

# House Bill 2780

Sponsored by Representative PARRISH (Pre-session filed.)

## 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**.

Provides that escrow agent or other person that engages in real estate closing escrow may not accept funds, property or documents if principal to real estate closing escrow is 65 years of age or older and selling price of property is more than 20 percent below appraised or assessed value and if escrow agent or other person reasonably believes that principal does not understand nature or terms of transaction. Requires escrow agent or other person that reasonably believes that principal does not understand nature or terms of transaction to report attempted sale as suspected financial exploitation in accordance with elder abuse reporting requirements.

Becomes operative January 1, 2016.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to requirements for real estate closing escrows; creating new provisions; amending ORS  
3 696.520 and 696.581; and declaring an emergency.

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

5 **SECTION 1.** ORS 696.520 is amended to read:

6 696.520. The provisions of ORS 696.505 to 696.590 do not apply to and the term "escrow agent"  
7 does not include:

8 (1) [Any] **A** person [doing] **that does** business under the laws of this state or the United States  
9 [relating] **that relates** to banks, mutual savings banks, trust companies, savings and loan associ-  
10 ations, consumer finance companies, or insurance companies except to the extent that the person  
11 provides real estate closing escrow services other than those permitted under subsection (3) of this  
12 section.

13 (2) An attorney at law [rendering] **who renders** services in [the performance of] **performing**  
14 duties as attorney at law.

15 (3) [Any] **A** firm or corporation [lending] **that lends** money on real or personal property and  
16 [which firm or corporation] **that** is subject to licensing, supervision or auditing by a federal or state  
17 agency, but only to the extent of closing a loan transaction between [such] **the** firm or corporation  
18 and a borrower, and seller, if a fee for escrow services is not charged to the seller.

19 (4) [Any] **A** person [doing] **that does** any of the acts specified in ORS 696.505 (4) under order  
20 of any court.

21 (5) **Except as provided in ORS 696.581 (1)(b), a** [any] real estate broker or principal real estate  
22 broker licensed under ORS 696.022 who performs the closing for the principals in a real estate  
23 transaction [handled by the broker] **that the broker handles**, if the principals are not charged a  
24 separate fee for escrow services.

25 (6) [Any] **A** collection agency registered under ORS 697.015 that [is engaged in any] **engages in**  
26 **a** collection or billing activity without holding documents relating to the debt.

27 **SECTION 2.** ORS 696.581 is amended to read:

**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       696.581. (1)(a) An escrow agent may not accept funds, property or documents in any escrow  
 2 transaction without dated, written escrow instructions from the principals to the transaction or a  
 3 dated executed agreement in writing between the principals to the transaction.

4       **(b)(A) An escrow agent or another person that performs a real estate closing escrow may  
 5 not accept funds, property or documents in the real estate closing escrow if a principal to  
 6 the real estate closing escrow is 65 years of age or older and if, after the escrow agent or  
 7 other person carefully explains the terms of the real estate closing escrow and the sale, the  
 8 escrow agent or other person reasonably believes that the principal does not understand that  
 9 the selling price for the property is:**

10       **(i) More than 20 percent below the price that a state licensed appraiser or state certified  
 11 appraiser, as defined in ORS 674.010, has determined as the appraised value of the property;  
 12 or**

13       **(ii) More than 20 percent below the assessed value of the property, as determined under  
 14 ORS 308.146.**

15       **(B) An escrow agent or other person that, under the circumstances set forth in subpar-  
 16 agraph (A) of this paragraph, reasonably believes that a principal to a real estate closing  
 17 escrow does not understand the terms of the sale of the property or the real estate closing  
 18 escrow shall report the attempt to sell the property as a suspected case of financial exploi-  
 19 tation, as defined in ORS 124.050, in accordance with the procedures set forth in ORS 124.050  
 20 to 124.095.**

21       **(C) Documents that an escrow agent or other person uses in a real estate closing escrow  
 22 must provide contact information for the Department of Human Services or a law enforce-  
 23 ment agency that receives reports under ORS 124.065. The contact information must appear  
 24 prominently on the escrow documents or on a separate page included with the escrow docu-  
 25 ments.**

26       **(D) Except as otherwise provided, an escrow agent or other person is not a public or  
 27 private official, as defined in ORS 124.050, solely because of the duty set forth in subpara-  
 28 graph (B) of this paragraph.**

29       **(E) The Real Estate Commissioner may adopt rules that are necessary to implement the  
 30 provisions of this subsection.**

31       (2) Except as provided in this section, an escrow agent *[must]* **shall** follow dated, written escrow  
 32 instructions executed by the principals or a dated executed written agreement between the princi-  
 33 pals to a transaction.

