

# Appendix A: Real Estate and Escrow Laws and Rules

This appendix contains:

ORS chapter 696, Oregon Real Estate and Escrow Statutes  
(2007 edition)

OAR chapter 863, Oregon Real Estate Agency  
Administrative Rules (January 1, 2009)

*This page intentionally left blank.*

# Chapter 696

2007 EDITION

## Real Estate and Escrow Activities

|         |   |         |  |
|---------|---|---------|--|
|         | REAL ESTATE LICENSEES   | 696.290 | Sharing compensation with or paying finder's fee to unlicensed person prohibited; exceptions                       |
|         | (Generally)   | 696.294 | Opinion letter; rules  |
| 696.007 | Statement of legislative purpose  | 696.301 | Grounds for discipline   |
| 696.010 | Definitions   | 696.310 | Intracompany supervision and control; effect of revocation on licensed associates                                  |
| 696.015 | Legislative finding; short title  | 696.315 | Prohibition against licensee permitting nonlicensed individual to engage in activity with or on behalf of licensee |
|         | (Licensing)   | 696.320 | Effect of suspension or revocation of principal broker license on associated licensees                             |
| 696.020 | License required for individuals engaged in professional real estate activities; exception; rules   | 696.361 | Regulation of real estate property manager   |
| 696.022 | Licensing system for real estate brokers and property managers; rules   | 696.363 | Relationship between licensees as independent contractors or employer and employee                                 |
| 696.024 | Payments due and owing to Real Estate Agency  | 696.365 | City or county business license tax  |
| 696.026 | Conducting business under broker's name, under registered business name or through business organization; rules   |         | (Administration)   |
| 696.028 | Licensed personal assistant; rules  | 696.375 | Real Estate Agency; Real Estate Commissioner; confirmation, salary and security of commissioner                    |
| 696.030 | Exemptions  | 696.385 | Power of agency; rulemaking procedures   |
| 696.040 | Single act sufficient to constitute professional real estate activity   | 696.392 | Power of commissioner to administer oaths, take depositions and issue subpoenas                                    |
| 696.110 | Exclusive nature of regulation of real estate licensees   | 696.395 | Power of commissioner  |
| 696.130 | Limited license   | 696.396 | Investigation of complaints and progressive discipline; rules  |
| 696.174 | License renewal; continuing education courses; rules  | 696.398 | Delegation by commissioner to employees; requirements  |
| 696.200 | Real estate broker or organization to maintain place of business; branch offices; change of business location   | 696.405 | Real Estate Board; appointment; term; qualifications; compensation; expenses                                       |
| 696.205 | Death or incapacity of sole proprietor real estate licensee; temporary license; rules   | 696.415 | Officers; meetings; quorum   |
| 696.232 | Return of license by employee of agency; reissuance upon termination of employment  | 696.425 | Powers and duties of board; expenses   |
|         | (Client Trust Fund Accounts)  | 696.430 | Records of commissioner as evidence; records open to inspection; rules   |
| 696.241 | Clients' Trust Accounts; notice to agency; authority to examine account; branch trust account; interest earnings on trust account; when broker entitled to earnest money; funds not subject to execution; rules | 696.445 | Advancement of education and research; Oregon Real Estate News Journal; content as to disciplinary actions         |
| 696.243 | Substituting copy for original canceled check allowed; electronic fund transfers  | 696.490 | Real Estate Account; disposition of receipts   |
| 696.245 | Clients' Trust Accounts; notice to bank; retention of copy  | 696.495 | Revolving fund; amount; use; procedure for repayment   |
|         | (Nonresident and Reciprocal Real Estate Broker and Salesperson Licensing)   |         | ESCROWS AND ESCROW AGENTS  |
| 696.255 | Nonresident license equivalent to appointment of commissioner as agent for service of process; service on commissioner; fee   | 696.505 | (Generally)  |
| 696.265 | Recognition of nonresident real estate licensee; rules  | 696.508 | Definitions for ORS 696.505 to 696.590   |
|         | (Miscellaneous)   |         | Legislative finding; short title   |
| 696.270 | Fees  | 696.511 | (Licensing)  |
| 696.280 | Records of real estate brokers; rules   | 696.511 | License required; application and information required; issuance   |
|         |   | 696.520 | Application of ORS 696.505 to 696.590  |
|         |   | 696.523 | Application of ORS 696.505 to 696.590 to title insurance activities  |
|         |   | 696.525 | Bond for escrow agents   |



696.005 [1963 c.580 §39; repealed by 1965 c.617 §8]

## REAL ESTATE LICENSEES

### (Generally)

**696.007 Statement of legislative purpose.** (1) The Sixty-second Legislative Assembly recognizes that notwithstanding amendments made to ORS chapter 696 by sections 9, 17, 19, 23, 25, 27 to 30, 32 and 40 to 43, chapter 649, Oregon Laws 1977, section 40, chapter 617, Oregon Laws 1981, and amendments made to ORS chapter 656 by chapter 864, Oregon Laws 1979, section 1, chapter 725, Oregon Laws 1981, and section 4, chapter 854, Oregon Laws 1981, agencies of this state are uncertain regarding application to real estate licensees of statutes of this state relating to employers and employees. This section and ORS 316.209 and 656.037 are enacted to eliminate that uncertainty, to reaffirm the legislative intent of the enactments cited in this section and to conform Oregon law to parallel provisions of the Internal Revenue Code.

