

House Bill 2608

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon State Bar Board of Governors on behalf of Oregon Law Foundation)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires, when parties utilize services of escrow agents, trust funds to be deposited in interest-bearing accounts. If trust funds are not expected to produce net positive return, requires funds to be deposited in pooled interest-bearing trust account. Requires interest, net of reasonable costs, to be distributed to public benefit corporations that are organized for purpose of supporting access to justice and that distribute funds to provide legal services to persons of lesser means.

Applies to interest accrued on funds deposited with escrow agents or after January 1, 2014.

A BILL FOR AN ACT

1
2 Relating to escrow accounts; creating new provisions; and amending ORS 696.578.

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

4 **SECTION 1.** ORS 696.578 is amended to read:

5 696.578. (1) All funds received by an escrow agent to be delivered upon the close of the escrow
6 or upon any other contingency are trust funds that must be deposited and maintained in a bank
7 authorized to do business within this state. The funds must be deposited in a federally insured ac-
8 count designated as an escrow trust account and kept separate, distinct and apart from funds be-
9 longing to the escrow agent. The designation of an account as an escrow trust account indicates
10 that the funds are not the funds of the escrow agent.

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

16 [(3) *With prior written notice to all parties who have an interest in the trust funds, an escrow agent*
17 *may place trust funds received by the escrow agent in a federally insured interest-bearing bank account*
18 *that is designated as an escrow trust account and the earnings of which inure to the benefit of a public*
19 *benefit corporation, as defined in ORS 65.001, for distribution to organizations and individuals for*
20 *first-time homebuying assistance and for development of affordable housing. The escrow agent shall*
21 *select a qualified public benefit corporation to receive the interest earnings.*]

22 (3) **Notwithstanding subsection (2) of this section, if the funds are not expected to**
23 **produce a positive net return, the funds must be placed in a pooled interest-bearing trust**
24 **account that otherwise meets the requirements of subsection (1) of this section. The interest**
25 **accruing on the pooled interest-bearing trust account, net of reasonable costs, must be paid**
26 **to a public benefit corporation, as defined in ORS 65.001, that is organized for the purpose**
27 **of supporting access to justice in this state and that distributes funds to provide legal ser-**
28 **vices to persons of lesser means.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (4) For purposes of subsection (3) of this section:

2 (a) Whether trust funds produce a positive net return is determined by taking into ac-
3 count only:

4 (A) The amount of interest the trust funds would earn if held as described in subsection
5 (2) of this section;

6 (B) The expected period of deposit of the trust funds; and

7 (C) The cost of establishing and administering an account under subsection (2) of this
8 section.

9 (b) The reasonable costs that may be withheld from distributions from a pooled
10 interest-bearing trust account may consist only of deposit charges, monthly maintenance
11 fees and per-item check or deposit charges.

12 (5) An escrow agent holding funds in a pooled interest-bearing trust account described
13 in subsection (3) of this section shall direct the financial institution where the account is
14 established to:

15 (a) Remit net interest on the average monthly balance in the account, or as otherwise
16 determined under standard accounting practices used by the financial institution, to the
17 public benefit corporation described in subsection (3) of this section; and

18 (b) Give a statement to the public benefit corporation and the escrow agent at the time
19 the remittance is made that provides details about the account, including but not limited to
20 the name of the escrow agent for whom the remittance is sent, the rate of interest applied,
21 the balance used to compute the interest and the amount of the reasonable costs, if any, that
22 were deducted.

23 (6) An escrow agent shall, upon establishing a pooled interest-bearing trust account de-
24 scribed in subsection (3) of this section, submit a written report to the Director of the De-
25 partment of Consumer and Business Services that provides the name of the escrow agent,
26 the name and address of the financial institution at which the account is established and the
27 account number of the account.

28 [(4)] (7) Any bank services, as defined by rule by the Real Estate Commissioner, provided to the
29 escrow agent may not be considered to affect the impartiality or neutrality of the escrow agent.
30 Such services are permitted with approval in the written closing instructions of the principals.

31 [(5)] (8) Trust funds, **other than those held in a pooled interest-bearing trust account de-**
32 **scribed in subsection (3) of this section**, may be invested in secured obligations of the United
33 States, if:

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

36 (b) The depositing principal releases the escrow agent from any liability for loss of the trust
37 funds;

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

40 (d) The escrow agent does not have any interest in the investment or earnings from the invest-
41 ment.

42 [(6)] (9) If the trust funds to be invested represent earnest money in a transaction, both princi-
43 pals in the transaction must give prior written approval for the investment and are both considered
44 depositing principals.

45 **SECTION 2. The amendments to ORS 696.578 by section 1 of this 2013 Act apply to in-**

1 **terest from trust funds described in ORS 696.578 that are deposited with escrow agents on**
2 **or after January 1, 2014.**

3
