the consideration for the conveyance;

35 (b) The net proceeds resulting from the conveyance; or

36 (c) Eight percent of the gain includable in the transferor's Oregon taxable income. In arriving
37 at this amount, the authorized agent may rely upon the transferor's written affirmation of the
38 amount of includable gain.

39 (3) An authorized agent is not required to withhold amounts under this section if:

40 (a) The consideration for the conveyance does not exceed \$100,000;

41 (b) The conveyance is pursuant to a judicial foreclosure proceeding, a writ of execution, a non-
42 judicial foreclosure of a trust deed or a nonjudicial forfeiture of a land sale contract;

43 (c) The conveyance is in lieu of foreclosure of a mortgage, trust deed or other security instru-
44 ment or a land sale contract with no additional monetary consideration;

45 (d) The transferor is a personal representative, executor, conservator, bankruptcy trustee or

1 other person acting under judicial review;

2 (e) The transferor delivers to the authorized agent a written assurance as provided in section
3 6045(e) of the Internal Revenue Code that the sale or exchange qualifies for exclusion of gain under
4 section 121 of the Internal Revenue Code;

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

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

9 (h) The authorized agent is an attorney and a licensed escrow agent is providing services in the
10 conveyance.

11 (4)(a) Amounts withheld pursuant to this section are held in trust for the State of Oregon and
12 shall be paid to the department in the time and manner prescribed by the department by rule.

13 (b) If an authorized agent fails to remit an amount withheld by the agent under this section by
14 the time remittance is required, the department may recover from the authorized agent the amount
15 withheld with interest at the rate established under ORS 305.220.

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

18 (A) \$500; or

19 (B) 10 percent of the amount required to be withheld under this section, but not more than
20 \$2,500.

21 (d) The department may not proceed with collection actions against the authorized agent if the
22 authorized agent:

23 (A) Withholds the required amount in connection with a conveyance and timely remits the funds
24 to the department;

25 (B) Is not required to withhold an amount under this section; or

26 (C) Demonstrates to the department that the authorized agent obtained a written affirmation as
27 described in this section or an assurance as provided in section 6045(e) of the Internal Revenue Code
28 prior to disbursement of funds due the transferor resulting from the conveyance.

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

31 (f) *[Notwithstanding ORS 696.581 (2),]* An authorized agent may withhold funds under this sec-
32 tion without written instructions to withhold from the transferor.

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

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

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