

Enrolled
Senate Bill 156

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CHAPTER

AN ACT

Relating to professional real estate activity; creating new provisions; amending ORS 130.005, 696.010, 696.022, 696.026, 696.125, 696.174, 696.182, 696.200, 696.241, 696.245, 696.270, 696.280 and 696.855; and declaring an emergency.

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

AFFIRMATIVE DUTIES OF REAL ESTATE PROPERTY MANAGERS

SECTION 1. (1) **As used in this section:**

(a) **“Management of rental real estate” has the meaning given that term in ORS 696.010.**

(b) **“Real estate property manager” has the meaning given that term in ORS 696.010.**

(2) **A real estate property manager who represents a property owner, for compensation, in the management of rental real estate is the property owner’s agent.**

(3) **A real estate property manager owes the property owner the following affirmative duties:**

(a) **To deal honestly and in good faith;**

(b) **To disclose material facts known by the property manager and not apparent or readily ascertainable to the owner;**

(c) **To exercise reasonable care and diligence;**

(d) **To account in a timely manner for all funds received from or on behalf of the owner;**

(e) **To act in a fiduciary manner in all matters relating to trust funds;**

(f) **To be loyal to the owner by not taking action that is adverse or detrimental to the owner’s interest;**

(g) **To disclose in a timely manner to the owner any existing or contemplated conflict of interest;**

(h) **To advise the owner to seek expert advice on matters that are beyond the property manager’s expertise; and**

(i) **To maintain as confidential all information from or about the owner, except under subpoena or court order, even after the agency relationship ends.**

(4) **The affirmative duties listed in subsection (3) of this section may not be waived.**

(5) **Nothing in this section implies a duty beyond or in addition to those activities that are reasonably within the scope of the management of rental real estate.**

SECTION 2. ORS 696.855 is amended to read:

696.855. (1) ORS 696.301, 696.392, 696.600 to 696.785 and 696.995 **and section 1 of this 2011 Act** do not directly, indirectly or by implication limit or alter any preexisting common law or statutory right or remedy including actions for fraud, negligence or equitable relief.

[2) *The terms "loyalty," "obedience," "disclosure," "confidentiality," "reasonable care and diligence" and "accounting in dealings" shall be interpreted under the common law of agency.*]

[3) (2) Common law and statutory remedies are not affected by ORS 696.301, 696.392, 696.600 to 696.785 and 696.995 **and section 1 of this 2011 Act.**

CLIENTS' TRUST ACCOUNTS

SECTION 3. ORS 696.245 is amended to read:

696.245. (1) Each **licensed real estate property manager and** principal real estate broker, at the time a [*Clients' Trust Account*] **clients' trust account** is opened **as required** under ORS 696.241, shall provide the bank in which the account is opened with a notice, **acknowledged by the real estate licensee and the bank**, in substantially the following form:

NOTICE OF CLIENTS' TRUST ACCOUNT

To: [*name of bank*] _____ **(name of bank)**

Under the Oregon Real Estate License Law, I, _____ **(licensed name)**, am [*the*] **a licensed real estate property manager or** principal real estate broker [*or designated real estate appraiser*] for _____ (licensed name of **principal real estate broker or real estate property manager, or a business name registered under ORS 696.026**) [_____].

[*Further,*] Under ORS 696.241, I am required to maintain in Oregon a [*Clients' Trust Account*] **clients' trust account** for the purpose of holding funds belonging to others **received in the course of conducting professional real estate activity.**

[*With regard to*] The account(s) numbered _____ [*which*] **in the name(s) of** _____ is/are **hereby** designated as a [*Clients' Trust Account,*] **clients' trust account** **and** the account(s) is/are maintained with you as a depository for money belonging to persons other than myself and in my fiduciary capacity as a **licensed real estate property manager or** principal real estate broker established by client agreements in separate documents.

