

Enrolled
Senate Bill 640

Sponsored by Senator COURTNEY

CHAPTER

AN ACT

Relating to the licensing of real estate professionals; creating new provisions; and amending ORS 696.022, 696.174, 696.280 and 696.425.

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

SECTION 1. ORS 696.022 is amended to read:

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

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

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

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

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

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

(2)(a) A real estate broker may engage in professional real estate activity. A real estate broker may not employ, engage or supervise the professional real estate activity of another real estate licensee.

(b) *[In order]* To qualify for a real estate broker's license, an applicant must furnish proof *[satisfactory]* to the commissioner **at the time of application for the license** that the applicant has *[successfully completed]*:

(A) Obtained a high school diploma or a General Educational Development (GED) certificate or the international equivalent;

(B) Successfully completed the basic real estate broker's educational courses **required by rule of the agency;** and

(C) Passed the real estate broker's *[the]* examination required by rule of the agency. *[Proof of completion of all required courses must be provided at the time of applying for the license.]*

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

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

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

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

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

(A) Three years of active experience as a licensed real estate broker **or a licensed real estate salesperson as defined in ORS 696.025 (1999 Edition);** *[or]*

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

(B) Passed the principal real estate broker's examination required by rule of the agency; and

(C) Successfully completed the brokerage administration and sales supervision course required by rule of the agency.

(4) *[In order]* To qualify for a real estate property manager's license, an applicant must furnish proof *[satisfactory]* to the commissioner **at the time of application for the license** that the applicant has:

(a) Obtained a high school diploma or General Educational Development (GED) certificate or the international equivalent;

(b) Successfully completed courses in the legal aspects of real estate, real estate property management and accounting, bookkeeping and trust accounting practices. *The applicant also must have successfully completed a); and*

(c) Passed the real estate property manager's license examination *[prescribed]* **required** by rule of the agency. *[Proof of completion of all required courses must be provided at the time of applying for the license.]*

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

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

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

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

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

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

SECTION 2. ORS 696.174 is amended to read:

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

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

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

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

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

(1) To renew an active license, a real estate licensee must complete 30 hours of real estate continuing education courses that are eligible for credit under section 4 of this 2009 Act during the two years preceding the renewal. The 30 hours must include:

(a) At least three hours in a course on recent changes in real estate rule and law approved by the Real Estate Board; and

(b) If the licensee is renewing an active license for the first time, an advanced course in real estate practices approved by the board.

(2) The Real Estate Agency, in consultation with real estate professionals and educators, shall develop a form to ensure that a licensee has completed the number of hours required by subsection (1) of this section. A completed form must contain:

(a) The date, name and length of time of each course attended;

(b) The name of the real estate continuing education provider that offered the course;

(c) The name of the instructor who taught the course; and

(d) Any other information that the agency requires by rule.

(3) The agency may waive any portion of the requirements of this section for a licensee who submits satisfactory evidence that poor health or other circumstances beyond the licensee's control prevented the licensee from attending part or all of the continuing education courses required by subsection (1) of this section.

SECTION 3. Sections 4, 5 and 6 of this 2009 Act are added to and made a part of ORS 696.010 to 696.375.

SECTION 4. (1) The Real Estate Agency, with advice from real estate professionals and educators, shall prescribe rules for certifying real estate continuing education providers.

(2) The agency shall include in the rules that an applicant for certification under this section must be:

(a) A main or branch office of a real estate broker or principal real estate broker registered with the agency under ORS 696.026;

(b) A title or escrow company conducting business in this state;

(c) A real estate trade association or a trade association in a related field;

(d) A real estate multiple listing service;

(e) A private career school approved by the agency to teach continuing education courses;

(f) An accredited community college or an accredited state institution of higher education;

(g) A distance learning provider approved by the agency; or

(h) Another provider approved by the Real Estate Board.

(3) The agency, in consultation with real estate professionals and educators, shall provide by rule:

(a) A broad list of course topics that are eligible for continuing education credit required by ORS 696.174; and

(b) Learning objectives for each course topic.

(4) The list of course topics developed by the agency under subsection (3) of this section must allow for changes in the real estate profession.

(5) The minimum length of each course is one hour. A continuing education provider or course instructor may allow a break of no more than 10 minutes for each hour of instruction.

SECTION 5. (1) A real estate continuing education provider shall:

(a) Ensure that the courses offered by the continuing education provider that are eligible for continuing education credit meet the learning objectives for the course topic as provided by rule of the Real Estate Agency under section 4 of this 2009 Act;

(b) Ensure that instructors who teach a real estate continuing education course that is eligible for continuing education credit under section 4 of this 2009 Act for the continuing education provider meet the requirements set forth in section 6 of this 2009 Act; and

(c) Keep records of each course that the continuing education provider offered, the length of time of each course, the name of the instructor who taught each course and other information required by the agency. The continuing education provider shall keep the records for at least three years.

(2) The records kept under subsection (1) of this section must be open at all times for inspection by the Real Estate Commissioner or the commissioner's authorized representatives. The records may be maintained in any format that allows for inspection and copying by the commissioner or the commissioner's representatives as determined by the commissioner by rule and that complies with rules adopted by the Real Estate Agency. The agency may prescribe by rule terms and conditions under which a continuing education provider may maintain records outside this state.