34       (3) Except as provided in ORS 314.258, an escrow agent may not close an escrow or disburse  
 35 any funds or property in an escrow without obtaining dated, separate escrow instructions in writing  
 36 from the principals to the transaction **that are** adequate to administer and close the transaction or,  
 37 in the case of disbursement, to disburse the funds and property.

38       (4) The following statement or *[its]* a substantial equivalent *[shall]* **must** appear on or be at-  
 39 tached to all written escrow instructions *[prepared by]* **that** an escrow agent **prepares** for signature  
 40 of the principals to a transaction. The statement *[shall]* **must** be in at least 10-point bold type. The  
 41 statement *[shall either]* **must** appear immediately above the signatures of the principals or be sepa-  
 42 rately initialed by the principals:

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43  
 44  
 45       It is understood by the parties signing the above or attached instructions that the instructions

1 are the complete instructions between this firm as an escrow agent and you as a principal to the  
 2 escrow transaction. These instructions may not include all the terms of the agreement which is the  
 3 subject of this escrow. Read these instructions carefully, and do not sign them unless they are ac-  
 4 ceptable to you.

5 \_\_\_\_\_  
 6  
 7 (5) An escrow agent may not solicit or accept any original, amended or supplemental escrow  
 8 instructions [containing any] **that contain a** blank to be filled in after signing. An escrow agent  
 9 may not allow any alteration of original, amended or supplemental escrow instructions, unless the  
 10 alteration is signed or initialed by all principals who signed or initialed the instructions before the  
 11 alteration.

12 (6) An escrow agent may accept trust funds, in excess of earnest money required in transaction  
 13 documents to be held, as individual funds of the principal who has paid [them] **the trust funds** into  
 14 escrow. [Such] **The escrow agent may disburse** individual trust funds [may be disbursed with] only  
 15 **with** the separate written instructions of the principal who deposited the funds into escrow.

16 (7) An escrow agent may open a one-sided escrow, as defined by rule by the Real Estate Com-  
 17 missioner, by receiving the funds, property or documents for an escrow. [Such] **The escrow agent**  
 18 **may disburse the** escrow funds [may be disbursed with] only **with** the separate written instructions  
 19 of the principal who deposited the funds into escrow.

20 (8) Except as authorized in ORS 105.475, notwithstanding the requirement for dated, separate  
 21 escrow instructions to close an escrow or disburse funds or property in an escrow, an escrow agent:

22 (a) May disburse earnest money deposited based on an agreement [of] the parties executed after  
 23 the initial sales agreement; and

24 (b) May not impose additional requirements on the principals to the transaction, including a  
 25 requirement that the principals sign a release of liability in favor of the escrow agent.

26 (9) Notwithstanding any provision of this section, an escrow agent may disburse funds, property  
 27 or documents deposited in escrow in accordance with an order of a court of competent jurisdiction.

28 **SECTION 3. The amendments to ORS 696.520 and 696.581 by sections 1 and 2 of this 2015**  
 29 **Act apply to real estate closing escrows that occur on and after the operative date specified**  
 30 **in section 4 of this 2015 Act.**

31 **SECTION 4. (1) The amendments to ORS 696.520 and 696.581 by sections 1 and 2 of this**  
 32 **2015 Act become operative January 1, 2016.**

33 **(2) The Real Estate Commissioner may adopt rules and take any action before the oper-**  
 34 **ative date specified in subsection (1) of this section that is necessary to enable the commis-**  
 35 **sioner, on and after the operative date specified in subsection (1) of this section, to exercise**  
 36 **all of the duties, functions and powers conferred on the commissioner by the amendments**  
 37 **to ORS 696.520 and 696.581 by sections 1 and 2 of this 2015 Act.**

38 **SECTION 5. This 2015 Act being necessary for the immediate preservation of the public**  
 39 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**  
 40 **on its passage.**