

House Bill 3092

Sponsored by Representative BREESE-IVERSON

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**.

Creates residential property wholesaler registration. Prohibits residential property wholesaling without registration. Provides exceptions.

A BILL FOR AN ACT

1 Relating to residential property wholesaling; creating new provisions; and amending ORS 696.010.

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

3 **SECTION 1. Definitions. As used in sections 1 to 5 of this 2023 Act:**

4 (1) **"Market" means to advertise, or contract with another person or entity to advertise,**
5 **the purchase of property either publicly or privately.**

6 (2) **"Residential property wholesaler" means any individual who engages in residential**
7 **property wholesaling and is registered as a residential property wholesaler under section 3**
8 **of this 2023 Act.**

9 (3) **"Residential property wholesaling" means to market for sale the purchase of resi-**
10 **dential property for which the residential property wholesaler has only equitable interest or**
11 **an option to purchase.**

12 **SECTION 2. Registration requirement; exemptions. (1) Except as provided in this section,**
13 **an individual may not engage in residential property wholesaling unless that individual is**
14 **registered as a residential property wholesaler under section 3 of this 2023 Act.**

15 (2) **This section applies to every individual who conducts residential property wholesaling**
16 **related to property located in this state.**

17 (3) **One act or transaction of residential property wholesaling is sufficient to constitute**
18 **engaging in residential property wholesaling within the meaning of this section.**

19 (4) **An individual licensed under ORS 696.022 may engage in residential property whole-**
20 **saling only if that individual:**

21 (a) **Is registered as a residential property wholesaler under section 3 of this 2023 Act; and**

22 (b) **Provides proper written disclosure to any potential buyers or sellers of all residential**
23 **property wholesale transactions.**

24 (5) **For purposes of this section, the Real Estate Agency shall establish the standards for**
25 **proper written disclosure requirements for individuals licensed under ORS 696.022 who en-**
26 **gage in residential property wholesaling. The disclosure must at least state that the individ-**
27 **ual is a real estate licensee and a registered residential property wholesaler.**

28 (6) **The requirement to register as a residential property wholesaler does not apply to an**
29 **individual:**

30 (a) **Whose equitable interest in the residential property results from a land sale contract**
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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 that was entered into for purposes other than residential property wholesaling;

2 (b) Who is licensed under ORS 696.022 and is engaging in professional real estate activity;

3 (c) Who is an attorney at law rendering services in the performance of duties as an at-
4 torney at law; or

5 (d) Who acts in the individual's official capacity as a receiver, a conservator, a trustee
6 in bankruptcy, a personal representative or a trustee, or a regular salaried employee of the
7 trustee, acting under a trust agreement, deed of trust or will.

8 **SECTION 3. Residential property wholesaler registration; requirements; rules.** (1) The
9 Real Estate Agency may issue a residential property wholesaler registration only to an indi-
10 vidual.

11 (2) In accordance with any applicable provisions of ORS chapter 183, the Real Estate
12 Commissioner shall establish by rule a system to register residential property wholesalers.
13 Such a system shall include but need not be limited to prescribing:

14 (a) The form and content of and the times and procedures for submitting an application
15 for the issuance or renewal of registration.

16 (b) The term of the registration and the fee for the original issue and renewal in an
17 amount that does not exceed the cost of administering the registration system.

18 (c) Those actions or circumstances that constitute failure to achieve or maintain regis-
19 tration or competency or that otherwise constitute a danger to the public interest and for
20 which the commissioner may refuse to issue or renew or may suspend or revoke a registra-
21 tion or may impose a penalty.

22 (3) For an applicant to qualify for registration, the commissioner must receive:

23 (a) Certification that the applicant has a high school diploma or a certificate for passing
24 an approved high school equivalency test such as the General Educational Development
25 (GED) test or the international equivalent, or other equivalent education acceptable to the
26 commissioner; and

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

28 (4) Registration for residential property wholesalers shall be granted only if the applicant
29 is trustworthy and competent to conduct residential property wholesaling in such manner
30 as to safeguard the interests of the public and only after satisfactory proof has been pre-
31 sented to the commissioner. As used in this subsection, "satisfactory proof" includes but is
32 not limited to the fingerprints and a criminal records check of the applicant. For the pur-
33 pose of requesting a state or nationwide criminal records check under ORS 181A.195, the
34 commissioner may require the fingerprints of the applicant.

35 **SECTION 4. Disclosure requirements.** (1) Residential property wholesalers shall provide
36 a residential property wholesaler written disclosure to any potential buyers and sellers before
37 entering into an initial written contract for a residential property wholesale transaction.