(2) Nothing in this section and ORS 316.209 and 656.037 shall be construed to impair or invalidate any claim of refund or defense against collection of any tax, which claim or defense is asserted by a taxpayer who has services performed by an individual who does not meet the requirements of ORS 316.209. [1983 c.597 §1]

**Note:** 696.007 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 696 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**696.010 Definitions.** 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) "Agency" means the Real Estate Agency.

(2) "Associated with" means to be employed, engaged or otherwise supervised by, with respect to the relationship between a real estate broker and a principal real estate broker.

(3) "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.

(4)(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.

(5) "Commissioner" means the Real Estate Commissioner.

(6) "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 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 license has been returned to the agency to be held until the licensee reactivates the license 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) "Management of rental real estate" means:

(a) Representing the owner of real estate 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 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.

(13) "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.

(14) "Principal real estate broker" means an individual who holds an active license as a principal real estate broker and who employs, engages or supervises the professional real estate activity of another real estate licensee.

(15) "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 305.230 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 (1)(L), 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.

(16) "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.

(17) "Real estate broker" means an individual who engages in professional real estate activity and who holds an active license as a real estate broker.

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

(19) "Real estate property manager" means a real estate licensee who is authorized to engage in management of rental real estate.

(20) "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.

(21) "Sole practitioner" means a real estate broker conducting professional real estate activity not in conjunction with other real estate brokers or principal real estate brokers. [Amended by 1953 c.166 §5; 1955 c.322 §6; 1965 c.617 §1; 1973 c.416 §1; 1975 c.746 §1; 1977 c.649 §9; 1981 c.617 §2; 1985 c.589 §6; 1987 c.414 §37; 1987 c.468 §1; 1987 c.611 §12; 1989 c.724 §1; 1991 c.5 §26; 1995 c.217 §14; 1997 c.417 §5; 1999 c.488 §1; 2001 c.300 §10; 2003 c.347 §2; 2003 c.398 §6; 2005 c.116 §1; 2007 c.319 §1]

#### **696.015 Legislative finding; short title.**

(1) The Legislative Assembly finds the activity of persons seeking to assist others, for compensation, to deal in real estate in this state to be a matter of public concern. The provisions of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and 696.995 are enacted to assist in creating for the public a healthy real estate market atmosphere and to assure that professional real estate activity is conducted with high fiduciary standards.

(2) ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and 696.995 may be cited as the Oregon Real Estate License Law. [1977 c.649 §2]

### **(Licensing)**

**696.020 License required for individuals engaged in professional real estate activities; exception; rules.** (1) The Real Estate Agency may issue a real estate license only to an individual.

(2) An individual may not engage in, carry on, advertise or purport to engage in or carry on professional real estate activity, or act in the capacity of a real estate licensee, within this state unless the individual holds an active license as provided for in this chapter.

(3) A real estate licensee is bound by and subject to the requirements of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and 696.995 while:

(a) Engaging in professional real estate activity; or

(b) Acting on the licensee's own behalf in the sale, exchange, lease option or purchase of real estate or in the offer or negotiations for the sale, exchange, lease option or purchase of real estate.

(4) The agency by rule may establish provisions for a nonlicensed individual whose license is inactive or suspended and who acts on the licensee's own behalf in the sale, exchange, lease option or purchase of real estate or in the offer or negotiations for the sale, exchange, lease option or purchase of real estate. [Amended by 1969 c.674 §1; 1975 c.746 §1a; 1977 c.649 §10; 1981 c.617 §2a; 2007 c.319 §4]

#### **696.022 Licensing system for real estate brokers and property managers; rules.**

(1) The Real Estate Agency shall establish by rule a system for licensing real estate brokers, principal real estate brokers and real estate property managers. The system shall establish, at a minimum:

(a) The form and content of applications for licensing under each category of real estate professional licensed by the agency;

(b) A licensing examination for each category of license;

(c) Schedules and procedures for issuing and renewing licenses;

(d) The term of a license in each category; and

(e) Terms and conditions under which the license of a real estate licensee must be returned or transferred to the Real Estate Commissioner for purposes including, but not limited to, inactivation, suspension or termination of the license.

(2)(a) A real estate broker may engage in professional real estate activity. A real estate broker may not employ, engage or supervise the professional real estate activity of another real estate licensee.

(b) In order to qualify for a real estate broker's license, an applicant must furnish proof satisfactory to the commissioner that the applicant has successfully completed the basic real estate broker's educational courses and the examination required by rule of the agency. Proof of completion of all required courses must be provided at the time of applying for the license.

(c) A real estate broker may conduct professional real estate activity as a sole practitioner after:

(A) The individual has acquired three years of active experience as a real estate broker; or

(B) The individual has acquired three years of active experience as a real estate

salesperson as defined in ORS 696.025 (1999 Edition) and has successfully completed the real estate broker's examination required by rule of the agency.

(3)(a) A principal real estate broker may engage in professional real estate activity. A principal real estate broker may conduct professional real estate activity in conjunction with other real estate brokers or principal real estate brokers. In addition, a principal real estate broker must employ, engage or supervise the professional real estate activity of another real estate licensee.

