

Enrolled House Bill 4058

Sponsored by Representative BREESE-IVERSON, Senators ANDERSON, MEEK; Representatives CATE, GOODWIN, HELFRICH, JAVADI, LEVY B, MARSH, OSBORNE, OWENS, RESCHKE, STOUT, WRIGHT, YUNKER, Senators KNOPP, PATTERSON, SMITH DB (Presession filed.)

CHAPTER

AN ACT

Relating to regulated real estate activities; creating new provisions; and amending ORS 696.010, 696.581, 696.730, 696.800, 696.805, 696.810, 696.815 and 696.840.

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

RESIDENTIAL PROPERTY WHOLESALING

SECTION 1. Definitions. As used in sections 1 to 9 of this 2024 Act:

(1) “Market” means to advertise, or contract with another person or entity to advertise, or to solicit purchasers for the purchase of property either publicly or privately.

(2) “Residential property” means real property zoned for residential use, or an existing condominium unit as defined in ORS 100.005.

(3) “Residential property wholesaler” means any individual who engages in residential property wholesaling and is registered as a residential property wholesaler under section 3 of this 2024 Act.

(4) “Residential property wholesaling” means to market residential property for which the marketer has only an equitable interest or an option to purchase and, at the time of marketing, the marketer has:

(a) Held such interest or option for fewer than 90 days; and

(b) Invested less than \$10,000 in land development or improvement costs associated with the residential property.

SECTION 2. Registration requirement; exemptions. (1) Except as provided in subsections (4) and (6) of this section, a person may not engage in residential property wholesaling unless that person, or, if that person is an entity, the individual conducting residential property wholesaling activity on that person’s behalf, is registered as a residential property wholesaler under section 3 of this 2024 Act.

(2) This section applies to every person who conducts residential property wholesaling related to property located in this state.

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

(4) An individual licensed under ORS 696.022 may engage in residential property wholesaling without registering as a residential property wholesaler only if that individual provides

proper written disclosure to any potential buyers or sellers of all residential property wholesale transactions.

(5) For purposes of this section, the Real Estate Agency shall establish the standards for proper written disclosure requirements for individuals licensed under ORS 696.022 who engage in residential property wholesaling.

(6) The requirement to register as a residential property wholesaler does not apply to a person:

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

(b) Who is an attorney at law rendering services in the performance of duties as an attorney at law;

(c) Who acts in the person's official capacity as a receiver, a conservator, a trustee in bankruptcy, a personal representative or a trustee, or a regular salaried employee of the trustee, acting under a deed of trust, will or trust agreement, provided that the trustee does not use the trust agreement as a device to engage in residential property wholesaling without obtaining the necessary registration;

(d) Who acts as attorney in fact under a duly executed power of attorney in which the authorized agent is the spouse of the principal, or the child, grandchild, parent, grandparent, sibling, aunt, uncle, niece or nephew of the principal or of the spouse of the principal, authorizing real estate activity if the power of attorney is recorded in the office of the recording officer for the county in which the real estate to be sold, leased or exchanged is located; or

(e) Who acts as attorney in fact under a duly executed power of attorney from the owner or purchaser authorizing the supervision of the closing of or supervision of the performance of a contract for the sale, lease or exchange of real estate if the power of attorney was executed prior to July 1, 2002, in compliance with the requirements of law at the time of execution or if:

(A) The power of attorney is recorded in the office of the recording officer for the county in which the real estate is located;

(B) The power of attorney specifically describes the real estate; and

(C) The person does not use the power of attorney as a device to engage in residential property wholesaling without obtaining the necessary registration.

SECTION 3. Residential property wholesaler registration; requirements; rules. (1) The Real Estate Agency may issue a residential property wholesaler registration only to an individual.

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

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

(b) The term of the registration and the fee for the initial issuance and renewal in an amount that does not exceed the maximum amount described in section 4 of this 2024 Act.

(c) Those actions or circumstances that constitute failure to achieve or maintain registration or competency or that otherwise constitute a danger to the public interest and for which the commissioner may refuse to issue or renew or may suspend or revoke a registration or may impose a penalty.