38 (2) For purposes of this section, the Real Estate Agency shall establish the standards for
39 proper residential property wholesaler written disclosure requirements under this section.
40 The disclosure must at least state that the residential property wholesaler:

41 (a) Is a residential property wholesaler;

42 (b) Has only an equitable interest in the property being sold;

43 (c) Does not have legal title to the property and therefore might be unable to directly
44 transfer title to the buyer;

45 (d) Might not be a licensed real estate agent and therefore might not be permitted to

1 engage in professional real estate activity; and

2 (e) Might not be a licensed appraisal specialist and therefore might not be permitted to
 3 provide an opinion as to the value of the property.

4 (3) A seller or buyer who enters into an initial written contract for a residential property
 5 wholesale transaction may cancel the contract by delivery of a written notice of cancellation
 6 any time prior to 12 a.m. at the end of the third business day after the receipt of the resi-
 7 dential property wholesaler written disclosure.

8 (4) If the residential property wholesaler fails to provide a residential property wholesaler
 9 written disclosure to the seller before entering into an initial written contract for a resi-
 10 dential property wholesale transaction, the seller may terminate the contract at any time
 11 without penalty and retain any earnest money paid to the seller by the residential property
 12 wholesaler.

13 (5) If the residential property wholesaler fails to provide a residential property wholesaler
 14 written disclosure to the buyer before entering into an initial written contract for a resi-
 15 dential property wholesale transaction, the buyer may terminate the contract at any time
 16 without penalty and retain any earnest money paid to the residential property wholesaler.

17 (6) In any civil action between buyer and seller that arises due to the residential property
 18 wholesaler’s failure to provide a residential property wholesaler written disclosure before
 19 entering into an initial written contract for a residential property wholesale transaction as
 20 prescribed under this section, the prevailing party bring a claim to recover all reasonable
 21 attorney fees, costs and expenses incurred at trial, on appeal, at mediation and at arbitration
 22 from the residential property wholesaler.

23 **SECTION 5. Grounds for disciplinary action.** The Real Estate Commissioner may suspend
 24 or revoke registration of any residential property wholesaler, or may deny the issuance or
 25 renewal of registration to an applicant, who has done any of the following:

26 (1) Knowingly or negligently pursued a course of material misrepresentation in matters
 27 related to residential property wholesaling, whether or not damage or injury resulted, or
 28 knowingly or negligently made any material misrepresentation or material false promise in
 29 a matter related to residential property wholesaling if the material misrepresentation or
 30 material false promise created a reasonable probability of damage or injury, whether or not
 31 damage or injury actually resulted.

32 (2) Procured or attempted to procure a residential property wholesaler registration by
 33 fraud, misrepresentation or deceit or by making any material misstatement of fact in an
 34 application for a residential property wholesaler registration.

35 (3) Engaged in any act or conduct, whether of the same or of a different character
 36 specified in this subsection, that constitutes or demonstrates bad faith, incompetence,
 37 untrustworthiness or dishonest, fraudulent or improper dealings.

38 **SECTION 6.** ORS 696.010 is amended to read:

39 696.010. As used in ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and
 40 696.995 and sections 1 to 5 of this 2023 Act, unless the context requires otherwise:

41 (1) “Associated with” means to be employed, engaged or otherwise supervised by, with respect
 42 to the relationship between:

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

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

5 (3)(a) “Branch office” means a business location, other than the main office designated under
 6 ORS 696.200, where professional real estate activity is regularly conducted or that is advertised to
 7 the public as a place where professional real estate activity may be regularly conducted.

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

13 (4) “Business day” means a day other than Saturday or Sunday or a federal or State of Oregon
 14 legal holiday.

15 (5) “Commingle” means the mixing of funds from any source, including personal funds, with trust
 16 funds as defined in ORS 696.241, by a licensed real estate property manager or principal real estate
 17 broker, except as specifically authorized by this chapter.

18 (6) “Compensation” means valuable consideration for services rendered or to be rendered,
 19 whether contingent or otherwise.

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

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

29 (9) “Inactive” means, in the context of a real estate licensee, that the licensee is not authorized
 30 to engage in professional real estate activity. The inactive status of a license continues until the
 31 license is reactivated or the license expires or lapses.

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

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

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

37 (13) “Main office” means the office designated by a principal real estate broker or licensed real
 38 estate property manager pursuant to ORS 696.200.