Dated: _____ (insert date)

(signature of [*broker*] **real estate licensee**)

ACKNOWLEDGMENT OF RECEIPT

I, _____, a duly authorized representative of [*bank*] _____ **(bank)**, do hereby acknowledge receipt of the above NOTICE OF CLIENTS' TRUST ACCOUNT on [*date*] _____ **(date).**

(signature)

(title)

(2) The **real estate licensee shall retain the** acknowledged copy of the notice described in subsection (1) of this section [*shall be retained by the principal real estate broker*] **for at least six years following the closing of the account** as provided in ORS [*696.241 for the retention of trust*]

account records, subject to inspection by the Real Estate Commissioner or the commissioner's authorized representative] **696.280.**

SECTION 4. ORS 696.241 is amended to read:

696.241. (1) **As used in this section, "trust funds" means money belonging to others that is received or handled by a licensed real estate property manager or principal real estate broker in the course of conducting professional real estate activity and in the real estate licensee's fiduciary capacity.**

[(1)] (2) [Each] **A licensed real estate property manager or principal real estate broker shall maintain in this state one or more separate federally insured bank accounts that [shall be] are designated [a Clients' Trust Account in which] clients' trust accounts under ORS 696.245. Except as provided in subsection (3) of this section, a licensed real estate property manager or principal real estate broker shall deposit all trust funds received or handled by the licensed real estate property manager or principal real estate broker and the real estate licensees subject to the supervision of the principal real estate broker [on behalf of any other person shall be deposited unless,] in a clients' trust account.**

(3) **A principal real estate broker, pursuant to written agreement of all parties to a real estate transaction having an interest in the trust funds, shall immediately place the trust funds [are immediately placed] in a clients' trust account as provided in subsection (2) of this section or in a licensed neutral escrow depository in this state.**

[(2)] (4) [Each] **Within 10 business days after the date a clients' trust account is opened, a licensed real estate property manager or principal real estate broker shall file with the Real Estate Agency, on forms approved by the [Real Estate Commissioner] agency, [a statement identifying] the following information about the clients' trust account:**

(a) **The name of the bank [or banks,];**

(b) **The account number [or account numbers, and];**

(c) **The name of the account [or accounts for each Clients' Trust Account maintained.];**

(d) **The date the account was opened; and**

(e) **A statement by the property manager or principal broker authorizing the Real Estate Commissioner or the commissioner's representative to examine the clients' trust account at such times as the commissioner may direct.**

[(3) Each principal real estate broker shall authorize the agency, by a form approved by the commissioner, to examine any Clients' Trust Account, by a duly authorized representative of the agency. The examination shall be made at such times as the commissioner may direct.]

(5) **A licensed real estate property manager or principal real estate broker who closes a clients' trust account shall notify the agency within 10 business days after the date the account is closed on a form approved by the agency.**

(6) **Except for earned interest on a clients' trust account as provided in subsections (8) and (9) of this section, only trust funds may be held by a licensed real estate property manager or principal real estate broker in a clients' trust account.**

[(4)] (7) **If a licensed real estate property manager or principal real estate broker maintains a separate [Clients' Trust Account] clients' trust account in a branch office, a separate bookkeeping system [shall] must be maintained in the branch office[, provided] and a copy of the records required [by the provisions of] under ORS 696.280 [are] must be maintained in the main office of the property manager or principal broker.**

[(5)] (8) **Trust funds received by a licensed real estate property manager or principal real estate broker may be [placed] deposited by the property manager or principal broker in a federally insured interest-bearing bank account[, that is designated a [Clients' Trust Account] clients' trust account under ORS 696.245, 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 [shall] do not inure to the benefit of the licensed real estate property manager or principal real estate broker unless expressly approved in writing [before deposit of the trust funds] by all parties having an interest in the trust funds before deposit of the trust funds.**

[(6)] (9) With prior written notice to all parties who have an interest in the trust funds, a principal real estate broker may place trust funds received by the principal real estate broker **in a real estate sales, purchase or exchange transaction** in a federally insured interest-bearing bank account that is designated a [*Clients' Trust Account and*] **clients' trust account under ORS 696.245**, 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 principal real estate broker shall select a qualified public benefit corporation to receive the interest earnings.