(b) In order to qualify for a principal real estate broker's license, an applicant must meet the requirements of subsection (2)(b) of this section and must furnish proof satisfactory to the commissioner that the applicant has successfully completed the brokerage administration and sales supervision course, as required by agency rule, and has:

(A) Three years of active experience as a licensed real estate broker; or

(B) Three years of active experience as a real estate salesperson as defined in ORS 696.025 (1999 Edition) and has successfully completed the real estate broker's examination required by rule of the agency.

(4) In order to qualify for a real estate property manager's license, an applicant must furnish proof satisfactory to the commissioner that the applicant has successfully completed courses in the legal aspects of real estate, real estate property management and accounting, bookkeeping and trust accounting practices. The applicant also must have successfully completed a real estate property manager's license examination prescribed by rule of the agency. Proof of completion of all required courses must be provided at the time of applying for the license.

(5)(a) A license for a real estate broker, principal real estate broker or real estate property manager shall be granted only to an individual who is trustworthy and competent to conduct professional real estate activity in a manner that protects the public interest. As a condition of licensing, the commissioner may require proof of competence and trustworthiness that the commissioner deems necessary to protect the public interest.

(b) In implementing this subsection, the commissioner shall require fingerprints and criminal offender information of an applicant for initial licensing and may require fingerprints and criminal offender information of an applicant for license renewal. Fingerprints acquired under this subsection may be used for the purpose of requesting a state or nationwide criminal records check under ORS 181.534.

(6) A license may be issued under this section only to an individual who is 18 years of age or older.

(7) In order to qualify for a real estate broker's license, a real estate salesperson licensed in another state or country must successfully complete a course of study and pass a real estate broker's license examination, both as prescribed by agency rule.

(8) In order to satisfy the educational requirements under subsections (2) to (4) and (7) of this section, a course must be approved by the commissioner. The commissioner shall determine the final examination score acceptable as evidence of successful completion for each required course.

(9) The Real Estate Board may determine that an applicant for a principal real estate broker's license or a real estate broker's license has experience related to professional real estate activity that is equivalent to the experience required under subsection (2) or (3) of this section. [2001 c.300 §9; 2003 c.398 §7; 2005 c.116 §2; 2005 c.730 §37; 2007 c.319 §5]

**Note:** 696.022 to 696.028 were added to and made a part of the Oregon Real Estate License Law by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**696.024 Payments due and owing to Real Estate Agency.** To qualify for a real estate license under ORS 696.022 or to renew an active or inactive real estate license, the applicant must make full payment of any unpaid moneys due and owing to the Real Estate Agency, including any unpaid civil penalties assessed under a final order of the Real Estate Commissioner. [2001 c.300 §15]

**Note:** See note under 696.022.

**696.025** [1977 c.649 §8a; 1981 c.617 §3; 1987 c.468 §2; 1987 c.611 §13; 1989 c.724 §2; 1991 c.5 §27; repealed by 2001 c.300 §84]

**696.026 Conducting business under broker's name, under registered business name or through business organization; rules.** (1) A real estate broker or principal real estate broker may conduct professional real estate activity under the broker's name, a registered business name or a name prescribed by agency rule. The business name under which a broker conducts professional real estate activity has no license standing independent of the broker.

(2) The agency by rule shall adopt a registration system for business names. The system shall allow the registration of any branch office of either a sole practitioner or a principal real estate broker.

(3) A real estate broker or principal real estate broker operating under a business name registered by the broker need not be an owner or officer of any organization otherwise lawfully entitled to use the registered

business name or have an ownership interest in the registered name. However, all professional real estate activity conducted by or on behalf of the broker must be conducted under the business name registered by the broker.

(4) A real estate broker or principal real estate broker may register two or more business names if the business names are for affiliated or subsidiary business organizations. If a real estate broker or principal real estate broker registers the business names for two or more affiliated or subsidiary business organizations, the broker may conduct professional real estate activity separately under each business name. A real estate broker or principal real estate broker must supervise and control the professional real estate activity conducted under the broker's name or registered business name.

(5) A real estate broker employed, engaged or supervised by a principal real estate broker for required training and supervision by the principal real estate broker may have an ownership interest in any business through which the principal broker conducts professional real estate activity, but may not control or supervise the professional real estate activity of the principal broker and may not interfere with or be responsible for the training and supervision of any other broker.

(6) A nonlicensed individual may have an ownership interest in any business through which a real estate broker or principal real estate broker engages in professional real estate activity, but may not control or supervise the professional real estate activity of any real estate broker or principal real estate broker licensed to control or supervise the professional real estate activity of such business.

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

(8) Notwithstanding any other provision of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and 696.995, a broker associated with a principal broker may create a corporation, limited liability company, limited liability partnership or any other lawfully constituted business organization for the purpose of receiving compensation from the principal broker. A business organization created under this subsection may not be licensed under ORS 696.022 or conduct in its own name professional real estate activity requiring a real estate license. [2001 c.300 §8; 2005 c.116 §3; 2005 c.393 §1; 2007 c.319 §6; 2007 c.337 §3]

**Note:** See note under 696.022.

**696.028 Licensed personal assistant; rules.** The Real Estate Commissioner may prescribe by rule the terms and conditions for licensed personal assistant agreements including, but not limited to, the duties and responsibilities of, the limitations on the activities of, and the nature and scope of the business relationship between a real estate licensee and a licensed personal assistant. [2001 c.300 §30]

**Note:** See note under 696.022.

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

(a) A nonlicensed individual who is a full-time employee of a single owner of real estate whose real estate activity involves the real estate of the employer and:

(A) Is incidental to the employee's normal, nonreal estate activities; or

(B) Is the employee's principal activity, but the employer's principal activity or business is not the sale, exchange, lease option or acquisition of real estate.

