

# Senate Bill 23

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## 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**.

Modifies provisions related to regulation of real estate activities.  
Declares emergency, effective on passage.

## A BILL FOR AN ACT

Relating to the regulation of real estate activities; creating new provisions; amending ORS 270.120, 696.010, 696.020, 696.026, 696.030, 696.130, 696.184, 696.186, 696.241, 696.290, 696.315, 696.385, 696.425, 696.445 and 696.890; repealing ORS 696.361; and declaring an emergency.

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

## PROPERTY MANAGEMENT AGREEMENTS

**SECTION 1.** 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) "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.

(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.

(3)(a) "Branch office" means a business location, other than the main office designated under ORS 696.200 (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.

(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 oth-

**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 erwise.

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

9 (6) “Expired” means, in the context of a real estate licensee, that the license has not been re-  
 10 newed in a timely manner, but may still be renewed.

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

13 (8) “Lapsed” means, in the context of a real estate licensee, that the license has not been re-  
 14 newed in a timely manner and is not eligible for renewal.

15 (9) “Letter opinion” has the meaning given that term in ORS 696.294.

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

18 (11) “Management of rental real estate” means:

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

- 21 (A) Advertising the real estate for rent or lease;
- 22 (B) Procuring prospective tenants to rent or lease the real estate;
- 23 (C) Negotiating with prospective tenants;
- 24 (D) Accepting deposits from prospective tenants;
- 25 (E) Checking the qualifications and creditworthiness of prospective tenants;
- 26 (F) Charging and collecting rent or lease payments;
- 27 (G) Representing the owner in inspection or repair of the real estate;
- 28 (H) Contracting for repair or remodeling of the real estate;
- 29 (I) Holding trust funds or property received in managing the real estate and accounting to the  
 30 owner for the funds or property;
- 31 (J) Advising the owner regarding renting or leasing the real estate;
- 32 (K) Providing staff and services to accommodate the tax reporting and other financial or ac-  
 33 counting needs of the real estate;
- 34 (L) Providing copies of records of acts performed on behalf of the owner of the real estate; and
- 35 (M) Offering or attempting to do any of the acts described in this paragraph for the owner of  
 36 the real estate; or

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

- 39 (A) Consulting with tenants or prospective tenants about renting or leasing real estate;
- 40 (B) Assisting prospective tenants in renting or leasing real estate;
- 41 (C) Assisting prospective tenants in qualifying for renting or leasing real estate;
- 42 (D) Accepting deposits or other funds from prospective tenants for renting or leasing real estate  
 43 and holding the funds in trust for the prospective tenants;
- 44 (E) Representing tenants or prospective tenants renting or leasing real estate; and
- 45 (F) Offering or attempting to do any of the acts described in this paragraph for a tenant or

1 prospective tenant.

2 (12) “Nonlicensed individual” means an individual:

3 (a) Who has not obtained a real estate license; or

4 (b) Whose real estate license is lapsed, expired, inactive, suspended, surrendered or revoked.

5 (13) “Principal real estate broker” means:

6 (a) An individual who holds an active license as a principal real estate broker; or

7 (b) A sole practitioner who conducted professional real estate activity as a sole practitioner  
8 prior to January 1, 2010.

9 (14) “Professional real estate activity” means any of the following actions, when engaged in for  
10 another and for compensation or with the intention or in the expectation or upon the promise of  
11 receiving or collecting compensation, by any person who:

12 (a) Sells, exchanges, purchases, rents or leases real estate;

13 (b) Offers to sell, exchange, purchase, rent or lease real estate;

14 (c) Negotiates, offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or  
15 leasing of real estate;

16 (d) Lists, offers, attempts or agrees to list real estate for sale;

17 (e) Offers, attempts or agrees to perform or provide a competitive market analysis or letter  
18 opinion, to represent a taxpayer under ORS 305.230 or 309.100 or to give an opinion in any admin-  
19 istrative or judicial proceeding regarding the value of real estate for taxation, except when the ac-  
20 tivity is performed by a state certified appraiser or state licensed appraiser;

21 (f) Auctions, offers, attempts or agrees to auction real estate;

22 (g) Buys, sells, offers to buy or sell or otherwise deals in options on real estate;

23 (h) Engages in management of rental real estate;

24 (i) Purports to be engaged in the business of buying, selling, exchanging, renting or leasing real  
25 estate;

26 (j) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange,  
27 leasing or rental of real estate;

28 (k) Assists or directs in the negotiation or closing of any transaction calculated or intended to  
29 result in the sale, exchange, leasing or rental of real estate;

30 (L) Except as otherwise provided in ORS 696.030 [(1)(L)] (12), advises, counsels, consults or an-  
31 alyzes in connection with real estate values, sales or dispositions, including dispositions through  
32 eminent domain procedures;

33 (m) Advises, counsels, consults or analyzes in connection with the acquisition or sale of real  
34 estate by an entity if the purpose of the entity is investment in real estate; or

35 (n) Performs real estate marketing activity as described in ORS 696.600.