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

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

(b) Certification that the applicant is at least 18 years of age; and

(c) A list of all entities, business names and assumed business names under which the applicant has conducted or will conduct residential property wholesaling activity, along with evidence that all business names and assumed business names are registered with the Secretary of State and all entities, including foreign entities, are authorized by the Secretary of State to transact business in this state.

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

SECTION 4. The Real Estate Commissioner, with the approval of the Oregon Department of Administrative Services, may prescribe the fees that the Real Estate Agency may charge for activities listed under this section, subject to the following maximum amounts:

(1) For initial issuance of residential property wholesaler registration under section 3 of this 2024 Act, \$300; and

(2) For renewal of residential property wholesaler registration under section 3 of this 2024 Act, \$300.

SECTION 5. Disclosure requirements. (1) Residential property wholesalers shall provide a residential property wholesaler written disclosure:

(a) To any potential buyers and sellers before entering into a written contract for a residential property wholesale transaction;

(b) To any individual licensed under ORS 696.022 who is engaged to assist the residential property wholesaler in marketing or listing the property;

(c) To any individual licensed under ORS 696.022 who is assisting a potential buyer in purchasing the property; and

(d) In all advertising related to the residential property that is the subject of a residential property wholesale transaction.

(2) For purposes of this section, the Real Estate Agency shall establish the standards for proper residential property wholesaler written disclosure requirements under this section. The disclosure must be in at least 10-point bold type, must contain information prescribed by the Real Estate Commissioner and at a minimum must state that the residential property wholesaler or, if applicable, the entity on behalf of which the residential property wholesaler is conducting residential property wholesaling:

(a) Is a residential property wholesaler;

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

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

(d) Might not be a licensed real estate broker or principal broker and therefore might not be permitted to engage in professional real estate activity; and

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

(3) A seller or buyer who enters into a written contract for a residential property wholesale transaction may cancel the contract without penalty by delivery of a written notice of cancellation any time before 12 midnight at the end of the third business day after the receipt of the residential property wholesaler written disclosure. The right of cancellation granted by this subsection may not be waived. Upon cancellation, all earnest money or deposits shall be returned to the person who provided the earnest money or deposit.

(4) If the residential property wholesaler fails to provide a residential property wholesaler written disclosure to the seller before entering into a written contract for a residential property wholesale transaction, the seller may terminate the contract at any time without

penalty and retain any earnest money or deposit paid to the seller or deposited in escrow by the residential property wholesaler. An escrow agent may disburse the earnest money or deposit to the seller without the need for separate written instructions from the residential property wholesaler if:

(a) The seller in writing asserts that the residential property wholesaler written disclosure was not provided to the seller before entering into the written contract for the residential property wholesale transaction and demands disbursement to the seller of all deposits held by the escrow agent; and

(b) The seller has provided the escrow agent with a written release and indemnification against all liability arising from the disbursement of the earnest money and deposits to the seller.

(5) If the residential property wholesaler fails to provide a residential property wholesaler written disclosure to the seller or buyer, and if the purchase and sale agreement is terminated as a result, the wholesaler shall be liable for damages incurred by seller and buyer.

(6) In any mediation or arbitration proceeding or civil action between buyer and seller, between buyer and residential property wholesaler or between seller and residential property wholesaler that arises due to the residential property wholesaler's failure to provide a residential property wholesaler written disclosure before entering into a written contract for a residential property wholesale transaction as prescribed under this section, the prevailing party is entitled to recover all reasonable attorney fees, costs and expenses incurred at trial, on appeal, at mediation and at arbitration from the residential property wholesaler.

SECTION 6. Grounds for disciplinary action. The Real Estate Commissioner may suspend or revoke registration of any residential property wholesaler, deny the issuance or renewal of registration to an applicant, or prohibit an individual licensed under ORS 696.022 from engaging in residential property wholesaling as otherwise provided in section 2 (4) of this 2024 Act if the wholesaler, applicant or individual has done any of the following:

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

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

(3) Violated a provision of section 2 or 5 of this 2024 Act.