[(7)] (10) **In connection with a real estate sales, purchase or exchange transaction**, a principal real estate broker is not entitled to any part of any interest earnings on trust funds deposited under subsection [(5)] (8) of this section or to any part of the earnest money or other money paid to the broker [*in connection with any real estate transaction*] as part or all of the broker's compensation until the transaction has been completed or terminated. [*The question of*] **The principal real estate broker and the seller shall negotiate and agree in writing to** the disposition of forfeited earnest money [*shall be negotiated between the principal real estate broker and the seller*] at the time of [*executing*] **execution by the seller of** any listing agreement or earnest money agreement. [*The result of these negotiations shall be filled in on the agreement form at the time of signing by the seller and either separately*] **An agreement about the disposition of forfeited earnest money must be** initialed by the seller or [*placed*] immediately [*above the signature of the seller*] **precede the seller's signature.**

[(8)] (11) [*Clients'*] Trust [*Account*] funds **in a clients' trust account** are not subject to execution or attachment on any claim against a **licensed real estate property manager or** principal real estate broker.

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

[(10)] (12) The agency by rule shall establish an optional procedure by which a principal real estate broker may elect to disburse disputed funds held in relation to the sale, exchange or purchase of real estate from a [*Clients' Trust Account*] **clients' trust account** to the person who delivered the funds to the principal real estate broker. The procedure [*shall*] **must** allow disbursement not more than 20 days after a request is made for the disbursement. A disbursement pursuant to the procedure does not affect the claim of any other person to the funds.

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

SECTION 5. ORS 130.005 is amended to read:

130.005. (1) Except as provided in subsection (2) of this section, this chapter applies to express trusts, whether charitable or noncharitable, and to trusts created pursuant to a statute or a judgment that requires that the trust be administered in the manner of an express trust.

(2) This chapter does not apply to:

- (a) A trust that is part of an employee benefit arrangement or an individual retirement account.
- (b) A trust account established under a qualified tuition savings program pursuant to ORS 348.841 to 348.873.
- (c) Trust accounts maintained on behalf of clients or customers by licensed service professionals, including trust accounts maintained by attorneys pursuant to rules of professional conduct adopted under ORS 9.490 and by **licensed real estate property managers or principal** real estate brokers pursuant to ORS 696.241.
- (d) An endowment care fund established by a cemetery authority pursuant to ORS 97.810.
- (e) Funds maintained by public bodies as defined by ORS 174.109 or other governmental entities.
- (f) Trust funds held for a single business transaction or an escrow arrangement.
- (g) Trusts created by a depository agreement with a financial institution.
- (h) Trusts created by an account agreement with a regulated financial services entity.

(i) An account maintained under the Oregon Uniform Transfers to Minors Act as set forth in ORS 126.805 to 126.886.

(j) A fund maintained pursuant to court order in conjunction with a bankruptcy proceeding or business liquidation.

(k) A business trust as described in ORS 128.560.

(L) A voting trust as described in ORS 60.254.

(m) Funds maintained to manage proceeds from class actions.

(n) A trust deed as defined in ORS 86.705 (5) or any other trust created solely to secure the performance of an obligation.

(o) A trust established on behalf of a resident of a residential facility under ORS 443.880.

(p) A trust managed by a nonprofit association for persons with disabilities under 42 U.S.C. 1396p(d)(4)(C), as in effect on January 1, 2006, and under the rules of the Department of Human Services.

(q) A resulting or constructive trust.

(r) A trust fund established for a purchaser who enters into a prearrangement sales contract, as defined in ORS 97.923, or a preconstruction sales contract, as defined in ORS 97.923.

REGISTRATION OF BUSINESS NAMES

SECTION 6. ORS 696.026 is amended to read:

696.026. (1) The Real Estate Agency shall establish by rule a system for the registration of business names.

(2) The system must require:

(a) The location of a business with a registered name to be the main office of a principal real estate broker or licensed real estate property manager; and

(b) A business name registered under this section to be a corporate name, professional corporate name, business corporate name, cooperative name, limited partnership name, business trust name, reserved name, registered corporate name or assumed business name of active record with the Office of the Secretary of State.

(3) The system must allow a principal real estate broker or licensed real estate property manager to register a branch office under the registered business name of the main office.

(4) Only a principal real estate broker or licensed real estate property manager may register a business name or register a branch office under the registered business name of the main office. Only a principal real estate broker or licensed real estate property manager may control and supervise the professional real estate activity conducted under the registered business name.

(5) A business name registered under this section has no license standing.