36 (15) **“Property management agreement” means a written contract for the management**  
37 **of rental real estate between a real estate property manager and the owner of the rental real**  
38 **estate.**

39 [(15)] (16) “Real estate” includes leaseholds and licenses to use including, but not limited to,  
40 timeshare estates and timeshare licenses as defined in ORS 94.803, as well as any and every interest  
41 or estate in real property, whether corporeal or incorporeal, whether freehold or nonfreehold,  
42 whether held separately or in common with others and whether the real property is situated in this  
43 state or elsewhere.

44 [(16)] (17) “Real estate broker” means an individual who engages in professional real estate ac-  
45 tivity and who holds an active license as a real estate broker.

1 [(17)] (18) “Real estate licensee” means an individual who holds an active license as a real es-  
 2 tate broker, principal real estate broker or real estate property manager.

3 [(18)] (19) “Real estate property manager” means a real estate licensee who engages in the  
 4 management of rental real estate and is a licensed real estate property manager, a principal real  
 5 estate broker or a real estate broker who is associated with and supervised by a principal real es-  
 6 tate broker.

7 [(19)] (20) “Registered business name” means a name registered with the Real Estate Agency  
 8 under which the individual registering the name engages in professional real estate activity.

9 [(20)] (21) “Sole practitioner” means a real estate broker conducting professional real estate  
 10 activity not in conjunction with other real estate brokers or principal real estate brokers and who,  
 11 prior to January 1, 2010:

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

13 (b) Acquired three years of active experience as a real estate salesperson as defined in ORS  
 14 696.025 (1999 Edition) and successfully completed the real estate broker’s examination required by  
 15 rule of the agency.

16 **SECTION 2.** ORS 696.890 is amended to read:

17 696.890. (1) As used in this section:

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

19 **(b) “Property management agreement” has the meaning given that term in ORS 696.010.**

20 [(b)] (c) “Real estate property manager” has the meaning given that term in ORS 696.010.

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

23 **(3) A real estate property manager may engage in the management of rental real estate**  
 24 **for an owner of rental real estate only pursuant to a property management agreement.**

25 [(3)] (4) A real estate property manager owes the property owner the following affirmative du-  
 26 ties:

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

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

30 (c) To exercise reasonable care and diligence;

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

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

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

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

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

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

40 [(4)] (5) The affirmative duties listed in subsection [(3)] (4) of this section may not be waived.

41 [(5)] (6) Nothing in this section implies a duty beyond or in addition to those activities that are  
 42 reasonably within the scope of the management of rental real estate.

43 **SECTION 3.** ORS 696.290 is amended to read:

44 696.290. (1)(a) **Except as provided in paragraph (b) of this subsection,** a real estate licensee  
 45 may not offer, promise, allow, give, pay or rebate, directly or indirectly, any part or share of the

1 licensee's compensation arising or accruing from any real estate transaction or pay a finder's fee  
2 to any person who is not a real estate licensee licensed under ORS 696.022.

3 (b) [However,] A real estate broker or principal real estate broker may pay a finder's fee or a  
4 share of the licensee's compensation on a cooperative sale when the payment is made to a licensed  
5 real estate broker in another state or country, provided that:

6 (A) The state or country in which [that] **the nonresident real estate** broker is licensed has a  
7 law permitting real estate brokers to cooperate with real estate brokers or principal real estate  
8 brokers in this state; and

9 (B) [That such] **The** nonresident real estate broker does not conduct in this state any acts  
10 constituting professional real estate activity and for which compensation is paid. If a country does  
11 not license real estate brokers, the payee must be a citizen or resident of the country and represent  
12 that the payee is in the business of real estate brokerage in the other country.

13 (2) A real estate broker associated with a principal real estate broker may not accept compen-  
14 sation from any person other than the principal real estate broker with whom the real estate broker  
15 is associated at the time.

16 (3) A principal real estate broker may not make payment to the real estate broker of another  
17 principal real estate broker except through the principal real estate broker with whom the real es-  
18 tate broker is associated.

19 (4) Nothing in this section prevents payment of compensation earned by a real estate broker  
20 or principal real estate broker while licensed[,] because of [change of affiliation] **the real estate**  
21 **broker's or principal real estate broker's association with a different principal real estate**  
22 **broker or because of** inactivation of the **real estate broker's or principal real estate** broker's  
23 license.

24 [(2)] (5) Nothing in subsection (1) of this section prohibits a real estate licensee who has a  
25 [written] property management agreement with the owner of a residential building or facility from  
26 authorizing the payment of a referral fee, rent credit or other compensation to an existing tenant  
27 of the owner or licensee, or a former tenant if the former tenant resided in the building or facility  
28 within the previous six months, as compensation for referring new tenants to the licensee.

29 [(3)(a)] (6)(a) Nothing in subsection (1) of this section prevents an Oregon real estate broker or  
30 principal real estate broker from sharing compensation on a cooperative nonresidential real estate  
31 transaction with a person who holds an active real estate license in another state or country, pro-  
32 vided:

33 (A) Before the out-of-state real estate licensee performs any act in this state that constitutes  
34 professional real estate activity, the licensee and the cooperating Oregon real estate broker or  
35 principal real estate broker agree in writing that the acts constituting professional real estate ac-  
36 tivity conducted in this state will be under the supervision and control of the cooperating Oregon  
37 broker and will comply with all applicable Oregon laws;

38 (B) The cooperating Oregon real estate broker or principal real estate broker accompanies the  
39 out-of-state real estate licensee and the client during any property showings or negotiations con-  
40 ducted in this state; and

41 (C) All property showings and negotiations regarding nonresidential real estate located in this  
42 state are conducted under the supervision and control of the cooperating Oregon real estate broker  
43 or principal real estate broker.