(b) A nonlicensed individual 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, leasing or exchanging 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 individual does not use the power of attorney as a device to engage in professional real estate activity without obtaining the necessary real estate license.

(c) A nonlicensed individual 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.

(d) A nonlicensed individual who is an attorney at law rendering services in the performance of duties as an attorney at law.

(e) A nonlicensed individual who acts in the individual's official capacity as a receiver, a conservator, a trustee in bank-

ruptcy, a personal representative or a trustee, or a regular salaried employee of the trustee, acting under a trust agreement, deed of trust or will.

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

(g) A nonlicensed individual who is a regular full-time employee of a single corporation, partnership, association or nonlicensed individual owner of real property acting for the corporation, partnership, association or nonlicensed individual owner in the rental or management of the real property, but not in the sale, exchange, lease option or purchase of the real property.

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

(i) A nonlicensed individual who is employed by a real estate broker or principal real estate broker and who acts as a manager for real estate if the real estate activity of the nonlicensed individual is limited to negotiating rental or lease agreements, checking tenant and credit references, physically maintaining the real estate, conducting tenant relations, collecting the rent, supervising the premises' managers and discussing financial matters relating to management of the real estate with the owner.

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

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

(L) A nonlicensed individual who analyzes or provides advice regarding permissible land use alternatives, environmental impact, building and use permit procedures or demographic market studies, or a regular full-time employee of the nonlicensed individual performing similar activities. This exclusion does not apply to the handling of transactional negotiations for transfer of an interest in real estate.

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

(n) An individual who is a travel agent arranging the rental of transient lodging at a hotel or inn as defined in ORS 699.005 in

the course of business as a travel agent for compensation. For the purpose of this paragraph, "travel agent" means a person, and employees of the person, regularly representing and selling travel services to the public directly or indirectly through other travel agents.

(o) An individual who is a common carrier arranging the rental of transient lodging at a hotel or inn as defined in ORS 699.005 in the course of business as a common carrier. For the purpose of this paragraph, "common carrier" means a person that transports or purports to be willing to transport individuals from place to place by rail, motor vehicle, boat or aircraft for hire, compensation or consideration.

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

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

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

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

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

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

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

(w) A nonlicensed individual who gives an opinion in an administrative or judicial

proceeding regarding the value of real estate for taxation or representing a taxpayer under ORS 305.230 or 309.100.

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

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

(z) An individual who is a representative of a financial institution or trust company, as those terms are defined in ORS 706.008, that is attorney in fact under a duly executed power of attorney from the owner or purchaser authorizing real estate activity, if the power of attorney is recorded in the office of the county clerk for the county in which the real estate to be sold, leased or exchanged is located.

(2) The vesting of title to real estate in more than one person by tenancy by the entirety, tenancy in common or by survivorship shall be construed as that of a single owner for the purposes of this section. [Amended by 1955 c.322 §7; 1963 c.593 §1; 1967 c.277 §1; 1969 c.674 §2; 1975 c.746 §2; 1977 c.649 §11; 1979 c.125 §3; 1979 c.289 §1a; 1981 c.617 §4; 1985 c.639 §13; 1985 c.677 §64; 1991 c.5 §28; 1991 c.212 §1; 1993 c.18 §149; 1995 c.246 §1; 1997 c.307 §2; 1999 c.488 §2; 2001 c.300 §11; 2003 c.347 §1; 2005 c.116 §4; 2007 c.319 §7]

**696.040 Single act sufficient to constitute professional real estate activity.** One act or transaction of professional real estate activity is sufficient to constitute engaging in professional real estate activity, within the meaning of this chapter. [Amended by 1955 c.322 §8; 1977 c.649 §12]

**696.050** [Amended by 1955 c.322 §9; 1961 c.471 §1; 1963 c.412 §1; 1969 c.515 §1; 1969 c.674 §3; 1971 c.671 §1; 1973 c.416 §3; 1973 c.827 §78; 1974 c.36 §21; 1975 c.746 §3; 1977 c.191 §1; 1977 c.649 §13; 1981 c.617 §5; 1983 c.258 §1; 1989 c.532 §6; 1989 c.724 §3; 1991 c.5 §29; repealed by 2001 c.300 §84]

**696.060** [Amended by 1975 c.746 §4; 1977 c.649 §14; 1981 c.617 §6; repealed by 2001 c.300 §84]

**696.070** [Amended by 1963 c.412 §2; repealed by 1977 c.649 §53 and 1977 c.842 §17]

**696.080** [Amended by 1975 c.746 §5; 1977 c.649 §15; 1981 c.617 §6a; 1987 c.611 §14; repealed by 2001 c.300 §84]

**696.085** [1991 c.462 §2; repealed by 2001 c.300 §84]

**696.090** [Amended by 1955 c.322 §10; repealed by 1977 c.649 §16 and 1977 c.842 §17 (694.169 enacted in lieu of 696.090)]

**696.100** [Amended by 1963 c.412 §3; 1977 c.649 §17; repealed by 2001 c.300 §84]

**696.110 Exclusive nature of regulation of real estate licensees.** The provisions of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.995 shall be exclusive and no political subdivision or agency of this state shall require or issue any license or charge any fee for licensing or reg-

ulation of individuals licensed under ORS 696.022. Nothing in this section shall limit the authority of a county, city or town to levy and collect a general and nondiscriminatory license fee upon all businesses in the county, city or town or to levy a tax based upon the business conducted by any licensee or firm within the county, city or town. [Amended by 1955 c.322 §11; 1961 c.309 §3; 1965 c.617 §2; 1975 c.746 §1b; 2001 c.300 §12; 2007 c.319 §22]

**696.120** [Amended by 1977 c.649 §18; repealed by 2001 c.300 §84]

**696.130 Limited license.** (1) If the license of any real estate broker or principal real estate broker is revoked by the Real Estate Commissioner, the commissioner may not issue a new license until the individual complies with the provisions of ORS 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870.