SECTION 6. (1) A person must have one of the following qualifications to teach a real estate continuing education course that is eligible for credit required under ORS 696.174:

(a) A bachelor's degree and two years of experience working in a field related to the topic of the course;

(b) Six years of experience working in a field related to the topic of the course;

(c) A total of six years of any combination of college-level coursework and experience working in a field related to the topic of the course;

(d) A designation by a professional real estate organization as determined by rule of the Real Estate Agency and two years of college-level coursework;

(e) A designation by an association of real estate educators of competency as an instructor;

(f) Successful completion of an instructor training course approved by the Real Estate Board and two years of experience working in a field related to the topic of the course; or

(g) Certification or approval in good standing as a real estate instructor for the same or a similar course topic in any other state or jurisdiction.

(2) Notwithstanding subsection (1) of this section, a person may not teach a real estate continuing education course if the person:

(a) Has had a professional or occupational license related to the topic of the course revoked for disciplinary reasons, or has a professional or occupational license related to the topic of the course that is currently suspended for disciplinary reasons; or

(b) Has been determined by a state court or an administrative law judge to have violated any statute, rule, regulation or order pertaining to real estate activity in this or any other state in the preceding five years.

(3) Before a person teaches a course for a real estate continuing education provider, the continuing education provider shall require the person to sign a form in which the person attests to:

(a) Meeting one of the qualifications described in subsection (1) of this section; and

(b) Not being disqualified from teaching a course for reasons described in subsection (2) of this section.

(4) The agency, with the advice of real estate professionals and educators, shall prescribe by rule the content of the form described in subsection (3) of this section.

SECTION 7. ORS 696.280 is amended to read:

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

(2)[(a)] The records of a principal real estate broker *[or]*, a sole practitioner **or a real estate broker** *[shall]* **must** include records of attendance in continuing education courses by the **principal real estate broker**, sole practitioner or broker. The records of attendance *[shall]* **must meet the requirements of ORS 696.174 (1)**. *[state the name of the sole practitioner or broker and the date of the sole practitioner's or broker's attendance, and shall be the basis for self-certification under ORS 696.174.]*

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

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

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

SECTION 8. ORS 696.425 is amended to read:

696.425. (1) The Real Estate Board is authorized to inquire into the needs of the real estate licensees of Oregon, the functions of the Real Estate Agency and the matter of the business policy thereof, to confer with and advise the Governor as to how the agency may best serve the state and the licensees, and to make recommendations and suggestions of policy to the agency as the board may deem beneficial and proper for the welfare and progress of the licensees and of the public and of the real estate business in Oregon.

(2) The board shall conduct all examinations for applicants for real estate licenses, prepare or cause to be prepared the questions to be asked in the examinations and grade or cause to be graded the papers of each applicant after the completion of the examination and file a written report with the agency as to applicants taking the examination who have passed and who have failed to pass the examination. The board shall provide the manner and methods for conducting examinations.

(3) The board shall create or approve a continuing education course for real estate licensees based on recent changes in real estate rule and law.

[(3)] (4) The expenses of the board shall be paid from moneys available to the agency for payment of administrative expenses relating to the real estate activities of the agency.

SECTION 9. (1) Sections 4 to 6 of this 2009 Act and the amendments to ORS 696.022, 696.174, 696.280 and 696.425 by sections 1, 2, 7 and 8 of this 2009 Act become operative on January 1, 2011.

(2) The Real Estate Agency and the Real Estate Board may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the agency and the board to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the agency and the board by sections 4 to 6 of this 2009 Act and the amendments to ORS 696.022, 696.174, 696.280 and 696.425 by sections 1, 2, 7 and 8 of this 2009 Act.

SECTION 10. If House Bill 2910 becomes law, section 7 of this 2009 Act (amending ORS 696.280) is repealed and ORS 696.280, as amended by section 7, chapter __, Oregon Laws 2009 (Enrolled House Bill 2910), is amended to read:

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

(2) The records of a real estate broker or a principal real estate broker [*shall*] **must** include records of attendance in continuing education courses by the real estate broker or principal real estate broker. The records of attendance [*shall state the name of the real estate broker or principal real estate broker and the date of attendance and shall be the basis for self-certification under ORS 696.174*] **must meet the requirements of ORS 696.174 (1).**

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

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

SECTION 11. If House Bill 2910 becomes law, section 9 of this 2009 Act is amended to read:

Sec. 9. (1) Sections 4 to 6 of this 2009 Act and the amendments to ORS 696.022, 696.174, 696.280 and 696.425 by sections 1, 2, [*7 and*] **8 and 10** of this 2009 Act become operative on January 1, 2011.

(2) The Real Estate Agency and the Real Estate Board may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the agency and the board to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the agency and the board by sections 4 to 6 of this 2009 Act and the amendments to ORS 696.022, 696.174, 696.280 and 696.425 by sections 1, 2, [*7 and*] **8 and 10** of this 2009 Act.

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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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