44 (b) As used in this subsection, "nonresidential real estate" means real property that is improved  
45 or available for improvement by commercial structures or five or more residential dwelling units.



1 **ORS 696.010 to 696.495, 696.600 to 696.785 and 696.890.**

2 (2) Notwithstanding subsection (1) of this section, the commissioner may issue the individual a  
 3 limited license if, in the discretion of the commissioner, it is in the public interest to do so. The  
 4 commissioner may limit a license issued under this subsection:

- 5 (a) By term;
- 6 (b) To acts subject to the supervision of a specific principal real estate broker; or
- 7 (c) By conditions to be observed in the exercise and the privileges granted.

8 (3) A limited license issued under this section does not confer any property right in the privi-  
 9 leges to be exercised thereunder, and the holder of a limited license does not have the right to re-  
 10 newal of such license. A limited license may be suspended or revoked, or the licensee may be  
 11 reprimanded, by the commissioner on the grounds set out in ORS 696.301.

12 **SECTION 8.** ORS 270.120 is amended to read:

13 270.120. (1) In exercising certain of its functions under ORS 184.634, 270.005 to 270.015, 270.100  
 14 to 270.190, 273.416, 273.426 to 273.436 and 273.551, the Oregon Department of Administrative Ser-  
 15 vices shall be advised by an advisory committee consisting of seven members appointed by the  
 16 Governor.

17 (2) The advisory committee appointed under subsection (1) of this section shall consist of two  
 18 members of the Legislative Assembly, one real estate licensee [*under ORS 696.020*] **as defined in**  
 19 **ORS 696.010**, two persons who serve in the executive branch of state government, one person  
 20 qualified as a land use planner, and one person qualified as a real estate management expert.

21 (3) Members of the advisory committee shall meet at such times and places and elect such offi-  
 22 cers and make such rules for the conduct of committee business as the committee may specify.

23 (4) Members of the advisory committee who are not members of the Legislative Assembly are  
 24 entitled to compensation under ORS 292.495. Members of the advisory committee who are members  
 25 of the Legislative Assembly shall be paid compensation and expense reimbursement as provided in  
 26 ORS 171.072, payable from funds appropriated to the Legislative Assembly.

27 (5) Expenses of the committee shall be paid from funds appropriated to the department to carry  
 28 out subsection (6) of this section.

29 (6)(a) The advisory committee shall advise the department on the acquisition, exchange or dis-  
 30 posal of real property valued at \$100,000 or more.

31 (b) The department may request the advice of the committee involving any real property trans-  
 32 action valued less than \$100,000.

33  
 34 **BUSINESS NAME REGISTRY**  
 35

36 **SECTION 9.** ORS 696.026 is amended to read:

37 696.026. (1) The Real Estate Agency shall establish by rule a system for the registration of  
 38 business names.

39 (2)(a) The system must require:

40 [(a)] (A) The [*location of a business with a registered name to*] **physical address associated with**  
 41 **a registered business name to** be the main office of a principal real estate broker or licensed real  
 42 estate property manager; and

43 [(b)] (B) [*A business name registered under this section to be a*] **The registered business name**  
 44 **to be the** corporate name, professional corporate name, business corporate name, cooperative name,  
 45 limited partnership name, business trust name, reserved name, registered corporate name or assumed

1 business name of active record with the Office of the Secretary of State[.];

2 **(b) The agency may establish by rule that the registration system must:**

3 **(A) Identify the principal real estate broker or the licensed real estate property manager**  
 4 **who is responsible for:**

5 **(i) Maintaining the registration of the business name, as described in subsection (2)(a)**  
 6 **of this section;**

7 **(ii) Registering any branch offices of the registered business name; and**

8 **(iii) Registering any additional business names as described in subsection (9)(a) of this**  
 9 **section.**

10 **(B) Maintain the information described in ORS 696.241 (4) and (6) for each clients' trust**  
 11 **account opened, closed or transferred by a principal real estate broker or by a licensed real**  
 12 **estate property manager who conducts professional real estate activity under the registered**  
 13 **business name; and**

14 [(3)] **(c)** The system must allow a principal real estate broker or licensed real estate property  
 15 manager to register [*a branch office*] **one or more branch offices** under the registered business  
 16 name of the main office.

17 [(4)] **(3)** Only a principal real estate broker or licensed real estate property manager may reg-  
 18 ister a business name or register a branch office under the registered business name of the main  
 19 office.

20 **(4)** Only a principal real estate broker or licensed real estate property manager may control and  
 21 supervise the professional real estate activity conducted under the registered business name.

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

23 **(6)** A principal real estate broker or licensed real estate property manager may conduct profes-  
 24 sional real estate activity only under:

25 **(a)** The name under which the principal broker or property manager's license was issued; or

26 **(b)** A registered business name.