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

(a) By term;

(b) To acts subject to the supervision of a specific principal real estate broker; or

(c) By conditions to be observed in the exercise and the privileges granted.

(3) A limited license issued under this section does not confer any property right in the privileges to be exercised thereunder, and the holder of a limited license does not have the right to renewal of such license. A limited license may be suspended or revoked, or the licensee may be reprimanded, by the commissioner on the grounds set out in ORS 696.301. [Amended by 1955 c.322 §12; 1969 c.674 §4; 1973 c.416 §4; 1975 c.746 §6; 1977 c.191 §2; 1977 c.649 §19; 1981 c.617 §7; 1987 c.611 §15; 1991 c.5 §30; 2001 c.300 §13; 2003 c.398 §8]

**696.140** [Amended by 1961 c.471 §2; 1963 c.412 §4; 1973 c.416 §5; repealed by 1975 c.746 §10 (696.141 enacted in lieu of 696.140)]

**696.141** [1975 c.746 §11 (enacted in lieu of 696.140); 1977 c.649 §51; 1979 c.243 §1; repealed by 2001 c.300 §84]

**696.150** [Amended by 1977 c.649 §20; repealed by 2001 c.300 §84]

**696.160** [Amended by 1969 c.674 §5; 1975 c.746 §12; 1977 c.649 §21; 1987 c.611 §16; 1989 c.724 §4; 1991 c.5 §31; repealed by 2001 c.300 §84]

**696.162** [1975 c.746 §8; 1977 c.190 §1; 1977 c.649 §22; 1981 c.617 §8; 1987 c.468 §3; repealed by 1991 c.5 §46]

**696.165** [1953 c.166 §4; 1969 c.674 §6; 1977 c.649 §23; 1981 c.617 §8a; 1991 c.5 §32; repealed by 2001 c.300 §84]

**696.167** [1975 c.746 §9; 1977 c.649 §24; repealed by 1981 c.617 §41]

**696.169** [1977 c.649 §16a (enacted in lieu of 696.090); 1989 c.724 §5; repealed by 2001 c.300 §84]

**696.170** [Amended by 1955 c.322 §13; repealed by 1969 c.674 §20]

**696.172** [1969 c.674 §9; repealed by 1975 c.746 §34]

**696.174 License renewal; continuing education courses; rules.** (1) To qualify an active license for renewal, the real estate licensee must present evidence of attendance during the preceding two license years at 30 clock-hours of real estate oriented continuing education courses, of which a minimum of 15 clock-hours shall be in required course topics.

(2)(a) The Real Estate Commissioner, with advice from real estate professionals, educators and the public, may accept a broad range of topics for real estate oriented continuing education courses. Required course topics shall be flexible so as to allow for changes in the real estate profession.

(b) The minimum length of each course, required or elective, shall be one hour. A standard form, created by the Real Estate Agency in consultation with real estate professionals, shall be developed to ensure that licensees have completed the required number of hours. Certification of attendance by the principal real estate broker with whom the real estate broker is associated, or self-certification if the licensee is a sole practitioner, a principal real estate broker or a real estate property manager, shall be considered evidence of attendance.

(3) The commissioner, with advice from real estate professionals, educators and the public, shall prescribe rules for certifying continuing education courses. The rules shall provide for correspondence courses and other distance learning alternatives, including but not limited to rules for minimum course length, comprehension of written materials and tests for course completion. The rules shall also provide that continuing education course topics contain an advanced course in real estate practices that must be completed by a licensee prior to the licensee's first renewal of an active license.

(4) The commissioner may waive the continuing education requirements of subsection (1) of this section for any licensee who submits satisfactory evidence of inability to attend such courses because of health or other circumstances beyond the licensee's control. [1969 c.674 §11; 1973 c.416 §6; 1977 c.649 §25; 1981 c.617 §9; 1983 c.359 §1; 1987 c.611 §19; 1989 c.724 §6; 1991 c.5 §33; 1995 c.335 §1; 2001 c.300 §14]

**696.176** [1969 c.674 §10; 1975 c.746 §13; 1977 c.649 §26; repealed by 2001 c.300 §84]

**696.180** [Amended by 1977 c.649 §27; repealed by 2001 c.300 §84]

**696.190** [Amended by 1977 c.649 §28; repealed by 1981 c.617 §41]

**696.200 Real estate broker or organization to maintain place of business; branch offices; change of business location.** (1) Except for real estate brokers associated with a principal real estate broker,

every real estate broker and principal real estate broker shall maintain in this state a place of business to be designated as the broker's main office and designate the place of business by a sign that contains the name under which the broker is licensed.

