

Enrolled Senate Bill 244

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CHAPTER

AN ACT

Relating to Oregon State Bar; creating new provisions; and amending ORS 3.428, 9.025, 9.160 and 9.162.

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

SECTION 1. ORS 9.025 is amended to read:

9.025. (1) The Oregon State Bar shall be governed by a board of governors consisting of [16] **18** members. [Twelve] **Fourteen** of the members shall be active members of the Oregon State Bar, who on appointment, on nomination, on election and during the full term for which the member was appointed or elected, maintain the principal office of law practice in the region of this state in which the active members of the Oregon State Bar eligible to vote in the election at which the member was elected maintain their principal offices. Four of the members shall be appointed by the board of governors from among the public. They shall be residents of this state and shall not be active or inactive members of the Oregon State Bar. No person charged with official duties under the executive and legislative departments of state government, including but not limited to elected officers of state government, may serve on the board of governors. Any other person in the executive or legislative department of state government who is otherwise qualified may serve on the board of governors.

(2) For the purpose of eligibility for nomination and to vote in the election of a member of the board of governors who is an elective member, and for appointment to the board of governors, the State of Oregon shall be divided into regions determined by the board. The board shall establish board regions that are based on the number of attorneys who have their principal offices in the region. To the extent that it is reasonably possible, the regions shall be configured by the board so that the representation of board members to attorney population in each region is equal to the representation provided in other regions. At least once every 10 years the board shall review the number of attorneys in the regions and shall alter or add regions as the board determines is appropriate in seeking to attain the goal of equal representation.

(3) Members of the board of governors may be elected only by the active members of the Oregon State Bar who maintain their principal offices in the regions established by the board. The **regular** term of a member of the board is four years. **The board may establish special terms for positions that are shorter than four years for the purpose of staggering the terms of members of the board. The board must identify positions with special terms before accepting nominating petitions for the positions.**

(4) No judge of a municipal, state or federal court or any other full-time judicial officer, shall be eligible for appointment or election to the board of governors.

(5) The term of any member of the board of governors shall terminate on the date of the death or resignation of the member, or if the member **of the board** is required to be a member of the Oregon State Bar, the term terminates on the date:

(a) Of the termination of active membership in the Oregon State Bar [*by the member*] for any reason;

(b) When the member discontinues to maintain the principal office of **law** practice in the region in which it was maintained at the time of the appointment or election of the member; or

(c) When the member assumes office as a judge of a municipal, state or federal court, or fills a full-time judicial office.

(6) No member of the board of governors shall be eligible, during the term of office, for service pro tempore as a judge of any municipal, state or federal court.

SECTION 2. The amendments to ORS 9.025 by section 1 of this 2009 Act become operative January 1, 2011, except that the provisions for two new members of the board of governors of the Oregon State Bar become operative on the effective date of this 2009 Act for the purposes of nominating and electing the two new members to assume the duties of a member of the board of governors on January 1, 2011.

SECTION 3. ORS 9.162 is amended to read:

9.162. As used in ORS 9.160 to 9.166 and 9.280, unless the context or subject matter requires otherwise:

(1) "Person" means a human being [*and where appropriate*], **a public body as defined by ORS 174.109**, a public or private corporation, an unincorporated association, a partnership, a [*government or a governmental instrumentality*] **limited liability company or any other business entity created under law.**

(2) "Restitution" means full, partial or nominal payment of pecuniary damages to a victim.

(3) "Victim" means any person who the court determines has suffered pecuniary damages as a result of any other person's violation of ORS 9.160.

SECTION 4. ORS 9.160 is amended to read:

9.160. (1) Except as provided in this section, a person may not practice law **in this state**, or represent that **the person [as] is** qualified to practice law **in this state**, unless [*that*] **the person** is an active member of the Oregon State Bar.

(2) Subsection (1) of this section does not affect the right to prosecute or defend a cause in person as provided in ORS 9.320.

(3) An individual licensed under ORS 696.022 acting in the scope of the individual's license to arrange a real estate transaction, including the sale, purchase, exchange, option or lease coupled with an option to purchase, lease for a term of one year or longer or rental of real property, is not engaged in the practice of law **in this state** in violation of subsection (1) of this section.

(4) A title insurer authorized to do business in this state, a title insurance agent licensed under the laws of this state or an escrow agent licensed under the laws of this state is not engaged in the practice of law **in this state** in violation of subsection (1) of this section if, for the purposes of a transaction in which the insurer or agent provides title insurance or escrow services, the insurer or agent:

(a) Prepares any satisfaction, reconveyance, release, discharge, termination or cancellation of a lien, encumbrance or obligation;

(b) Acts pursuant to the instructions of the principals to the transaction as scrivener to fill in blanks in any document selected by the principals;

(c) Presents to the principals to the transaction for their selection any blank form prescribed by statute, rule, ordinance or other law; or

(d) Presents to the principals to the transaction for their selection a blank form prepared or approved by a lawyer licensed to practice law in this state for one or more of the following:

(A) A mortgage.