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

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

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

34 **(8)** A principal real estate broker or licensed real estate property manager who registers a  
 35 business name need not be an owner or officer of any entity lawfully entitled to use or have an  
 36 ownership interest in the registered business name. However, only a principal real estate broker or  
 37 licensed real estate property manager may control and supervise the professional real estate activity  
 38 conducted under the registered business name.

39 **(9)(a)** A principal real estate broker or licensed real estate property manager who registers a  
 40 business name may register additional business names for [*affiliated*] **business organizations that**  
 41 **are affiliated with the business with the registered name,** or [*subsidiary*] business organizations  
 42 **that are subsidiaries** of the business with the registered name.

43 **(b)** [*If*] A principal real estate broker or licensed real estate property manager [*registers two or*  
 44 *more business names under this subsection, the real estate licensee may conduct professional real estate*  
 45 *activity separately under each registered business name*] **may conduct professional real estate ac-**



1 **tivity under two or more registered business names only if the business organizations are**  
 2 **affiliated with, or subsidiaries of, the business with the registered name.**

3 (10) A real estate broker or licensed real estate property manager associated with a principal  
 4 real estate broker may have an ownership interest in any business through which the principal real  
 5 estate broker conducts professional real estate activity, but may not control or supervise the pro-  
 6 fessional real estate activity of any other real estate licensee.

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

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

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

22  
 23 **EXEMPTIONS**  
 24

25 **SECTION 10.** ORS 696.030 is amended to read:

26 696.030. *[(1)]* ORS 696.010 to 696.375, 696.392, 696.395 to 696.430, 696.490, 696.600 to 696.785,  
 27 696.990 and 696.995 do not apply to:

28 *[(a)]* **(1)(a)** A nonlicensed individual who is a full-time employee of *[a single]* **an** owner of real  
 29 estate **and** whose real estate activity:

30 **(A)** Involves **only** the real estate of the employer *[and:]*; **and**

31 *[(A)]* **(B)(i)** Is incidental to the employee’s normal, nonreal estate activities; or

32 *[(B)]* **(ii)** Is the employee’s principal activity, but the employer’s principal activity or business  
 33 is not the sale, exchange, lease option or acquisition of real estate.

34 **(b) For the purpose of this subsection, “owner of real estate” means:**

35 **(A) An individual who has a sole ownership interest in the real estate; or**

36 **(B) More than one individual, each of whom has an ownership interest in the real estate,**  
 37 **if the ownership interest is by survivorship, tenancy in common or tenancy by the entirety.**

38 *[(b)]* **(2)** A nonlicensed individual who acts as attorney in fact under a duly executed power of  
 39 attorney from the owner or purchaser authorizing the supervision of the closing of or supervision  
 40 of the performance of a contract for the sale, leasing or exchanging of real estate if the power of  
 41 attorney was executed prior to July 1, 2002, in compliance with the requirements of law at the time  
 42 of execution or if:

43 *[(A)]* **(a)** The power of attorney is recorded in the office of the recording officer for the county  
 44 in which the real estate is located;

45 *[(B)]* **(b)** The power of attorney specifically describes the real estate; and

1 [(C)] (c) The individual does not use the power of attorney as a device to engage in professional  
2 real estate activity without obtaining the necessary real estate license.

3 [(c)] (3) A nonlicensed individual who acts as attorney in fact under a duly executed power of  
4 attorney in which the authorized agent is the spouse of the principal, or the child, grandchild, par-  
5 ent, grandparent, sibling, aunt, uncle, niece or nephew of the principal or of the spouse of the  
6 principal, authorizing real estate activity if the power of attorney is recorded in the office of the  
7 recording officer for the county in which the real estate to be sold, leased or exchanged is located.

8 [(d)] (4) A nonlicensed individual who is an attorney at law rendering services in the perform-  
9 ance of duties as an attorney at law.

10 [(e)] (5) A nonlicensed individual who acts in the individual's official capacity as a receiver, a  
11 conservator, a trustee in bankruptcy, a personal representative or a trustee, or a regular salaried  
12 employee of the trustee, acting under a trust agreement, deed of trust or will.

13 [(f)] (6) A nonlicensed individual who performs an act of professional real estate activity under  
14 order of a court.

15 [(g)] (7) A nonlicensed individual who is a regular full-time employee of a single corporation,  
16 partnership, association, limited liability company or nonlicensed individual owner of real property  
17 acting for the corporation, partnership, association, limited liability company or nonlicensed indi-  
18 vidual owner in the rental or management of the real property, but not in the sale, exchange, lease  
19 option or purchase of the real property.

20 [(h)] (8) An individual who is a registered professional engineer or architect rendering services  
21 in performance of duties as a professional engineer or architect.