(2) The place of business must be specified in the application for a real estate license, and designated in the license. Prior to the change of a business location, the broker shall notify the Real Estate Commissioner in writing of the new location. The change of a business location without notification to the commissioner is grounds for revocation of licenses previously issued.

(3) A real estate broker or principal real estate broker may establish one or more branch offices as separate business locations under the management of the broker. A broker may conduct and supervise the business of more than one office, whether main or branch. The broker shall register each branch office with the commissioner and designate each branch office by a sign that contains the name under which the broker is licensed.

(4) Upon vacating any business location, the broker shall ensure that the sign containing the broker's name or the name under which the broker has operated is removed from the location that the broker has vacated. A broker may not display any name at the designated places of business named in the broker's license or licenses other than the name under which the broker is licensed. [Amended by 1955 c.322 §14; 1961 c.471 §3; 1965 c.367 §1; 1973 c.416 §7; 1975 c.746 §14; 1977 c.649 §29; 1979 c.823 §1; 1981 c.617 §10; 1989 c.532 §7; 2001 c.300 §16; 2003 c.398 §9; 2005 c.116 §5]

**696.205 Death or incapacity of sole proprietor real estate licensee; temporary license; rules.** (1) If a real estate licensee who is a sole practitioner or who is the sole principal real estate broker of a real estate business dies or becomes incapacitated, the Real Estate Commissioner may issue a temporary license to the executor, administrator or personal representative of the estate of the deceased real estate licensee or to the court-appointed fiduciary of the incapacitated real estate licensee, or to some other individual designated by the commissioner, in order to continue to transact the real estate business in the case of the incapacitated real estate licensee or to wind up the affairs of the deceased or incapacitated real estate licensee. The term of a temporary license issued under this section may not exceed one year from the date of issuance unless the commissioner, in the discretion of the commissioner, extends the term of the temporary license based on sufficient cause provided by the temporary licensee to the commissioner.

(2) The Real Estate Agency may adopt administrative rules to administer this section or to authorize an individual to transact or wind up real estate business on behalf of the deceased or incapacitated real estate licensee. [1975 c.746 §7; 2001 c.300 §17; 2005 c.116 §6; 2007 c.319 §8]

**696.210** [Amended by 1977 c.649 §30; repealed by 2001 c.300 §84]

**696.220** [Repealed by 1955 c.322 §15]

**696.221** [1955 c.322 §4; 1969 c.674 §12; 1977 c.649 §31; 1983 c.258 §2; 1991 c.5 §34; 2001 c.300 §18; repealed by 2005 c.116 §24]

**696.224** [1955 c.322 §5; 1969 c.674 §13; 1977 c.649 §32; 1983 c.258 §3; 1989 c.724 §12; 1991 c.5 §35; repealed by 2001 c.300 §84]

**696.226** [1955 c.322 §2; 1977 c.649 §33; 1983 c.258 §4; 1991 c.5 §36; 2001 c.300 §19; repealed by 2005 c.116 §24]

**696.228** [1969 c.674 §8; 1977 c.649 §34; 1983 c.258 §5; repealed by 2001 c.300 §84]

**696.230** [Repealed by 1969 c.674 §21]

**696.232 Return of license by employee of agency; reissuance upon termination of employment.** (1) An employee or officer of the Real Estate Agency licensed as a real estate licensee under this chapter shall return the employee's or officer's license to the agency at the time of commencing employment. The agency shall hold the license as an active license held in suspense. At the termination of an employee's or officer's employment, the license may be returned to the licensee as an active or inactive license. The agency shall activate a license held in suspense without payment of further fee, and the license expires on the date on which it would have expired if the license had not been held in suspense.

(2) Except as stated in subsection (1) of this section, the return of the license to the licensee and all renewals are subject to the provisions of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.995. [1975 c.746 §16; 1977 c.649 §35; 1983 c.258 §6; 2001 c.300 §63; 2005 c.116 §7]

**696.235** [1975 c.746 §15; 1977 c.649 §36; 1981 c.617 §11; 1989 c.724 §7; 1995 c.335 §2; 2001 c.300 §20; repealed by 2005 c.116 §24]

**696.240** [Amended by 1957 c.383 §1; 1963 c.580 §49; repealed by 1975 c.746 §17 (696.241 enacted in lieu of 696.240)]

#### (Client Trust Fund Accounts)

**696.241 Clients' Trust Accounts; notice to agency; authority to examine account; branch trust account; interest earnings on trust account; when broker entitled to earnest money; funds not subject to execution; rules.** (1) Each sole practitioner and each principal real estate broker shall maintain in this state one or more separate bank accounts that shall be designated a Clients' Trust Account in which all trust funds received or handled by the sole practitioner or broker and the real estate licensees subject

to the supervision of the broker on behalf of any other person shall be deposited unless, pursuant to written agreement of all parties having an interest in the trust funds, the trust funds are immediately placed in a neutral escrow depository in this state.

(2) Each sole practitioner or principal real estate broker shall file with the Real Estate Agency, on forms approved by the Real Estate Commissioner, a statement identifying the name of the bank or banks, account number or account numbers, and name of account or accounts for each Clients' Trust Account maintained.

(3) Each sole practitioner or principal real estate broker shall authorize the agency, by a form approved by the commissioner, to examine any Clients' Trust Account, by a duly authorized representative of the agency. The examination shall be made at such times as the commissioner may direct.

