



Real Estate Agency

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Senate Committee on Business and Transportation Real Estate Agency Testimony on SB 23 February 5, 2013

My name is Laurie Skillman and I am a manager at the Oregon Real Estate Agency, testifying on behalf of the Agency in support of Senate Bill 23. The Agency licenses real estate brokers, property managers and escrow agents.

Senate Bill 23 is filed at the request of the Governor on behalf of the Real Estate Agency. The purpose of the bill is to make technical and housekeeping amendments to certain statutes within ORS Chapter 696, the Oregon Real Estate License Law. These amendments are for readability, to clarify certain provisions and to provide the Agency with specific rulemaking authority.

The Agency did a careful review of all the statutes in ORS Chapter 696, and determined that there were a number of technical amendments that were needed. The amendments are not controversial. The Real Estate Board and the Oregon Association of Realtors support these housekeeping/technical amendments.

Some highlights:

- Defines “property management agreement” as a written contract between a real estate property manager and an owner of real estate for the management of rental real estate specified in the agreement.
- Only allows a real estate property manager to engage in the management of rental real estate for an owner of rental real estate pursuant to a property management agreement.
- Technical amendment to change continuing education provider record-keeping requirements to conform to Agency’s new eLicense system. The Agency needs flexibility to require providers to maintain and provide licensee records to the Agency in an electronic format or to upload information. Allow recordkeeping to be determined by rule of the Agency.
- Establishes responsibility for a specific principal real estate broker or property manager associated with a registered business name to maintain current information on the business and any associated clients’ trust accounts. Clarifies requirement that all licensees associated with a registered business name must conduct professional real estate activity under that name.

Attached is a section-by section analysis that provides detail on the proposed amendments in SB 23.

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Oregon Real Estate Agency
Section-By-Section Analysis
Senate Bill 23 - 2013 Legislative Session

Section 1. Amends ORS 696.010 Definitions
<p><u>Purpose:</u> To define “property management agreement.”</p> <p>Page 3, line 36: “Property management agreement” means a written contract between a real estate property manager and an owner of real estate for the management of rental real estate specified in the agreement.</p>
Section 2. Amends ORS 696.890 Duties of real estate property managers
<p><u>Purpose:</u> To clarify that a real estate property manager must have a written contract (“property management agreement”) with an owner of real estate to engage in the “management of rental real estate.” This concept has been in rule for the past five years.</p> <p>See page 4, line 19 to 25: A real estate property manager may engage in the management of rental real estate for an owner of rental real estate only pursuant to a property management agreement.</p>
Section 3. Amends ORS 696.290 Sharing compensation with or paying finder’s fee to unlicensed person prohibited; exceptions
<p><u>Purpose:</u> Housekeeping for internal consistency and readability.</p> <p>See page 4-5. Technical amendment to clarify language and conform to legislative counsel writing style. This section was confusing as written. The term “change of affiliation” actually means the “association” of a real estate broker to a principal real estate broker. “Affiliation” is archaic language. “Associated with” is a defined term about the relationships between licensees.</p>
Section 4. Operative date for Section 3
<p><u>Purpose:</u> States that the amendments to ORS 696.290 in Section 3 apply to property management agreements entered into on or after the operative date of the Act.</p>
Section 5. Amends 696.020 License required for individuals engaged in professional real estate activities; exception; rules
<p><u>Purpose</u> Technical amendment to fix technical inconsistency. The section as written reads:</p> <p>(3) A real estate licensee is bound by and subject to the requirements of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and 696.995 while:</p> <p>(a) Engaging in professional real estate activity; or</p> <p>(b) Acting on the licensee’s own behalf in the sale, exchange, lease option or purchase of real estate or in the offer or negotiations for the sale, exchange, lease option or purchase of real estate.</p> <p>Problem #1: “Real estate licensee” refers to all three licenses and the statutory requirements for property managers are different and need to be distinguished. The provision in (3)(a) and (b) should only apply to brokers and principal brokers because the provisions in ORS 696.800 to 696.870 apply only to these licenses. The provisions in ORS 696.890 (affirmative duties of a property manager) apply only to real estate property managers (includes real estate brokers, principal brokers and property managers); however, 696.890 is not included in the list.</p> <p>Problem #2: The standards required for licensees acting on their own behalf in (3)(b) only apply to principal real estate broker and broker because these licensees may represent another for compensation in the sale, exchange, lease option or purchase, only these licensees should be bound while conducting those activities on their own behalf. A property manager license does not authorize the licensee to engage in these activities and, therefore, a property manager should not be bound by chapter 696 when engaging in sale, exchange, lease option or purchase on their own behalf.</p> <p>See page 6, lines 12-20</p>

