

# Enrolled Senate Bill 141

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CHAPTER .....

AN ACT

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

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

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

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

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

[(1)] **(2) "Collection escrow" means an escrow in which the escrow agent:**

(a) Receives:

(A) Installment payments;

(B) Instruments evidencing or securing an obligation; or

(C) Instruments discharging the security interest; and

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

[(2)] *"Commissioner" means the Real Estate Commissioner.*

**(3) "Compensation" means [any] a 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.**

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

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

**(6) "Escrow trust account" means a bank account that meets all of the following requirements:**

- (a) Is kept separate, distinct and apart from funds belonging to the escrow agent;
- (b) Is designated as an escrow trust account; and
- (c) Is used to deposit trust funds received by an escrow agent on behalf of a principal.

[(6) "Principal" means:]

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

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

(7) "Principal" means:

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

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

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

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

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

(f) A subservicer.

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

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

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

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

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

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

696.511. (1) A person may not directly or indirectly engage in or carry on, or purport to engage in or carry on, **within this state**, the business of an escrow agent, or act in the capacity of an escrow agent, unless the person holds an active license as an escrow agent under the provisions of ORS 696.505 to 696.590.

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

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

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

**(B) The requirements for submitting surety bonds under ORS 696.525 or evidence of deposits in lieu of a bond under ORS 696.527.**

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The commissioner may waive the three-year experience requirement in subsection (3) of this section for an applicant who demonstrates other qualifications sufficient to ensure the protection of the public.

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

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

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

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

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

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

**(d) For a change in individuals who will have ownership interest in an escrow agent, the individuals who will be corporate officers in charge of escrow operations or any other individuals who will be in charge of escrow operations, the commissioner shall require fingerprints and a state or nationwide criminal records check under ORS 181.534 of the individuals who will have the ownership interest or who will be in charge. The commissioner may require additional information from the individuals that the commissioner considers necessary for protecting the public.**

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

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

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

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

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

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

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

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

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

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

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

(a) Cash;

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

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

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

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

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

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

(a) To satisfy any final judgment entered against the escrow agent for actual damages suffered by any person by reason of the violation of any of the provisions of ORS 696.505 to 696.590, now

or hereafter enacted, or by reason of any fraud, dishonesty, misrepresentation or concealment of material fact growing out of any escrow transaction;

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

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

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

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

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

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

(5) All other claims against the bond or deposit of an escrow agent must be paid by the commissioner only upon the receipt of a final court judgment against the escrow agent and only in the amount of actual damages as ordered by the court.

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

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

(2) The filing fees are:

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

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

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

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

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

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

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

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

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

(a) By term;

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

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

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

(3) A limited licensee *[shall]* **must** comply with **the limitations of the license and** the requirements of ORS 696.505 to 696.590 **and rules adopted under ORS 696.505 to 696.590.** *[and shall:]*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) In addition to the civil penalty set forth in subsection (1) of this section, any person who violates any provision of ORS 696.505 to 696.590, any lawful rule or final order of the commissioner

or any final judgment made by a court upon application to the commissioner, may be required to forfeit and pay to the General Fund of the State Treasury, a civil penalty in an amount determined by the commissioner but not to exceed the amount by which such person profited in any transaction *[which]* **that** violates any such provision, rule, order or judgment.

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

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

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

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

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

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

(3) With prior written notice to all parties who have an interest in the trust funds, an escrow agent may place trust funds received by the escrow agent in a federally insured interest-bearing bank account that is designated *[a clients']* **as an escrow** 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 escrow agent shall select a qualified public benefit corporation to receive the interest earnings.

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

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

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

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

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

(d) The escrow agent does not have any interest in the investment or earnings from the investment.

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

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

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

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

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

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

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It is understood by the parties signing the above or attached instructions that the instructions are the complete instructions between this firm as an escrow agent and you as a principal to the escrow transaction. These instructions may not include all the terms of the agreement which is the subject of this escrow. Read these instructions carefully, and do not sign them unless they are acceptable to you.

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

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

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

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

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

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

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

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

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

314.258. (1) As used in this section:

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

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

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

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

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

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

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

(f) "Transferor" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) \$500; or

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

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

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

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

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

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

(f) [Notwithstanding ORS 696.581 (2),] An authorized agent may withhold funds under this section without written instructions to withhold from the transferor.

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

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

**Passed by Senate February 24, 2009**

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Secretary of Senate

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President of Senate

**Passed by House May 14, 2009**

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Speaker of House

**Received by Governor:**

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

**Approved:**

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

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Governor

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

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

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Secretary of State