- (B) A trust deed.
- (C) A promissory note.
- (D) An assignment of a mortgagee's interest under a mortgage.
- (E) An assignment of a beneficial interest under a trust deed.
- (F) An assignment of a seller's or buyer's interest under a land sale contract.
- (G) A power of attorney.
- (H) A subordination agreement.
- (I) A memorandum of an instrument that is to be recorded in place of the instrument that is the subject of the memorandum.

(5) In performing the services permitted in subsection (4) of this section, a title insurer, a title insurance agent or an escrow agent may not draft, select or give advice regarding any real estate document if those activities require the exercise of informed or trained discretion.

(6) The exemption provided by subsection (4) of this section does not apply to any acts relating to a document or form that are performed by an escrow agent under subsection (4)(b), (c) or (d) of this section unless the escrow agent provides to the principals to the transaction a notice in at least 12-point type as follows:

YOU WILL BE REVIEWING, APPROVING AND SIGNING IMPORTANT DOCUMENTS AT CLOSING. LEGAL CONSEQUENCES FOLLOW FROM THE SELECTION AND USE OF THESE DOCUMENTS. THESE CONSEQUENCES AFFECT YOUR RIGHTS AND OBLIGATIONS. YOU MAY CONSULT AN ATTORNEY ABOUT THESE DOCUMENTS. YOU SHOULD CONSULT AN ATTORNEY IF YOU HAVE QUESTIONS OR CONCERNS ABOUT THE TRANSACTION OR ABOUT THE DOCUMENTS. IF YOU WISH TO REVIEW TRANSACTION DOCUMENTS THAT YOU HAVE NOT YET SEEN, PLEASE CONTACT THE ESCROW AGENT.

(7) The exemption provided by subsection (4) of this section does not apply to any acts relating to a document or form that are performed by an escrow agent under subsection (4)(b), (c) or (d) of this section for a real estate sale and purchase transaction in which all or part of the purchase price consists of deferred payments by the buyer to the seller unless the escrow agent provides to the principals to the transaction:

(a) A copy of any proposed instrument of conveyance between the buyer and seller to be used in the transaction;

(b) A copy of any proposed deferred payment security instrument between the buyer and seller to be used in the transaction; and

(c) A copy of any proposed promissory note or other evidence of indebtedness between the buyer and seller to be used in the transaction.

(8) The notice and copies of documents that must be provided under subsections (6) and (7) of this section must be delivered in the manner most likely to ensure receipt by the principals to the transaction at least three days before completion of the transaction. If copies of documents have been provided under subsection (7) of this section and are subsequently amended, copies of the amended documents must be provided before completion of the transaction.

(9) Failure of any person to comply with the requirements of subsections (3) to (8) of this section does not affect the validity of any transaction and may not be used as a basis to challenge any transaction.

SECTION 5. ORS 3.428 is amended to read:

3.428. (1) A family law facilitation program may be established by the judges of the family court department of a circuit court. If there is no family court department for the court, a family law facilitation program may be established for a circuit court by the presiding judge for the judicial district. A family law facilitation program shall be designed to assist litigants in domestic relations or other family court proceedings described in ORS 3.408. The program shall be developed in con-

sultation with the local family law advisory committee established for the judicial district under ORS 3.434. The program shall operate under the supervision of the family court department or, if there is no family court department, under the supervision of the presiding judge for the judicial district. Services under the program shall be provided by court personnel in facilities under the supervision and control of the family court department or, if there is no family court department, under the supervision and control of the presiding judge for the judicial district. The program may provide:

- (a) Educational materials.
- (b) Court forms.
- (c) Assistance in completing forms.
- (d) Information about court procedures.
- (e) Referrals to agencies and resources that provide legal and other services to parents or children.

(2) All materials, forms, instructions and referral lists provided through the program must be approved by the family court department or, if there is no family court department, by the presiding judge for the judicial district.

(3) Except for those fees authorized for forms under ORS 21.361, services provided through the program shall be provided without charge.

(4) An employee or other person providing services to litigants through a family law facilitation program as provided in this section is not engaged in the practice of law **in this state** for the purposes of ORS 9.160.

(5) Except as provided in subsection (6) of this section, an employee or other person who assisted litigants through a family law facilitation program may not, for a period of one year after leaving the program, charge or collect any fee from a litigant for services relating to a matter that was the subject of assistance under the program.

(6) The prohibition of subsection (5) of this section does not apply to persons admitted to the practice of law in this state.

Passed by Senate February 16, 2009

Repassed by Senate May 19, 2009

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Secretary of Senate

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President of Senate

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Speaker of House

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