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

SECTION 7. Investigation. (1) The Real Estate Commissioner may investigate either upon complaint or otherwise whenever it appears that a person has conducted residential property wholesaling in violation of sections 2 to 6 of this 2024 Act.

(2) If upon investigation it appears that the person has violated a provision of sections 2 to 6 of this 2024 Act, the commissioner may, in addition to any other remedies, bring action in the name and on behalf of the State of Oregon against such person to enjoin such person from continuing any act in violation of sections 2 to 6 of this 2024 Act.

SECTION 8. Penalties. (1) Knowingly violating any of the provisions of section 2, 5 or 6 of this 2024 Act is a Class A misdemeanor.

(2) Any officer, director, shareholder, member, manager or agent of a corporation, limited liability company, partnership or association, who personally participates in or is an accessory to any violation of section 2, 5 or 6 of this 2024 Act by the corporation, limited li-

ability company, partnership or association, is subject to the penalties prescribed in subsection (1) of this section.

(3) Any person that violates section 2 of this 2024 Act may be required by the Real Estate Commissioner to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the commissioner of:

(a) Not less than \$1,000 nor more than \$2,500 for the first offense of unregistered residential property wholesaling activity; and

(b) Not less than \$2,500 nor more than \$5,000 for the second and subsequent offenses of unregistered residential property wholesaling activity.

(4) In addition to the civil penalty set forth in subsection (3) of this section, any person that violates section 2 of this 2024 Act may be required by the commissioner to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the commissioner, but not to exceed the amount by which such person profited in any transaction that violates section 2 of this 2024 Act.

(5) No person engaging in residential property wholesaling activity may maintain any suit or action in any of the courts of this state to enforce any claim arising out of residential property wholesaling activity without alleging and proving that the person was registered, or exempt from registering, under section 3 of this 2024 Act.

(6) The civil penalty provisions of subsections (3) and (4) of this section are in addition to and not in lieu of the criminal penalties for unregistered residential property wholesaling activity provided by subsections (1) and (2) of this section.

(7) For the purposes of subsection (3) of this section, any violation of section 2 of this 2024 Act that results from a failure of a residential property wholesaler to renew their registration within the time allowed by law constitutes a single offense of residential property wholesaling activity without registration for each 30-day period after the lapse of registration during which the individual engages in residential property wholesaling activity. A civil penalty imposed for a violation of section 2 of this 2024 Act that results from a failure of a residential property wholesaler to renew their registration within the time allowed by law is not subject to the minimum dollar amounts specified in subsection (3) of this section.

(8) Subsection (4) of this section does not apply to a violation of section 2 of this 2024 Act that results from a failure of a residential property wholesaler to renew their registration within the time allowed by law.

(9) Subsection (4) of this section does not apply to a violation of section 2 of this 2024 Act that results from a failure of an individual licensed under ORS 696.022 to renew a license within the time allowed by law.

(10) This section does not apply to escrow agents licensed under ORS 696.511 or to their employees engaged in rendering escrow services in the performance of duties as an escrow agent.

(11) Civil penalties under this section shall be imposed as provided in ORS 183.745.

SECTION 9. Commissioner's order against unregistered residential property wholesaler.

(1) Whenever the Real Estate Commissioner finds that a person is offering to engage in residential property wholesaling activity without registering as a residential property wholesaler and the person is required to register under section 2 of this 2024 Act, the commissioner may, subject to ORS chapter 183, issue an order directing the person to cease and desist from offering to engage in or engaging in residential property wholesaling activity.

(2) A cease and desist order issued under subsection (1) of this section must include:

(a) A statement of the facts constituting the violation.

(b) A provision requiring the person named in the order to cease and desist from the violation.

(c) The effective date of the order.

(d) A notice to the person named in the order of the right to a contested case hearing under ORS chapter 183.

(3) A cease and desist order issued under subsection (1) of this section becomes effective 30 days after the date of the order unless the person named in the order requests a hearing on the order.

SECTION 10. 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 and sections 1 to 9 of this 2024 Act, 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, where professional real estate activity is regularly conducted or that is advertised to the public as a place where professional real estate activity 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) “Business day” means a day other than Saturday or Sunday or a federal or State of Oregon legal holiday.