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

[(A)] **(a) The name [of the licensee;] under which the principal broker or property manager's license was issued; or**

[(B)] **(b) A registered business name[; or].**

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

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

[(2) The registered business name under which a real estate licensee conducts professional real estate activity has no license standing.]

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

(7) If a principal real estate broker or licensed real estate property manager has a registered business name:

(a) All professional real estate activity conducted by the principal broker or property manager must be conducted under the registered business name; and

(b) All professional real estate activity conducted by a real estate broker or another licensed real estate property manager associated with the principal broker or property manager must be conducted under the registered business name.

[(4)] (8) A [real estate licensee operating under] **principal real estate broker or licensed real estate property manager who registers** a business name [registered by the licensee] need not be an owner or officer of any [organization otherwise] **entity** lawfully entitled to use **or have an ownership interest in** the registered business name [or have an ownership interest in the registered business name]. However, [all] **only a principal real estate broker or licensed real estate property manager may control and supervise** the professional real estate activity conducted [by or on behalf of the real estate licensee must be conducted] under the **registered** business name [registered by the licensee].

[(5)(a)] (9)(a) A [real estate licensee] **principal real estate broker or licensed real estate property manager** who registers a business name [as provided by subsection (1) of this section] may register [two or more] **additional** business names [if the business names are] for affiliated or subsidiary business organizations **of the business with the registered name**.

(b) If a [real estate licensee] **principal real estate broker or licensed real estate property manager** registers two or more business names [for affiliated or subsidiary business organizations] **under this subsection**, the **real estate** licensee may conduct professional real estate activity separately under each **registered** business name.

[(6) A real estate licensee must supervise and control the professional real estate activity conducted under the name designated as provided by subsection (1) of this section.]

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

[(8)] (11) A nonlicensed individual may have an ownership interest in any business through which a **licensed** real estate [broker] **property manager** or principal real estate broker engages in professional real estate activity, but may not control or supervise the professional real estate activity of any real estate [broker or principal real estate broker licensed to control or supervise the professional real estate activity of the business] **licensee**.

[(9)] (12) Two or more **principal** real estate brokers operating under the same registered business name who do not exercise any administrative or supervisory control over one another are solely responsible for their own professional real estate activity.

[(10)] (13) Notwithstanding any other provision of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and 696.995, a [sole practitioner,] principal real estate broker or real estate broker associated with a principal real estate broker may create a corporation, limited liability company, limited liability partnership or any other lawfully constituted business organization for the purpose of receiving compensation. A real estate broker associated with a principal real estate broker may only receive compensation from a principal real estate broker. A business organization created under this subsection may not be licensed under ORS 696.022 or conduct in its own name professional real estate activity requiring a real estate license.

SECTION 7. ORS 696.200 is amended to read:

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

[(a) A sole practitioner;]

[(b) A principal real estate broker; or]

[(c) A real estate property manager.]

[2] Every real estate licensee identified in subsection (1) of this section must:

(1) **A licensed real estate property manager or principal real estate broker shall:**

(a) **Establish and maintain** in this state a place of business [to be] designated as the **real estate licensee's main office**; [and]

(b) **Register the main office with the Real Estate Agency under a registered business name as provided in ORS 696.026 or under the real estate licensee's licensed name;**

[b] (c) Designate the [place of business] **main office** by a sign that contains the name under which the **real estate licensee** conducts professional real estate activity[.] **as provided in ORS 696.026; and**

(d) **Before changing a main office location, notify the agency of the new location on a form approved by the agency.**

(2) **The change of a business location without notification to the agency as required by subsections (1) and (5) of this section is grounds for revocation of a real estate license.**

(3) The place of business of a real estate licensee must be specified in the application for a real estate license[,] and [designated in] **stated on** the license. [Prior to the change of a business location, the real estate licensee must notify the Real Estate Commissioner in writing of the new location. The change of a business location without notification to the commissioner is grounds for revocation of a license.]