22 [(i)] (9) A nonlicensed individual who is employed by a [*real estate broker or*] principal real es-  
23 tate broker **engaged in the management of rental real estate or by a licensed real estate**  
24 **property manager** and who acts [*as a manager for real estate*] **on behalf of the principal real**  
25 **estate broker or licensed real estate property manager pursuant to a written delegation of**  
26 **the principal real estate broker's or licensed real estate property manager's authority, as**  
27 **provided by the agency by rule**, if the real estate activity of the nonlicensed individual is limited  
28 to:

29 (a) Negotiating rental or lease agreements[.];

30 (b) Checking tenant and credit references[.];

31 (c) Physically maintaining the real estate[.];

32 (d) Conducting tenant relations[.];

33 (e) Collecting the rent[.];

34 (f) Supervising the premises' managers [*and*];

35 (g) Discussing financial matters relating to **the** management of the real estate with the owner;

36 **and**

37 **(h) Receiving and disbursing trust funds in a clients' trust account under ORS 696.241.**

38 [(j)] (10) An individual who sells or leases cemetery lots, parcels or units while engaged in the  
39 disposition of human bodies under ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to  
40 97.920 and 97.990 or an employee of the nonlicensed individual performing similar activities.

41 [(k)] (11) An individual who is a salaried employee of the State of Oregon, or any of its political  
42 subdivisions, engaging in professional real estate activity as a part of such employment.

43 [(L)] (12) A nonlicensed individual who analyzes or provides advice regarding permissible land  
44 use alternatives, environmental impact, building and use permit procedures or demographic market  
45 studies, or a regular full-time employee of the nonlicensed individual performing similar activities.

1 This exclusion does not apply to the handling of transactional negotiations for transfer of an interest  
2 in real estate.

3 [(m)] (13) An individual who is a hotelkeeper or innkeeper as defined by ORS 699.005 arranging  
4 the rental of transient lodging at a hotel or inn in the course of business as a hotelkeeper or  
5 innkeeper.

6 [(n)] (14) An individual who is a travel agent arranging the rental of transient lodging at a hotel  
7 or inn as defined in ORS 699.005 in the course of business as a travel agent for compensation. For  
8 the purpose of this [paragraph] **subsection**, “travel agent” means a person, and employees of the  
9 person, regularly representing and selling travel services to the public directly or indirectly through  
10 other travel agents.

11 [(o)] (15) An individual who is a common carrier arranging the rental of transient lodging at a  
12 hotel or inn as defined in ORS 699.005 in the course of business as a common carrier. For the pur-  
13 pose of this [paragraph] **subsection**, “common carrier” means a person that transports or purports  
14 to be willing to transport individuals from place to place by rail, motor vehicle, boat or aircraft for  
15 hire, compensation or consideration.

16 [(p)] (16) An individual who is a hotel representative arranging the rental of transient lodging  
17 at a hotel or inn as defined in ORS 699.005 in the course of business as a hotel representative. For  
18 the purpose of this [paragraph] **subsection**, “hotel representative” means a person that provides  
19 reservations or sale services to independent hotels, airlines, steamship companies and government  
20 tourist agencies.

21 [(q)] (17) A nonlicensed individual transferring or acquiring an interest in real estate owned or  
22 to be owned by the individual.

23 [(r)] (18) An individual who is a general partner for a domestic or foreign limited partnership  
24 duly registered and operating within this state under ORS chapter 70 engaging in the sale of limited  
25 partnership interests and the acquisition, sale, exchange, lease, transfer or management of the real  
26 estate of the limited partnership.

27 [(s)] (19) An individual who is a membership camping contract broker or salesperson registered  
28 with the Real Estate Agency selling membership camping contracts.

29 [(t)] (20) An individual who is a professional forester or farm manager engaging in property  
30 management activity on forestland or farmland when the activity is incidental to the nonreal estate  
31 duties involving overall management of forest or farm resources.

32 [(u)] (21) An individual who is a registered investment adviser under the Investment Advisers  
33 Act of 1940, 15 U.S.C. §80b-1 et seq., rendering real estate investment services for the office of the  
34 State Treasurer or the Oregon Investment Council.

35 [(v)] (22) A nonlicensed individual who refers a new tenant for compensation to a real estate  
36 licensee acting as the property manager for a residential building or facility while the individual  
37 resides in the building or facility or within six months after termination of the individual’s tenancy.

38 [(w)] (23) A nonlicensed individual who gives an opinion in an administrative or judicial pro-  
39 ceeding regarding the value of real estate for taxation or representing a taxpayer under ORS 305.230  
40 or 309.100.

41 [(x)] (24) A nonlicensed individual acting as a paid fiduciary whose real estate activity is limited  
42 to negotiating [or closing a transaction] **a contract** to obtain the services of a real estate licensee.

43 [(y)] (25) A nonlicensed individual who is a fiduciary under a court order, without regard to  
44 whether the court order specifically authorizes real estate activity.

45 [(z)] (26) An individual who is a representative of a financial institution or trust company, as

1 those terms are defined in ORS 706.008, that is attorney in fact under a duly executed power of at-  
 2 torney from the owner or purchaser authorizing real estate activity, if the power of attorney is re-  
 3 corded in the office of the county clerk for the county in which the real estate to be sold, leased  
 4 or exchanged is located.

5 [(aa)] **(27)** An individual who is the sole member or a managing member of a domestic or foreign  
 6 limited liability company duly registered and operating within this state under ORS chapter 63 and  
 7 who is engaging in the acquisition, sale, exchange, lease, transfer or management of the real estate  
 8 of the limited liability company.