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

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

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

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

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

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

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

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

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

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

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

- (A) Advertising the real estate for rent or lease;
 - (B) Procuring prospective tenants to rent or lease the real estate;
 - (C) Negotiating with prospective tenants;
 - (D) Accepting deposits from prospective tenants;
 - (E) Checking the qualifications and creditworthiness of prospective tenants;
 - (F) Charging and collecting rent or lease payments;
 - (G) Representing the owner in inspection or repair of the real estate;
 - (H) Contracting for repair or remodeling of the real estate;
 - (I) Holding trust funds or property received in managing the real estate and accounting to the owner for the funds or property;
 - (J) Advising the owner regarding renting or leasing the real estate;
 - (K) Providing staff and services to accommodate the tax reporting and other financial or accounting needs of the real estate;
 - (L) Providing copies of records of acts performed on behalf of the owner of the real estate; and
 - (M) Offering or attempting to do any of the acts described in this paragraph for the owner of the real estate; or
- (b) Representing a tenant or prospective tenant when renting or leasing real estate for which a real estate property manager has a property management agreement with the owner of the real estate and includes but is not limited to:
- (A) Consulting with tenants or prospective tenants about renting or leasing real estate;
 - (B) Assisting prospective tenants in renting or leasing real estate;
 - (C) Assisting prospective tenants in qualifying for renting or leasing real estate;
 - (D) Accepting deposits or other funds from prospective tenants for renting or leasing real estate and holding the funds in trust for the prospective tenants;
 - (E) Representing tenants or prospective tenants renting or leasing real estate; and
 - (F) Offering or attempting to do any of the acts described in this paragraph for a tenant or prospective tenant.
- (15) "Nonlicensed individual" means an individual:
- (a) Who has not obtained a real estate license; or
 - (b) Whose real estate license is lapsed, expired, inactive, suspended, surrendered or revoked.
- (16) "Principal real estate broker" means an individual who holds an active license as a principal real estate broker issued under ORS 696.022.
- (17) "Professional real estate activity" means any of the following actions, when engaged in for another and for compensation or with the intention or in the expectation or upon the promise of receiving or collecting compensation, by any person who:
- (a) Sells, exchanges, purchases, rents or leases real estate;
 - (b) Offers to sell, exchange, purchase, rent or lease real estate;
 - (c) Negotiates, offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate;
 - (d) Lists, offers, attempts or agrees to list real estate for sale;
 - (e) Offers, attempts or agrees to perform or provide a competitive market analysis or letter opinion, to represent a taxpayer under ORS 305.239 or 309.100 or to give an opinion in any administrative or judicial proceeding regarding the value of real estate for taxation, except when the activity is performed by a state certified appraiser or state licensed appraiser;
 - (f) Auctions, offers, attempts or agrees to auction real estate;
 - (g) Buys, sells, offers to buy or sell or otherwise deals in options on real estate;
 - (h) Engages in management of rental real estate;
 - (i) Purports to be engaged in the business of buying, selling, exchanging, renting or leasing real estate;
 - (j) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, leasing or rental of real estate;

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

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

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

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

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

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

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

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

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

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

SECTION 11. ORS 696.581 is amended to read:

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

(2) Except as provided in this section, an escrow agent must follow dated, written escrow instructions executed by the principals or a dated executed written agreement between the principals to a transaction.

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

(4) The following statement or its substantial equivalent shall appear on or be attached to all written escrow instructions prepared by an escrow agent for signature of the principals to a transaction. The statement shall be in at least 10-point bold type. The statement shall either appear immediately above the signatures of the principals or be separately initialed by the principals:

It is understood by the parties signing the above or attached instructions that the instructions are the complete instructions between this firm as an escrow agent and you as a principal to the escrow transaction. These instructions may not include all the terms of the agreement which is the subject of this escrow. Read these instructions carefully, and do not sign them unless they are acceptable to you.