(4) If a sole practitioner or principal real estate broker maintains a separate Clients' Trust Account in a branch office, a separate bookkeeping system shall be maintained in the branch office, provided a copy of the records required by the provisions of ORS 696.280 are maintained in the main office of the sole practitioner or broker.

(5) Trust funds received by a sole practitioner or principal real estate broker may be placed by the sole practitioner or broker in a federally insured interest-bearing bank account, designated a Clients' Trust Account, but only with the prior written approval of all parties having an interest in the trust funds. The earnings of such interest-bearing account shall not inure to the benefit of the sole practitioner or principal real estate broker unless expressly approved in writing before deposit of the trust funds by all parties having an interest in the trust funds.

(6) With prior written notice to all parties who have an interest in the trust funds, a sole practitioner or principal real estate broker may place trust funds received by the sole practitioner or principal real estate broker in a federally insured interest-bearing bank account that is designated a Clients' Trust Account and the earnings of which inure to the benefit of a public benefit corporation, as defined in ORS 65.001, for distribution to organizations and individuals for first-time homebuying assistance and for development of affordable housing. The sole practitioner or principal real estate broker shall select a qualified public benefit corporation to receive the interest earnings.

(7) A sole practitioner or principal real estate broker is not entitled to any part of any interest earnings on trust funds deposited under subsection (5) of this section or to any part of the earnest money or other

money paid to the sole practitioner or broker in connection with any real estate transaction as part or all of the sole practitioner's or broker's compensation until the transaction has been completed or terminated. The question of the disposition of forfeited earnest money shall be negotiated between the sole practitioner or principal real estate broker and the seller at the time of executing any listing agreement or earnest money agreement. The result of such negotiation shall be filled in on the agreement form at the time of signing by the seller and either separately initialed by the seller or placed immediately above the signature of the seller.

(8) Clients' Trust Account funds are not subject to execution or attachment on any claim against a sole practitioner or principal real estate broker.

(9) A sole practitioner or principal real estate broker may not knowingly keep or cause to be kept any funds or money in any bank under the heading of Clients' Trust Account or any other name designating such funds or money as belonging to the clients of any sole practitioner or principal real estate broker, except actual trust funds deposited with the sole practitioner or broker.

(10) The agency by rule shall establish an optional procedure by which a sole practitioner or a principal real estate broker may elect to disburse disputed funds held in relation to the sale, exchange or purchase of real estate from a Clients' Trust Account to the person who delivered the funds to the sole practitioner or principal real estate broker. The procedure shall allow disbursement not more than 20 days after a request is made for the disbursement. A disbursement pursuant to the procedure does not affect the claim of any other person to the funds.

(11) The agency may provide by rule for other records to be maintained and for the manner in which trust funds are deposited, held and disbursed. [1975 c.746 §18 (enacted in lieu of 696.240); 1977 c.649 §39; 1981 c.617 §11a; 1985 c.589 §4; 1991 c.5 §37; 2001 c.300 §21; 2003 c.224 §1; 2005 c.116 §18; 2005 c.393 §2a; 2007 c.224 §1; 2007 c.319 §9; 2007 c.337 §4]

**696.243 Substituting copy for original canceled check allowed; electronic fund transfers.** (1) Any real estate broker, principal real estate broker, real estate property manager or escrow agent who is required by the Real Estate Commissioner to maintain the canceled checks used to disburse moneys from the licensee's clients' trust account may substitute a copy of the original canceled check, if the copy is provided by a bank and is produced by optical imaging or other process that accurately reproduces the original or forms a durable medium for re-

producing the original, and the copy is at least 300 dots per inch in quality.

(2) A real estate broker, principal real estate broker, real estate property manager or escrow agent may use electronic fund transfers for the deposit into or for withdrawal from a clients' trust account established under ORS 696.241 or 696.578, if the bank furnishes to the licensee an accurate paper record of the deposits and withdrawals.

(3) As used in subsection (2) of this section, "electronic fund transfer" has the meaning set forth in section 903 of the Electronic Transfer Act (P.L. 90-321, 15 U.S.C. §1693a). [1995 c.760 §4; 2001 c.300 §22]

**Note:** 696.243 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 696 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**696.245 Clients' Trust Accounts; notice to bank; retention of copy.** (1) Each sole practitioner and each principal real estate broker, at the time a Clients' Trust Account is opened under ORS 696.241, shall provide the bank in which the account is opened with a notice in substantially the following form:

---

#### NOTICE OF CLIENTS' TRUST ACCOUNT

To: (name of bank) \_\_\_\_\_

Under the Oregon Real Estate License Law, I am the sole practitioner, principal real estate broker or designated real estate appraiser for (licensed name of broker or business) \_\_\_\_\_.

Further, under ORS 696.241, I am required to maintain in Oregon a Clients' Trust Account for the purpose of holding funds belonging to others.

With regard to the account(s) numbered \_\_\_\_\_ which is/are designated as a Clients' Trust Account, the account(s) is/are maintained with you as a depository for money belonging to persons other than myself and in my fiduciary capacity as a sole practitioner or principal real estate broker established by client agreements in separate documents.

Dated: (insert date)

\_\_\_\_\_  
(signature of broker)

#### ACKNOWLEDGMENT OF RECEIPT

I, \_\_\_\_\_, a duly authorized representative of (bank) \_\_\_\_\_, do hereby acknowledge receipt of the above NOTICE OF CLIENTS' TRUST ACCOUNT on (date) \_\_\_\_\_.