<p>Section 6. Amends ORS 696.315 Prohibition against licensee permitting nonlicensed individual to engage in activity with or on behalf of licensee.</p>
<p><u>Purpose:</u> Clarifies application of existing licensing exemption under ORS 696.030 for individuals who conduct certain activities on behalf of a licensed real estate property manager. Requires the property manager to specifically delegate authority in writing.</p> <p>See also Section 10, amending ORS 696.030</p>
<p>Section 7. Amends ORS 696.130 Effect of revocation of license</p>
<p><u>Purpose:</u> Technical amendment to clarify that the provision applies a property manager licensee whose license has been revoked by the Commissioner and that the property manager must comply with the statutes prior to being reissued a license.</p>
<p>Section 8. Amends ORS 270.120</p>
<p><u>Purpose:</u> Technical amendment by legislative Counsel to conform other statutes to ORS Chapter 696.</p>
<p>Section 9. Amends ORS 696.026 Registration of business names; rules</p>
<p><u>Purpose #1:</u> To clarify that a specific, named principal real estate broker or property manager is responsible for a registered business name and professional real estate activity that is done under that name, including providing the agency with information on all clients' trust accounts opened under a registered business name.</p> <p>Under existing rules and in the Agency's database, most real estate licensees are associated with a registered business name. Only a principal real estate broker or property manager may establish a registered business name. The Agency needs a named principal broker or property manager who is "responsible" for the registered business name and for all clients' trust accounts associated with the registered business name, including current active status with the Secretary of State.</p> <p><u>Purpose #2:</u> Technical amendment to clarify that all licensees who are associated with a principal real estate broker or licensed real estate property manager must conduct business under the registered business name. Clarification is to add principal real estate brokers to the licensees who must comply with this statute.</p>
<p>Section 10. Amends ORS 696.030 Exemptions from licensing</p>
<p><u>Purpose #1:</u> Technical amendment to clarify the meaning of the term "single owner of real estate." Change to define "owner of real estate" under ORS 696.030(1). New language:</p> <p>(b) For the purpose of this subsection, "owner of real estate" means: (A) An individual who has a sole ownership interest in the real estate; or (B) More than one individual, each of whom has an ownership interest in the real estate, if the ownership interest is by survivorship, tenancy in common or tenancy by the entirety.</p> <p><u>Purpose #2:</u> Technical amendment to clarify the application of existing licensing exemption under ORS 696.0309 for individuals who conduct certain activities on behalf of a licensed real estate property manager. Requires the property manager to specifically delegate authority in writing. See also Section 6, amending ORS 696.315.</p> <p><u>Purpose #3:</u> Technical amendment to clarify current ORS 696.030(24). New language: A nonlicensed individual acting as a paid fiduciary whose real estate activity is limited to negotiating a contract [or closing a transaction] to obtain the services of a real estate licensee.</p>

Section 11. Amends ORS 696.184 Continuing Education Provider Requirements
<p><u>Purpose#1:</u> Significant housekeeping amendments for simplicity and readability.</p> <p><u>Purpose #2:</u> Technical amendment to change continuing education provider record-keeping requirements to conform to Agency’s new eLicense system. The Agency needs flexibility to require providers to maintain and provide licensee records to the Agency in an electronic format or to upload information. Amend by deleting “The records may be maintained in any format.” Change all recordkeeping requirements to “as required by rule of the Agency.”</p> <p><u>Purpose #3:</u> Clarify that the Agency can request and the continuing education provider must produce records within 15 business days.</p>
Section 12. Amends ORS 696.186 Qualifications of continuing education instructors; rules
<p><u>Purpose:</u> Technical amendment to delete statutory provision on an “approved” training course because the Real Estate Board does not approve instructor training courses. This provision is unnecessary.</p>
Section 13. Amends ORS 696.241 Clients’ trust accounts; notice to agency; branch trust account; interest earnings on trust account; when broker entitled to earnest money; funds not subject to execution; rules
<p><u>Purpose#1:</u> Technical amendment to clarify that a clients' trust account must be “opened” in the state of Oregon. Current language only states that the licensee must “maintain” an account in Oregon.</p> <p><u>Purpose#2:</u> Technical amendment clarifying that a property manager or a principal real estate broker who engages in the management of rental real estate must open and maintain at least one clients’ trust account. Also, clarify that the clients' trust account provisions apply specifically to a property manager.</p> <p><u>Purpose#3:</u> Technical amendments for clarity and readability.</p> <p><u>Purpose#4:</u> Technical amendment to clarify that the licensee who places funds in a clients' trust account is responsible for those funds until the ownership of the clients' trust account is transferred to another licensee.</p>
Section 14. Amends ORS 696.385 Power of agency; rulemaking procedures
<p><u>Purpose:</u> Technical amendment to streamline filing and adopting administrative rules. The current provision creates problems for the Agency when filing proposed rules or notices of hearing because the Board only meets bi-monthly. Issue is easily resolved by shortening the 45-day requirement to submit proposed rules to the Board before the board meeting to 10 days. The Board will have 10 days prior to the Board meeting to review the rules and advise the Agency at the Board meeting.</p>
Section 15. Amends ORS 696.425 Powers and duties of board; expenses.
<p><u>Purpose:</u> Technical amendment to update archaic language. The Board does not “conduct examinations;” however, it does make recommendations to the Agency about the manner and methods for conducting examinations.</p>
Section 16. Amends ORS 696.445 Advancement of education and research; Oregon Real Estate News Journal; content as to disciplinary actions.
<p><u>Purpose:</u> Technical amendment to expand the concepts of “publication” and “printed matter” to include electronic “publication.” Also, allow for the Agency to publish a complete, final order rather than just “a brief description of the situation involved and the grounds for the commissioner’s action” on a final administrative order.</p>

Section 17. Amends ORS 696.361
Regulation of real estate property manager

Purpose: To repeal the statute. The entire statute reads: *A real estate property manager is regulated and bound as a real estate broker and as a principal real estate broker.* This statute was initially enacted to cover a new licensee called a “property manager,” and its purpose was to have all existing statutes regulating a broker apply to a property manager. Because the conduct allowed under the statutes is different for brokers and property managers, over the past three Legislative Sessions, the Agency has amended the provisions in ORS chapter 696 to specifically apply the appropriate statutes to individual licensees. The work is now completed and this statute may be repealed.

Section 18. Operative dates

States that the provisions of the bill become operative on July 1, 2013 and allows the agency to take any action necessary (including rule writing) prior to the effective date to enable the Agency to implement the provisions of the bill on the effective date.

Section 19. Unit captions

States that the unit captions are not part of the law.

Section 20. Emergency Clause

States that the bill takes effect on passage.