(5) An escrow agent may not solicit or accept any original, amended or supplemental escrow instructions containing any blank to be filled in after signing. An escrow agent may not allow any

alteration of original, amended or supplemental escrow instructions, unless the alteration is signed or initialed by all principals who signed or initialed the instructions before the alteration.

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

(7) An escrow agent may open a one-sided escrow, as defined by rule by the Real Estate Commissioner, by receiving the funds, property or documents for an escrow. Such escrow funds may be disbursed with only the separate written instructions of the principal who deposited the funds into escrow.

(8) Except as authorized in ORS 105.475 **and section 5 (4) of this 2024 Act**, notwithstanding the requirement for dated, separate escrow instructions to close an escrow or disburse funds or property in an escrow, an escrow agent:

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

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

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

SECTION 12. ORS 696.730 is amended to read:

696.730. Any court of competent jurisdiction, including a justice court, has full power to hear any violation of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.995 by an individual licensed under ORS 696.022, **and sections 1 to 9 of this 2024 Act**, and, upon finding a violation, the court may, at its discretion and in addition to the other penalties imposed, revoke the license of the individual found to have violated any provision of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.995 **and sections 1 to 9 of this 2024 Act**. The clerk of the court shall forward a copy of any order revoking a real estate license to the Real Estate Commissioner.

SECTION 13. Sections 1 to 9 of this 2024 Act and the amendments to ORS 696.010, 696.581 and 696.730 by sections 10 to 12 of this 2024 Act apply to contracts entered into on or after July 1, 2025.

SECTION 14. Sections 1 to 9 of this 2024 Act and the amendments to ORS 696.010, 696.581 and 696.730 by sections 10 to 12 of this 2024 Act become operative July 1, 2025.

REAL ESTATE LICENSEES

SECTION 15. ORS 696.800 is amended to read:

696.800. As used in ORS 696.392, 696.600 to 696.785, 696.800 to 696.870 and 696.995, unless the context requires otherwise:

(1) "Agent" means:

(a) A principal real estate broker who has entered into:

(A) A listing agreement with a seller;

(B) A [*service contract*] **representation agreement** with a buyer to represent the buyer; or

(C) A disclosed limited agency agreement; or

(b) A real estate broker associated with a principal real estate broker **who is authorized** to act as the principal real estate broker's agent in connection with acts requiring a real estate license and to function under the principal real estate broker's supervision.

(2) "Buyer" means a potential transferee in a real property transaction, and includes a person who:

(a) Executes an offer to purchase real property from a seller through an agent; or

(b) Enters into [*an exclusive representation contract or*] a buyer's [*service*] **representation agreement** with an agent, whether or not a sale or transfer of property results.

(3) “Confidential information” means information communicated to an agent by the buyer or seller of one to four residential units regarding the real property transaction, including but not limited to price, terms, financial qualifications or motivation to buy or sell. “Confidential information” does not mean information that:

(a) The buyer instructs the agent to disclose about the buyer to the seller or the seller instructs the agent to disclose about the seller to the buyer; and

(b) The agent knows or should know failure to disclose would constitute fraudulent representation.

(4) “Disclosed limited agency” means a real property transaction in which the representation of a buyer and seller or the representation of two or more buyers occurs within the same real estate business.

(5) “Listing agreement” means a contract between an agent and a seller of real property that authorizes the agent, in exchange for compensation, to act on behalf of the seller in offering the real property for sale or in finding and obtaining a buyer.

(6) “Listing price” means the amount expressed in dollars, specified in the listing agreement, for which the seller is willing to sell the real property through the listing agent.

(7) “Offer” means a written proposal executed by a buyer for the sale or lease of real property.

(8) “Offering price” is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property.

(9) “Principal” means the person who has permitted or directed an agent to act on the principal’s behalf. In a real property transaction, this generally means the buyer or the seller.

(10) “Purchase” refers to a transaction for the acquisition of real property by the buyer from the seller and includes:

(a) Exchanges of real property between the seller and the buyer and third parties; and

(b) Land sales contracts.