9 [(bb)] **(28)** An individual who is a partner in a partnership as defined in ORS 67.005 and who is  
 10 engaging in the acquisition, sale, exchange, lease, transfer or management of the real estate of the  
 11 partnership.

12 [(cc)] **(29)** An individual who is an officer or director of a domestic or foreign corporation duly  
 13 registered and operating within this state under ORS chapter 60 and who is engaging in the acqui-  
 14 sition, sale, exchange, lease, transfer or management of the real estate of the corporation.

15 [(2) *The vesting of title to real estate in more than one person by tenancy by the entirety, tenancy*  
 16 *in common or by survivorship shall be construed as that of a single owner for the purposes of this*  
 17 *section.*]

18  
 19 **REAL ESTATE CONTINUING EDUCATION**

20  
 21 **SECTION 11.** ORS 696.184 is amended to read:

22 696.184. (1) A real estate continuing education provider shall:

23 [(a) *Ensure that the courses offered by the continuing education provider that are eligible for con-*  
 24 *tinuing education credit meet the learning objectives for the course topic as provided by rule of the Real*  
 25 *Estate Agency under ORS 696.182;*]

26 [(b) *Ensure that instructors who teach a real estate continuing education course that is eligible for*  
 27 *continuing education credit under ORS 696.182 for the continuing education provider meet the re-*  
 28 *quirements set forth in ORS 696.186; and]*

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

32 **(a) Ensure that the courses offered by the continuing education provider meet the**  
 33 **learning objectives adopted under ORS 696.182 (4)(b);**

34 **(b) Ensure that instructors who teach a real estate continuing education course meet the**  
 35 **requirements set forth in ORS 696.186; and**

36 **(c) Keep records of each course offered, for at least three years, in a manner and form**  
 37 **prescribed by the Real Estate Agency by rule.**

38 (2) [The records kept under subsection (1) of] **Records maintained under** this section must be  
 39 open at all times for inspection by the Real Estate Commissioner or the commissioner’s authorized  
 40 representatives. [The records may be maintained in any format that allows for inspection and copying  
 41 by the commissioner or the commissioner’s representatives as determined by the commissioner by rule  
 42 and that complies with rules adopted by the Real Estate Agency.] **Upon request by the commis-**  
 43 **sioner, a real estate continuing education provider must produce records within 15 business**  
 44 **days after the date of the request.**

45 **(3) The agency may require by rule a real estate continuing education provider to submit**

1 **a record maintained under this section to the agency electronically.**

2 (4) The agency may prescribe by rule terms and conditions under which a **real estate** continu-  
 3 ing education provider may maintain records outside this state.

4 **SECTION 12.** ORS 696.186 is amended to read:

5 696.186. (1) A person must have one of the following qualifications to teach a real estate con-  
 6 tinuing education course that is eligible for credit required under ORS 696.174:

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

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

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

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

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

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

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

19 (2) Notwithstanding subsection (1) of this section, a person may not teach a real estate contin-  
 20 uing education course if the person:

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

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

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

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

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

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

34  
 35 **CLIENTS’ TRUST ACCOUNT**

36  
 37 **SECTION 13.** ORS 696.241 is amended to read:

38 696.241. (1) As used in this section, “trust funds” means money belonging to others that is re-  
 39 ceived or handled by a licensed real estate property manager or principal real estate broker in the  
 40 course of conducting professional real estate activity and in the real estate licensee’s fiduciary ca-  
 41 pacity.

42 (2) A licensed real estate property manager, or a principal real estate broker **who engages in**  
 43 **the management of rental real estate**, shall **open and** maintain in this state one or more separate  
 44 federally insured bank accounts that are designated clients’ trust accounts under ORS 696.245. [*Ex-*  
 45 *cept as provided in subsection (3) of this section, a licensed real estate property manager or principal*

1 *real estate broker*] **A principal real estate broker who engages in the management of rental**  
 2 **real estate or a licensed real estate property manager** shall deposit in a client's trust account  
 3 all trust funds received or handled by the [*licensed real estate property manager or*] principal real  
 4 estate broker, **licensed real estate property manager or** [*and the*] real estate licensees subject to  
 5 the supervision of the principal real estate broker [*in a clients' trust account*].

6 (3)(a) **A principal real estate broker who receives or handles trust funds and does not**  
 7 **deposit the trust funds in a licensed neutral escrow depository as described in paragraph (b)**  
 8 **of this subsection shall open and maintain in this state one or more separate federally in-**  
 9 **sured bank accounts that are designated clients' trust accounts under ORS 696.245.** [*A prin-*  
 10 *cipal real estate broker,*] Pursuant to written agreement of all parties to a real estate transaction  
 11 having an interest in the trust funds, **the principal real estate broker** shall immediately place the  
 12 trust funds in a clients' trust account [*as provided in subsection (2) of this section or*].

13 **(b) A principal real estate broker may deposit trust funds** in a licensed neutral escrow de-  
 14 pository in this state.