(4) A [real estate licensee identified in subsection (1) of this section] **principal real estate broker or licensed real estate property manager** may:

(a) **Establish and maintain** one or more branch offices as separate business locations under the [management] **control and supervision** of [the licensee. A real estate licensee may] **a licensed real estate property manager or principal real estate broker; and**

(b) Conduct and supervise the [business] **professional real estate activity** of more than one office, whether a main office or a branch office. [The real estate licensee must]

(5) **A licensed real estate property manager or principal real estate broker shall:**

(a) Register each branch office with the [commissioner and] **agency under a registered business name as provided in ORS 696.026 or the real estate licensee's licensed name;**

(b) Designate each branch office by a sign that contains the name under which the **real estate licensee** conducts professional real estate activity[.] **as provided in ORS 696.026; and**

(c) **Before changing a branch office location, notify the agency of the new location on a form approved by the agency.**

[5] (6) Upon vacating [any business] **a main or branch office** location, the **licensed real estate licensee property manager or principal real estate broker** shall ensure that the sign containing the **real estate licensee's** name or the **registered business** name [under which the licensee has operated] is removed from the location.

[6] (7) A **licensed real estate licensee property manager or principal real estate broker** may not display any name at [the designated places of business] **a main or branch office** other than the name under which the **real estate licensee** conducts professional real estate activity.

RECORDS

SECTION 8. ORS 696.280, as amended by section 10, chapter 502, Oregon Laws 2009, is amended to read:

696.280. (1) A **licensed real estate [broker] property manager** or principal real estate broker shall maintain within this state, except as provided in subsection [(4)] (6) of this section, complete and adequate records of all professional real estate activity conducted by or through the **property manager or principal** broker. The Real Estate Agency shall specify by rule the records required to establish complete and adequate records of a **licensed real estate property manager's or principal real estate** broker's professional real estate activity. The only documents the agency may require by rule a **licensed real estate [broker] property manager** 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] **in the course of conducting professional real estate activity.**

(2) [The records of a real estate broker or a principal real estate broker must include] **A real estate licensee shall maintain records of the licensee's attendance in continuing education courses for a period of at least three years** [by the real estate broker or principal real estate broker]. The records of attendance must meet the requirements of ORS 696.174 [(1)].

(3) [The] Records [shall] **maintained under this section must** at all times be open for inspection by the Real Estate Commissioner or the commissioner's authorized representatives.

(4) [The records of each transaction shall] **Except as provided in subsection (2) of this section, records under this section must** be maintained by the **real estate licensee** for a period of not less than six years after the **following** date [the]:

(a) **For a notice of clients' trust account under ORS 696.245, the date the account was closed;**

(b) **For real estate transactions, the date a transaction closed or failed, whichever is later;**

(c) **For management of rental real estate, the date on which the record expired, was superseded or terminated, or otherwise ceased to be in effect; and**

(d) **For all other records, the date the record was created or received, whichever is later.**

(5) [The] Records **under this section** may be maintained in any format that allows for inspection and copying by the commissioner or the commissioner's representatives, as [determined] **prescribed by [the commissioner by] rule of the agency.**

[(4)] (6) The agency may prescribe by rule terms and conditions under which a **licensed** real estate [broker] **property manager** or principal real estate broker may maintain records outside this state.

CONTINUING EDUCATION

SECTION 9. ORS 696.182 is amended to read:

696.182. (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, **with a registered business name as provided under ORS 696.026**, of a **licensed** real estate [broker] **property manager** or principal real estate broker [registered with the agency under ORS 696.026];

(b) A **licensed** 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) **An attorney admitted to practice in this state;**

[(e)] (f) A private career school **licensed by the Department of Education and** approved by the agency to [teach continuing education courses] **provide the basic real estate broker's or property manager's educational courses required under ORS 696.022;**

[(f)] (g) An accredited community college [or], an accredited state institution of higher education **or a private and independent institution of higher education as defined in ORS 352.720;**

[(g)] (h) A distance learning provider [approved by] **as provided by rule of the agency;** or

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

(3) **The Real Estate Agency may provide continuing education without being certified under this section.**

[(3)] (4) 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)] (5) The list of course topics developed by the agency under subsection [(3)] (4) of this section must allow for changes in the real estate profession.

[(5)] (6) 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.

ISSUANCE AND RENEWAL OF LICENSES

SECTION 10. ORS 696.022, as amended by section 1, chapter 502, Oregon Laws 2009, 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 **only if the broker is associated with and supervised by a principal real estate broker**. Except as provided in paragraph (c) of this subsection, a real estate broker may not employ, engage or supervise the professional real estate activity of another real estate licensee.