~~[(10)]~~ **(11)** “Real property” means any estate in real property, including a condominium as defined in ORS 100.005, a timeshare property as defined in ORS 94.803 and the granting of an option or right of first refusal. “Real property” also includes a manufactured structure, as defined in ORS 446.561, owned by the same person who owns the land upon which the manufactured structure is situated. “Real property” does not include a leasehold in real property.

~~[(11)]~~ **(12)** “Real property transaction” means a transaction regarding real property in which an agent is employed by one or more of the principals to act in that transaction and includes but is not limited to listing agreements, buyer’s *[service agreements, exclusive representation contracts]* **representation agreements** and offers to purchase.

(13) “Representation agreement” means a contract between an agent and buyer of real property that authorizes the agent, in exchange for compensation, to act on behalf of the buyer in purchasing real property or identifying real property for purchase.

~~[(12)]~~ **(14)** “Sale” or “sold” refers to a transaction for the transfer of real property from the seller to the buyer and includes:

(a) Exchanges of real property between the seller and the buyer and third parties; and

(b) Land sales contracts.

~~[(13)]~~ **(15)** “Seller” means a potential transferor in a real property transaction and includes an owner:

(a) Who enters into a listing agreement with an agent, whether or not a transfer results; or

(b) Who receives an offer to purchase real property that the seller owns from an agent acting on behalf of a buyer.

SECTION 16. ORS 696.805 is amended to read:

696.805. **(1) A real estate licensee representing a seller in a transaction is required to act under a written listing agreement with the seller. The listing agreement must:**

(a) Be entered into before the real estate licensee begins offering the property for sale or making efforts to find or obtain a buyer for the property;

(b) State whether the agreement is exclusive or nonexclusive;

(c) Describe the legal obligations of a seller's agent, either directly or by referring to the initial agency disclosure pamphlet required by ORS 696.820, if such pamphlet has been provided to the seller; and

(d) Contain any other additional requirements prescribed by rule by the Real Estate Commissioner.

(2) A real estate licensee may not enter into a listing agreement if the duration of the listing agreement, including any automatic renewals of the listing agreement, exceeds 24 months.

(3) The requirements of subsections (1) and (2) of this section do not apply to real estate licensees when engaged in a transaction for property that is improved or available for improvement by commercial structures or five or more residential dwelling units.

[(1)] (4) A real estate licensee who acts under a listing agreement with the seller acts **only** as the seller's agent *[only]* in a real estate transaction unless the seller has agreed in writing for the listing agent to be a disclosed limited agent pursuant to ORS 696.815.

[(2)] (5) A seller's agent owes the seller, other principals and the principals' agents involved in a real estate transaction the following affirmative duties:

(a) To deal honestly and in good faith;

(b) To present all written offers, written notices and other written communications to and from the parties in a timely manner without regard to whether the property is subject to a contract for sale or the buyer is already a party to a contract to purchase; and

(c) To disclose material facts known by the seller's agent and not apparent or readily ascertainable to a party.

[(3)] (6) A seller's agent owes the seller involved in a real estate transaction the following affirmative duties:

(a) To exercise reasonable care and diligence;

(b) To account in a timely manner for money and property received from or on behalf of the seller;

(c) To be loyal to the seller by not taking action that is adverse or detrimental to the seller's interest in a transaction;

(d) To disclose in a timely manner to the seller any conflict of interest, existing or contemplated;

(e) To advise the seller to seek expert advice on matters related to the transaction that are beyond the agent's expertise;

(f) To maintain confidential information from or about the seller except under subpoena or court order, even after termination of the agency relationship; and

(g) Unless agreed otherwise in writing, to make a continuous, good faith effort to find a buyer for the property, except that a seller's agent is not required to seek additional offers to purchase the property while the property is subject to a contract for sale.

[(4)] (7) A seller's agent may show properties owned by another seller to a prospective buyer and may list competing properties for sale without breaching any affirmative duty to the seller.

[(5)] (8) Except as provided in subsection [(3)(g)] (6)(g) of this section, an affirmative duty may not be waived.