15 (4) Within 10 business days after the date a clients' trust account is opened, a licensed real es-  
 16 tate property manager or principal real estate broker shall file with the Real Estate Agency, on  
 17 forms approved by the agency, the following information about the clients' trust account:

18 (a) The name of the bank;

19 (b) The account number;

20 (c) The name of the account;

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

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

25 **(5) A principal real estate broker or licensed real estate property manager who opens a**  
 26 **clients' trust account under subsection (2) or (3) of this section, or to whom ownership of a**  
 27 **clients' trust account is transferred under subsection (6) of this section, is liable for all de-**  
 28 **posits and disbursements made using the clients' trust account until the principal real estate**  
 29 **broker or licensed real estate property manager closes the account or transfers ownership**  
 30 **of the account.**

31 [(5)] **(6) A licensed real estate property manager or principal real estate broker who closes a**  
 32 **clients' trust account, or to whom ownership of a client's trust account is transferred as au-**  
 33 **thorized by the agency by rule,** shall notify the agency, within 10 business days after the date the  
 34 account is closed **or transferred,** on a form approved by the agency.

35 [(6)] **(7) Except for earned interest on a clients' trust account as provided in subsections [(8)**  
 36 **and] (9) and (10) of this section, [only trust funds may be held by] a licensed real estate property**  
 37 **manager or principal real estate broker [in a clients' trust account] may not commingle any other**  
 38 **funds with the trust funds held in a clients' trust account.**

39 [(7)] **(8) If a licensed real estate property manager or principal real estate broker maintains a**  
 40 **separate clients' trust account in a branch office, a separate bookkeeping system must be maintained**  
 41 **in the branch office and a copy of the records required under ORS 696.280 must be maintained in**  
 42 **the main office of the licensed real estate** property manager or principal **real estate** broker.

43 [(8)] **(9) Trust funds received by a licensed real estate property manager or principal real estate**  
 44 **broker may be deposited by the licensed real estate** property manager or principal **real estate**  
 45 **broker in a federally insured interest-bearing bank account that is designated a clients' trust ac-**

1 count under ORS 696.245, but only with the prior written approval of all parties having an interest  
 2 in the trust funds. The earnings of the interest-bearing account do not inure to the benefit of the  
 3 licensed real estate property manager or principal real estate broker unless expressly approved in  
 4 writing by all parties having an interest in the trust funds before deposit of the trust funds.

5 [(9)] (10) With prior written notice to all parties who have an interest in the trust funds, a  
 6 principal real estate broker may place trust funds received by the principal real estate broker in a  
 7 real estate sales, purchase or exchange transaction in a federally insured interest-bearing bank ac-  
 8 count that is designated a clients' trust account under ORS 696.245, the earnings of which inure to  
 9 the benefit of a public benefit corporation, as defined in ORS 65.001, for distribution to organizations  
 10 and individuals for first-time homebuying assistance and for development of affordable housing. The  
 11 principal real estate broker shall select a qualified public benefit corporation to receive the interest  
 12 earnings.

13 [(10)] (11) In connection with a real estate sales, purchase or exchange transaction, a principal  
 14 real estate broker is not entitled to any part of any interest earnings on trust funds deposited under  
 15 subsection [(8)] (9) of this section or to any part of the earnest money or other money paid to the  
 16 **principal real estate** broker as part or all of the **principal real estate** broker's compensation until  
 17 the transaction has been completed or terminated. The principal real estate broker and the seller  
 18 shall negotiate and agree in writing to the disposition of forfeited earnest money at the time of ex-  
 19 ecution by the seller of any listing agreement or earnest money agreement. An agreement about the  
 20 disposition of forfeited earnest money must be initialed by the seller or immediately precede the  
 21 seller's signature.

22 [(11)] (12) Trust funds in a clients' trust account are not subject to execution or attachment on  
 23 any claim against a licensed real estate property manager or principal real estate broker.

24 [(12)] (13) The agency by rule shall establish an optional procedure by which a principal real  
 25 estate broker may elect to disburse disputed funds held in relation to the sale, exchange or purchase  
 26 of real estate from a clients' trust account to the person who delivered the funds to the principal  
 27 real estate broker. The procedure must allow disbursement not more than 20 days after a request is  
 28 made for the disbursement. A disbursement pursuant to the procedure does not affect the claim of any other  
 29 person to the funds.

30 [(13)] (14) The agency may provide by rule for other records to be maintained and for the man-  
 31 ner in which trust funds are deposited, held and disbursed.

32  
 33 **RULEMAKING PROCEDURES**  
 34

35 **SECTION 14.** ORS 696.385 is amended to read:

36 696.385. The Real Estate Agency shall have the power to:

37 (1) Adopt a seal by which it shall authenticate its proceedings.

38 (2) From time to time, prepare and cause to be printed and circulated among the real estate  
 39 licensees of Oregon such printed matter as it may deem helpful or educational or proper for the  
 40 guidance and welfare of such licensees.

41 (3) Make and enforce any and all such reasonable rules as shall be deemed necessary to ad-  
 42 minister and enforce the provisions of, and enforce and discharge the duties defined in, any law with  
 43 the administration or enforcement of which the agency is charged.