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

(A) [*obtained*] **Certification by the applicant that the applicant has a high school diploma or a General Educational Development (GED) certificate or the international equivalent, or other equivalent education acceptable to the commissioner;**

(B) **Proof that the applicant:**

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

[(C)] (ii) **Has** passed the real estate broker's examination required by rule of the agency[.]; and

(C) **Certification that the applicant is at least 18 years of age.**

(c) A real estate broker who has acquired three years of active experience as a real estate broker may temporarily supervise the professional real estate activity of another real estate licensee due to unforeseen circumstances or the temporary absence of a sole principal real estate broker, as provided by rule of the agency. The temporary supervision of professional real estate activity allowed under this paragraph may not exceed 90 days.

(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 **or licensed real estate property managers**. In addition, a principal real estate broker may employ, engage or supervise the professional real estate activity of another real estate licensee.

(b) 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*] to the commissioner at the time of application for the license [*that the applicant has*]:

(A) **Certification by the applicant that the applicant has a high school diploma or a General Educational Development (GED) certificate or the international equivalent, or other equivalent education acceptable to the commissioner;**

(B) **Proof that the applicant:**

[(A)] (i) **Has** 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);

[(B)] (ii) **Has** passed the principal real estate broker's examination required by rule of the agency; and

[(C)] (iii) **Has** successfully completed the brokerage administration and sales supervision course required by rule of the agency; **and**

(C) Certification that the applicant is at least 18 years of age.

(4)(a) An individual who holds a real estate property manager license may engage only in the management of rental real estate.

(b) A licensed real estate property manager may employ, engage or supervise the professional real estate activity of another licensed real estate property manager.

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

[(a)] (A) [Obtained] **Certification by the applicant that the applicant has** a high school diploma or General Educational Development (GED) certificate or the international equivalent, **or other equivalent education acceptable to the commissioner;**

[(b)] (B) **Proof that the applicant:**

(i) **Has** successfully completed [courses in the legal aspects of real estate, real estate property management and accounting, bookkeeping and trust accounting practices; and] **the basic real estate property manager's educational courses required by rule of the agency; and**

[(c)] (ii) **Has** passed the real estate property manager's license examination required by rule of the agency[.]; **and**

(C) Certification that the applicant is at least 18 years of age.

(5)(a) A license for a real estate broker, principal real estate broker or real estate property manager 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)] (6) 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)] (7) In order to satisfy the educational requirements under subsections (2) to (4) and [(7)] (6) 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)] (8) 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 11. ORS 696.174, as amended by section 2, chapter 502, Oregon Laws 2009, is amended to read:

696.174. (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 ORS 696.182 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] a **real estate broker** is renewing an active license for the first time, an advanced course in real estate practices approved by the [board] **Real Estate Agency**.

(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 12. ORS 696.174, as amended by section 2, chapter 502, Oregon Laws 2009, and section 11 of this 2011 Act, is amended to read:

696.174. (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 ORS 696.182 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)(A) If the real estate broker is renewing an active license for the first time, an advanced course in real estate practices approved by the Real Estate Agency[.]; **or**

(B) If a licensed real estate property manager is renewing an active license for the first time, an advanced course in property management practices approved by the agency.

(2) The 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.

MISCELLANEOUS PROVISIONS

SECTION 13. ORS 696.010 is amended to read:

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

[(1) "Agency" means the Real Estate Agency.]

[(2)] (1) "Associated with" means to be employed, engaged or otherwise supervised by, with respect to the relationship between:

- (a) A real estate broker and a principal real estate broker;
- (b) **A licensed real estate property manager and a principal real estate broker; or**
- (c) **A licensed real estate property manager and another licensed real estate property manager.**

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

[(4)(a)] **(3)(a)** “Branch office” means a business location, other than the main office designated under ORS 696.200 [(2)] **(1)**, where professional real estate activity is regularly conducted or that is advertised to the public as a place where such business may be regularly conducted.

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

[(5)] “*Commissioner*” means the *Real Estate Commissioner*.]

[(6)] **(4)** “Compensation” means any 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.

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

[(8)] **(6)** “Expired” means, in the context of a real estate licensee, that the license has not been renewed in a timely manner, but may still be renewed.