[(6)] (9) Nothing in this section implies a duty to investigate matters that are outside the scope of the real estate licensee's expertise, including but not limited to investigation of the condition of property, the legal status of the title or the owner's past conformance with law, unless the licensee or the licensee's agent agrees in writing to investigate a matter.

[(7)] (10) In order to help a seller avoid selecting a buyer based on the buyer's race, color, religion, sex, sexual orientation, national origin, marital status or familial status as prohibited by the Fair Housing Act (42 U.S.C. 3601 et seq.), a seller's agent shall reject any communication other than customary documents in a real estate transaction, including photographs, provided by a buyer.

SECTION 17. ORS 696.810 is amended to read:

696.810. (1) **A real estate licensee representing a buyer is required to act under a written representation agreement with the buyer. The representation agreement must:**

(a) Be entered into before, or as soon as reasonably practicable after, the licensee has commenced efforts to assist the buyer in purchasing real property or in identifying real property for purchase;

(b) State whether the agreement is exclusive or nonexclusive;

(c) Describe the legal obligations of a buyer's agent described in this section either directly or by reference to the initial agency disclosure pamphlet required under ORS 696.820, if such pamphlet has been provided to the buyer; and

(d) Contain any other additional requirements prescribed by rule by the Real Estate Commissioner.

(2) A real estate licensee may not enter into a representation agreement, or a contract that would require the buyer to enter into a representation agreement in the future, if the duration of the representation agreement or contract, including any automatic renewals of the representation agreement or contract, exceeds 24 months.

(3) The requirements of subsections (1) and (2) of this section do not apply to real estate licensees when engaged in a transaction for property that is improved or available for improvement by commercial structures or five or more residential dwelling units.

[(1)] (4) A real estate licensee who acts under a representation agreement with a buyer acts only as the buyer's agent in a real estate transaction unless the buyer has agreed in writing for the buyer's agent to be a disclosed limited agent pursuant to ORS 696.815 [other than the seller's agent may agree with the buyer to act as the buyer's agent only. The buyer's agent is not representing the seller], even if the buyer's agent is receiving compensation for services rendered, either in full or in part, from the seller or through the seller's agent.

[(2)] (5) A buyer's agent owes the buyer, other principals and the principals' agents involved in a real estate transaction the following affirmative duties:

(a) To deal honestly and in good faith;

(b) To present all written offers, written notices and other written communications to and from the parties in a timely manner without regard to whether the property is subject to a contract for sale or the buyer is already a party to a contract to purchase; and

(c) To disclose material facts known by the buyer's agent and not apparent or readily ascertainable to a party.

[(3)] (6) A buyer's agent owes the buyer involved in a real estate transaction the following affirmative duties:

(a) To exercise reasonable care and diligence;

(b) To account in a timely manner for money and property received from or on behalf of the buyer;

(c) To be loyal to the buyer by not taking action that is adverse or detrimental to the buyer's interest in a transaction;

(d) To disclose in a timely manner to the buyer any conflict of interest, existing or contemplated;

(e) To advise the buyer to seek expert advice on matters related to the transaction that are beyond the agent's expertise;

(f) To maintain confidential information from or about the buyer except under subpoena or court order, even after termination of the agency relationship; and

(g) Unless agreed otherwise in writing, to make a continuous, good faith effort to find property for the buyer, except that a buyer's agent is not required to seek additional properties for the buyer while the buyer is subject to a contract for purchase or to show properties for which there is no written agreement to pay compensation to the buyer's agent.

[(4)] (7) A buyer's agent may show properties in which the buyer is interested to other prospective buyers without breaching an affirmative duty to the buyer.

[(5)] (8) Except as provided in subsection [(3)(g)] (6)(g) of this section, an affirmative duty may not be waived.

[(6)] (9) Nothing in this section implies a duty to investigate matters that are outside the scope of the real estate licensee's expertise, including but not limited to investigation of the condition of

property, the legal status of the title or the owner's past conformance with law, unless the licensee or the licensee's agent agrees in writing to investigate a matter.