44 (4) Except as provided in subsection (5) of this section, when the agency proposes to adopt,  
 45 amend or repeal a rule concerning real estate licensees, the agency shall:

1 (a) Submit a copy of the proposed rule to the Real Estate Board at least [45] 10 days prior to  
 2 publication of the notice of intended action required under ORS 183.335 for the rule.

3 (b) Consider any recommendations that the board, by majority vote, makes concerning the pro-  
 4 posed rule.

5 (c) Publish as part of the statement of need in the matters any written comments submitted by  
 6 the board for publication under paragraph (b) of this subsection.

7 (5) Subsection (4) of this section does not apply to a temporary rule that is adopted, amended  
 8 or suspended pursuant to ORS 183.335 (5). However, the agency shall submit to the board a copy  
 9 of any proposed temporary rule as soon as practicable and, to the extent possible under the cir-  
 10 cumstances, consider any recommendations that the board may make by majority vote regarding the  
 11 temporary rule.

12  
 13 **DUTIES AND POWERS OF REAL ESTATE BOARD**

14  
 15 **SECTION 15.** ORS 696.425 is amended to read:

16 696.425. (1) The Real Estate Board is authorized to inquire into the needs of the real estate  
 17 licensees of Oregon, the functions of the Real Estate Agency and the matter of the business policy  
 18 thereof, to confer with and advise the Governor as to how the agency may best serve the state and  
 19 the licensees, and to make recommendations and suggestions of policy to the agency as the board  
 20 may deem beneficial and proper for the welfare and progress of the licensees and of the public and  
 21 of the real estate business in Oregon.

22 (2) The board shall [*conduct all examinations for applicants for real estate licenses, prepare or*  
 23 *cause to be prepared the questions to be asked in the examinations and grade or cause to be graded*  
 24 *the papers of each applicant after the completion of the examination and file a written report with the*  
 25 *agency as to applicants taking the examination who have passed and who have failed to pass the ex-*  
 26 *amination. The board shall provide] **make recommendations to the agency about** the manner and  
 27 methods for conducting examinations.*

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

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

32  
 33 **EDUCATION AND DISCIPLINARY ACTIONS**

34  
 35 **SECTION 16.** ORS 696.445 is amended to read:

36 696.445. (1) Pursuant to ORS 696.385 (2), the Real Estate Agency shall provide for the advance-  
 37 ment of education and research in connection with the educational requirements for the securing  
 38 of licenses for real estate licensees under ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to  
 39 696.870 and 696.995.

40 (2) The Real Estate Commissioner may assign and reassign staff in the agency to perform such  
 41 duties as the commissioner considers necessary to carry out subsection (1) of this section, including  
 42 but not limited to the preparation and distribution of a periodic publication to be known as the  
 43 Oregon Real Estate News Journal and the preparation and publication of other printed [*matter*] **or**  
 44 **electronic information** of an educational nature for the benefit of real estate licensees.

45 (3) The commissioner shall publish in the Oregon Real Estate News Journal the names and the



1 city and state of:

2 (a) Real estate **and escrow agent** licensees who have been reprimanded[, of];

3 (b) Real estate and escrow agent licensees whose licenses have been suspended or revoked; and

4 (c) [of] Real estate and escrow agent licensees [*who have been*] **against whom the agency has**  
5 assessed civil penalties.

6 (4) Each [*such*] publication [*shall*] **under subsection (3) of this section must** include:

7 (a) A brief description of the situation involved and the grounds for the commissioner’s action;

8 **or**

9 (b) **The complete final order issued by the agency.**

10  
11 **REPEALS**

12  
13 **SECTION 17. ORS 696.361 is repealed.**

14  
15 **OPERATIVE DATE**

16  
17 **SECTION 18. (1) Section 4 of this 2013 Act, the amendments to ORS 270.120, 696.010,**  
18 **696.020, 696.026, 696.030, 696.130, 696.184, 696.186, 696.241, 696.290, 696.315, 696.385, 696.425,**  
19 **696.445 and 696.890 by sections 1 to 3 and 5 to 16 of this 2013 Act and the repeal of ORS**  
20 **696.361 by section 17 of this 2013 Act become operative on July 1, 2013.**

21 **(2) The Real Estate Agency may take any action before the operative date specified in**  
22 **subsection (1) of this section that is necessary to enable the agency to exercise, on and after**  
23 **the operative date specified in subsection (1) of this section, all of the duties, functions and**  
24 **powers conferred on the agency by section 4 of this 2013 Act, the amendments to ORS**  
25 **270.120, 696.010, 696.020, 696.026, 696.030, 696.130, 696.184, 696.186, 696.241, 696.290, 696.315,**  
26 **696.385, 696.425, 696.445 and 696.890 by sections 1 to 3 and 5 to 16 of this 2013 Act and the**  
27 **repeal of ORS 696.361 by section 17 of this 2013 Act.**

28  
29 **UNIT CAPTIONS**

30  
31 **SECTION 19. The unit captions used in this 2013 Act are provided only for the conven-**  
32 **ience of the reader and do not become part of the statutory law of this state or express any**  
33 **legislative intent in the enactment of this 2013 Act.**

34  
35 **EMERGENCY CLAUSE**

36  
37 **SECTION 20. This 2013 Act being necessary for the immediate preservation of the public**  
38 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
39 **on its passage.**