[(9)] **(7)** “Inactive” means, in the context of a real estate licensee, that the license has been returned to the agency to be held until the licensee reactivates the license or the license expires or lapses.

[(10)] **(8)** “Lapsed” means, in the context of a real estate licensee, that the license has not been renewed in a timely manner and is not eligible for renewal.

[(11)] **(9)** “Letter opinion” has the meaning given that term in ORS 696.294.

(10) “Licensed real estate property manager” means an individual who holds an active real estate property manager’s license issued under ORS 696.022.

[(12)] **(11)** “Management of rental real estate” means:

(a) Representing the owner of real estate in the rental or lease of the real estate and includes but is not limited to:

- (A) Advertising the real estate for rent or lease;
- (B) Procuring prospective tenants to rent or lease the real estate;
- (C) Negotiating with prospective tenants;
- (D) Accepting deposits from prospective tenants;
- (E) Checking the qualifications and creditworthiness of prospective tenants;
- (F) Charging and collecting rent or lease payments;
- (G) Representing the owner in inspection or repair of the real estate;
- (H) Contracting for repair or remodeling of the real estate;
- (I) Holding trust funds or property received in managing the real estate and accounting to the owner for the funds or property;

(J) Advising the owner regarding renting or leasing the real estate;

(K) Providing staff and services to accommodate the tax reporting and other financial or accounting needs of the real estate;

(L) Providing copies of records of acts performed on behalf of the owner of the real estate; and

(M) Offering or attempting to do any of the acts described in this paragraph for the owner of the real estate; or

(b) Representing a tenant or prospective tenant when renting or leasing real estate and includes but is not limited to:

(A) Consulting with tenants or prospective tenants about renting or leasing real estate;

(B) Assisting prospective tenants in renting or leasing real estate;

- (C) Assisting prospective tenants in qualifying for renting or leasing real estate;
- (D) Accepting deposits or other funds from prospective tenants for renting or leasing real estate and holding the funds in trust for the prospective tenants;
- (E) Representing tenants or prospective tenants renting or leasing real estate; and
- (F) Offering or attempting to do any of the acts described in this paragraph for a tenant or prospective tenant.

[(13)] (12) "Nonlicensed individual" means an individual:

- (a) Who has not obtained a real estate license; or
- (b) Whose real estate license is lapsed, expired, inactive, suspended, surrendered or revoked.

[(14)] (13) "Principal real estate broker" means:

- (a) An individual who holds an active license as a principal real estate broker; or
- (b) A sole practitioner who conducted professional real estate activity as a sole practitioner prior to January 1, 2010.

[(15)] (14) "Professional real estate activity" means any of the following actions, when engaged in for another and for compensation or with the intention or in the expectation or upon the promise of receiving or collecting compensation, by any person who:

- (a) Sells, exchanges, purchases, rents or leases real estate;
- (b) Offers to sell, exchange, purchase, rent or lease real estate;
- (c) Negotiates, offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate;
- (d) Lists, offers, attempts or agrees to list real estate for sale;
- (e) Offers, attempts or agrees to perform or provide a competitive market analysis or letter opinion, to represent a taxpayer under ORS 305.230 or 309.100 or to give an opinion in any administrative or judicial proceeding regarding the value of real estate for taxation, except when the activity is performed by a state certified appraiser or state licensed appraiser;
- (f) Auctions, offers, attempts or agrees to auction real estate;
- (g) Buys, sells, offers to buy or sell or otherwise deals in options on real estate;
- (h) Engages in management of rental real estate;
- (i) Purports to be engaged in the business of buying, selling, exchanging, renting or leasing real estate;
- (j) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, leasing or rental of real estate;
- (k) Assists or directs in the negotiation or closing of any transaction calculated or intended to result in the sale, exchange, leasing or rental of real estate;
- (L) Except as otherwise provided in ORS 696.030 (1)(L), advises, counsels, consults or analyzes in connection with real estate values, sales or dispositions, including dispositions through eminent domain procedures;
- (m) Advises, counsels, consults or analyzes in connection with the acquisition or sale of real estate by an entity if the purpose of the entity is investment in real estate; or
- (n) Performs real estate marketing activity as described in ORS 696.600.