SECTION 18. ORS 696.815 is amended to read:

696.815. (1) A real estate licensee may represent both the seller and the buyer in a real estate transaction **as a disclosed limited agent** under a disclosed limited agency agreement, with full disclosure of the relationship under the agreement. **The real estate licensee must also have a written listing agreement with the seller that meets the requirements of ORS 696.805 and a written representation agreement with the buyer that meets the requirements of ORS 696.810.**

(2) A real estate licensee acting pursuant to a disclosed limited agency agreement has the following duties and obligations:

(a) To the seller, the duties under ORS 696.805;

(b) To the buyer, the duties under ORS 696.810; and

(c) To both seller and buyer, except with express written permission of the respective person, the duty not to disclose to the other person:

(A) That the seller will accept a price lower or terms less favorable than the listing price or terms;

(B) That the buyer will pay a price greater or terms more favorable than the offering price or terms; or

(C) Specific confidential information as defined in ORS 696.800 (3).

(3) Nothing in this section implies a duty to investigate matters that are outside the scope of the real estate licensee's expertise unless the licensee agrees in writing to investigate a matter.

(4) In a real estate transaction in which different real estate brokers associated with the same principal real estate broker establish agency relationships with different parties to the real estate transaction, the principal real estate broker shall be the only broker acting as a disclosed limited agent representing both seller and buyer. Other brokers shall continue to represent only the party with whom the broker has an agency relationship unless all parties agree otherwise in writing.

(5) The principal real estate broker and the real estate licensees representing either seller or buyer shall owe the following duties to the seller and buyer:

(a) To disclose a conflict of interest in writing to all parties;

(b) To take no action that is adverse or detrimental to either party's interest in the transaction; and

(c) To obey the lawful instructions of both parties.

SECTION 19. ORS 696.840 is amended to read:

696.840. The payment of compensation or the obligation to pay compensation to a real estate licensee by the seller or the buyer is not necessarily determinative of a particular agency relationship between a real estate licensee and the seller or the buyer. After full disclosure of agency relationships, a listing agent, a selling agent or a real estate licensee or any combination of the three may agree to share any compensation paid, or any right to any compensation for which an obligation arises as the result of a real property transaction, and the terms of the agreement shall not necessarily be determinative of a particular relationship. **Before entering into an agreement to share compensation between a listing agent and a buyer's agent, the listing agent and buyer's agent must disclose to their respective clients the amount and terms of the shared compensation.** Nothing in this section shall prevent the parties from selecting a relationship not specifically prohibited by ORS 696.301, 696.392, 696.600 to 696.785, 696.800 to 696.870 and 696.995.

SECTION 20. Section 21 of this 2024 Act is added to and made a part of ORS 696.010 to 696.495.

SECTION 21. (1)(a) As used in this section, "future right to list contract" means a contract granting a right to list, or to refer to another for listing, residential real estate for sale in the future and includes, but is not limited to, any document recorded in the county where the real estate is located relating to the contract, including the contract itself, a memorandum concerning the contract, or a deed of trust to secure the terms of the contract.

(b) "Future right to list contract" does not include a will or trust instrument in which the testator or settlor instructs a personal representative or trustee to use the services of a particular real estate licensee or firm upon the death or incapacity of the testator or settlor.

(2) A real estate licensee may not solicit, enter into or give or receive compensation arising from a future right to list contract if:

(a) The duration of the contract, including any renewals thereof, exceeds 24 months;

(b) The contract purports to run with the land or to be binding on future owners of interests in the real property;

(c) The contract allows for assignment of the right to provide service without notice to and consent of the owner of residential real estate; or

(d) The contract purports to create a lien, encumbrance or other real property security interest.

(3) This section does not apply if the future right to list contract is entered into between a real estate licensee and a corporation, limited liability company or partnership and is for the right to list the real property of the corporation, limited liability company or partnership.

CAPTIONS

SECTION 22. The unit and section captions used in this 2024 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2024 Act.

Passed by House February 14, 2024

.....
Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

Passed by Senate February 28, 2024

.....
Rob Wagner, President of Senate

Received by Governor:

.....M.,....., 2024

Approved:

.....M.,....., 2024

.....
Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2024

.....
LaVonne Griffin-Valade, Secretary of State