39 (14) “Management of rental real estate” means:

40 (a) Representing the owner of real estate under a property management agreement in the rental
 41 or lease of the real estate and includes but is not limited to:

- 42 (A) Advertising the real estate for rent or lease;
- 43 (B) Procuring prospective tenants to rent or lease the real estate;
- 44 (C) Negotiating with prospective tenants;
- 45 (D) Accepting deposits from prospective tenants;

- 1 (E) Checking the qualifications and creditworthiness of prospective tenants;
- 2 (F) Charging and collecting rent or lease payments;
- 3 (G) Representing the owner in inspection or repair of the real estate;
- 4 (H) Contracting for repair or remodeling of the real estate;
- 5 (I) Holding trust funds or property received in managing the real estate and accounting to the
- 6 owner for the funds or property;
- 7 (J) Advising the owner regarding renting or leasing the real estate;
- 8 (K) Providing staff and services to accommodate the tax reporting and other financial or ac-
- 9 counting needs of the real estate;
- 10 (L) Providing copies of records of acts performed on behalf of the owner of the real estate; and
- 11 (M) Offering or attempting to do any of the acts described in this paragraph for the owner of
- 12 the real estate; or
- 13 (b) Representing a tenant or prospective tenant when renting or leasing real estate for which
- 14 a real estate property manager has a property management agreement with the owner of the real
- 15 estate and includes but is not limited to:
 - 16 (A) Consulting with tenants or prospective tenants about renting or leasing real estate;
 - 17 (B) Assisting prospective tenants in renting or leasing real estate;
 - 18 (C) Assisting prospective tenants in qualifying for renting or leasing real estate;
 - 19 (D) Accepting deposits or other funds from prospective tenants for renting or leasing real estate
 - 20 and holding the funds in trust for the prospective tenants;
 - 21 (E) Representing tenants or prospective tenants renting or leasing real estate; and
 - 22 (F) Offering or attempting to do any of the acts described in this paragraph for a tenant or
 - 23 prospective tenant.
- 24 (15) "Nonlicensed individual" means an individual:
 - 25 (a) Who has not obtained a real estate license; or
 - 26 (b) Whose real estate license is lapsed, expired, inactive, suspended, surrendered or revoked.
- 27 (16) "Principal real estate broker" means an individual who holds an active license as a princi-
- 28 pal real estate broker issued under ORS 696.022.
- 29 (17) "Professional real estate activity" means any of the following actions, when engaged in for
- 30 another and for compensation or with the intention or in the expectation or upon the promise of
- 31 receiving or collecting compensation, by any person who:
 - 32 (a) Sells, exchanges, purchases, rents or leases real estate;
 - 33 (b) Offers to sell, exchange, purchase, rent or lease real estate;
 - 34 (c) Negotiates, offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or
 - 35 leasing of real estate;
 - 36 (d) Lists, offers, attempts or agrees to list real estate for sale;
 - 37 (e) Offers, attempts or agrees to perform or provide a competitive market analysis or letter
 - 38 opinion, to represent a taxpayer under ORS 305.239 or 309.100 or to give an opinion in any admin-
 - 39 istrative or judicial proceeding regarding the value of real estate for taxation, except when the ac-
 - 40 tivity is performed by a state certified appraiser or state licensed appraiser;
 - 41 (f) Auctions, offers, attempts or agrees to auction real estate;
 - 42 (g) Buys, sells, offers to buy or sell or otherwise deals in options on real estate;
 - 43 (h) Engages in management of rental real estate;
 - 44 (i) Purports to be engaged in the business of buying, selling, exchanging, renting or leasing real
 - 45 estate;

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

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

5 (L) Except as otherwise provided in ORS 696.030 (12), advises, counsels, consults or analyzes in
6 connection with real estate values, sales or dispositions, including dispositions through eminent do-
7 main procedures;

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

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

11 (18) "Property management agreement" means a written contract for the management of rental
12 real estate between a real estate property manager and the owner of the rental real estate.

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

18 (20) "Real estate broker" means an individual who holds an active license as a real estate bro-
19 ker issued under ORS 696.022.

20 (21) "Real estate licensee" means an individual who holds an active license or an active limited
21 license as a real estate broker, principal real estate broker or licensed real estate property manager.

22 (22) "Real estate property manager" means a real estate licensee who engages in the manage-
23 ment of rental real estate and is a licensed real estate property manager, a principal real estate
24 broker or a real estate broker who is associated with and supervised by a principal real estate
25 broker.

26 (23) "Registered business name" means a name registered with the Real Estate Agency under
27 which the individual registering the name engages in professional real estate activity.

28 **SECTION 7. Sections 1 to 5 of this 2023 Act and the amendments to ORS 696.010 by sec-**
29 **tion 6 of this 2023 Act apply to contracts entered into on or after the effective date of this**
30 **2023 Act.**

31 **SECTION 8. The section captions used in this 2023 Act are provided only for the con-**
32 **venience of the reader and do not become part of the statutory law of this state or express**
33 **any legislative intent in the enactment of this 2023 Act.**

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