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

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

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

[(19)] (18) "Real estate property manager" means a real estate licensee who **engages in the management of rental real estate and** is *[authorized to engage in management of rental real*

estate] a licensed real estate property manager, a principal real estate broker or a real estate broker who is associated with and supervised by a principal real estate broker.

[20] (19) “Registered business name” means a name registered with the Real Estate Agency under which the individual registering the name engages in professional real estate activity.

[21] (20) “Sole practitioner” means a real estate broker conducting professional real estate activity not in conjunction with other real estate brokers or principal real estate brokers and who, prior to January 1, 2010:

(a) Acquired three years of active experience as a real estate broker; or

(b) Acquired three years of active experience as a real estate salesperson as defined in ORS 696.025 (1999 Edition) and successfully completed the real estate broker’s examination required by rule of the agency.

SECTION 14. ORS 696.125 is amended to read:

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

(a) By term;

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

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

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

(2) A limited license issued under this section does not confer any property right in the privileges to be exercised under the license, and the holder of a limited license does not have the right to renewal of the limited license. A limited license may be suspended or revoked, or the real estate licensee may be reprimanded, by the commissioner on the grounds set out in ORS 696.301 or for failure to comply with the limitations of the license.

SECTION 15. ORS 696.270 is amended to read:

696.270. The maximum fees described in this section may be charged by [*and paid to*] the Real Estate Agency. Actual fees shall be prescribed by the Real Estate Commissioner with approval of the Oregon Department of Administrative Services. This section applies to the following fees:

(1) For each licensing examination applied for, \$75.

(2) For each real estate broker’s, principal real estate broker’s or real estate property manager’s license, \$230.

(3) For each renewal of a real estate broker’s, principal real estate broker’s or real estate property manager’s license, \$230.

(4) For each notification of the opening or closing of a registered branch office of a real estate broker or principal real estate broker, at times other than the time of issuing or renewing the broker’s license, \$10.

(5) For each change of name or address of a broker on the records of the agency, \$10.

(6) For each duplicate license, when the original license is lost or destroyed and affidavit made thereof, \$20.

(7) For each transfer of a real estate broker’s, principal real estate broker’s or real estate property manager’s license within the same license category, \$10.

(8) For the renewal of a real estate broker’s, principal real estate broker’s or real estate property manager’s inactive license, \$110.

(9) For the reactivation of a real estate broker’s, principal real estate broker’s or real estate property manager’s inactive license, \$75.

(10) In addition to the renewal fee, for late renewal, \$30.

(11) For a temporary license issued under ORS 696.205, \$40, and for an extension thereof, \$40.

(12) For initial registration of a business name, \$230.

SECTION 16. (1) Section 1 of this 2011 Act and the amendments to ORS 130.005, 696.010, 696.022, 696.026, 696.125, 696.174, 696.182, 696.200, 696.241, 696.245, 696.280 and 696.855 by sections 2 to 11, 13 and 14 of this 2011 Act become operative on January 1, 2012.

(2) The amendments to ORS 696.174 by section 12 of this 2011 Act become operative on January 1, 2013.

(3) The Real Estate Agency may take any action on or before the operative dates specified in subsections (1) and (2) of this section to enable the agency to exercise, on and after the operative dates specified in subsections (1) and (2) of this section, all the duties, functions and powers conferred on the agency by section 1 of this 2011 Act and the amendments to ORS 130.005, 696.010, 696.022, 696.026, 696.125, 696.174, 696.182, 696.200, 696.241, 696.245, 696.280 and 696.855 by sections 2 to 14 of this 2011 Act.

SECTION 17. (1) The amendments to ORS 696.022 and 696.174 by sections 10 and 11 of this 2011 Act apply to individuals who apply for issuance or renewal of a real estate license on or after January 1, 2012.

(2) The amendments to ORS 696.174 by section 12 of this 2011 Act apply to licensed real estate property managers who renew an active license for the first time on or after January 1, 2013.

SECTION 18. The unit captions used in this 2011 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2011 Act.

SECTION 19. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by Senate April 14, 2011

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 16, 2011

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Received by Governor:

.....M.,....., 2011

Approved:

.....M.,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

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Kate Brown, Secretary of State