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(title)

(2) The acknowledged copy of the notice described in subsection (1) of this section shall be retained by the sole practitioner or principal real estate broker as provided in ORS 696.241 for the retention of trust account records, subject to inspection by the Real Estate Commissioner or the commissioner's authorized representative. [1985 c.589 §2; 1991 c.5 §38; 2001 c.300 §23; 2005 c.116 §19]

**Note:** 696.245 was added to and made a part of ORS 696.010 to 696.495 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**696.247** [1989 c.916 §1; 1991 c.716 §1; repealed by 1997 c.801 §37]

**696.249** [1989 c.916 §2; 1991 c.716 §2; repealed by 1997 c.801 §37]

**696.250** [Amended by 1953 c.202 §2; 1961 c.675 §1; 1965 c.367 §2; 1969 c.674 §14; 1975 c.746 §19; 1977 c.649 §37; 1981 c.617 §12; repealed by 1989 c.532 §10]

**696.251** [1989 c.916 §2a; repealed by 1997 c.801 §37]

**696.253** [1989 c.916 §3; repealed by 1997 c.801 §37]

**696.254** [1989 c.916 §7; 1991 c.716 §4; 1993 c.744 §176; repealed by 1997 c.801 §37]

**(Nonresident and Reciprocal  
Real Estate Broker  
and Salesperson Licensing)**

**696.255 Nonresident license equivalent to appointment of commissioner as agent for service of process; service on commissioner; fee.** (1) The acceptance by a nonresident of a real estate license shall be considered equivalent to an appointment by the nonresident of the Real Estate Commissioner as the nonresident licensee's true and lawful attorney, upon whom may be served any lawful summons, process or pleading in any action or suit against the nonresident licensee in any court of this state, arising out of any business done by the nonresident licensee as a real estate licensee in this state. The acceptance shall be considered equivalent to an agreement by the nonresident licensee that any summons, process or pleading so served shall be of the same legal force and validity as if served on the nonresident licensee personally in this state.

(2) If it appears by the certificate of the sheriff of the county in which an action or suit has been filed against a nonresident licensee, that the defendant cannot be found in this state, service of any summons, process or pleading in the action or suit may be made by leaving a copy thereof, with a fee of \$2, in the hands of the commissioner or in the commissioner's office. Such service shall

be sufficient and valid personal service upon the defendant; provided that:

(a) Notice of the service and copy of the summons, process or pleading is sent forthwith by registered mail or by certified mail with return receipt by the plaintiff or the plaintiff's attorney to the defendant, at the most recent address furnished to the commissioner by the nonresident licensee or to the nonresident licensee's last-known address; and

(b) The affidavit of the plaintiff or the plaintiff's attorney of the mailing is appended to the summons, process or pleading and entered as a part of the return thereof.

(3) Notwithstanding any other provision of this section, personal service outside of the state in accordance with the statutes relating to personal service of summons outside of the state shall relieve the plaintiff from the mailing requirement under this section.

(4) Any summons served as provided in this section shall require the defendant to appear and answer the complaint within four weeks after receipt thereof by the commissioner.

(5) The fee of \$2 paid by the plaintiff to the commissioner shall be taxed as costs in favor of the plaintiff if the plaintiff prevails in the action.

(6) The commissioner shall keep a record of each summons, process or pleading served upon the commissioner under this section, showing the day and hour of service. [1981 c.617 §12a; 1989 c.532 §9; 1991 c.249 §62]

**696.258** [1989 c.532 §1; repealed by 2001 c.300 §84]

**696.260** [Repealed by 1977 c.649 §53 and 1977 c.842 §17]

**696.262** [1989 c.532 §§2,3; repealed by 1999 c.470 §4]

**696.265 Recognition of nonresident real estate licensee; rules.** Notwithstanding ORS 696.040 to 696.232 and 696.255, the Real Estate Commissioner may prescribe by rule the terms and conditions for license recognition of a nonresident real estate broker or salesperson and for reciprocity agreements with other states and countries, including but not limited to application procedures, license qualifications, license maintenance, limitations on activities and license renewal requirements. [1989 c.532 §4; 1999 c.470 §3; 2001 c.300 §24]

**Note:** 696.265 was added to and made a part of 696.010 to 696.495 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**(Miscellaneous)**

**696.270 Fees.** The maximum fees described in this section may be charged by and paid to the Real Estate Agency. Actual

fees shall be prescribed by the Real Estate Commissioner with approval of the Oregon Department of Administrative Services. This section applies to the following fees:

(1) For each licensing examination applied for, \$75.

(2) For each real estate broker's, principal real estate broker's or real estate property manager's license, \$230.

(3) For each renewal of a real estate broker's, principal real estate broker's or real estate property manager's license, \$230.

(4) For each notification of the opening or closing of a registered branch office of a real estate broker or principal real estate broker, at times other than the time of issuing or renewing the broker's license, \$10.

(5) For each change of name or address of a broker on the records of the agency, \$10.

(6) For each duplicate license, when the original license is lost or destroyed and affidavit made thereof, \$20.

(7) For each transfer of a real estate broker's, principal real estate broker's or real estate property manager's license within the same license category, \$10.

(8) For the renewal of a real estate broker's, principal real estate broker's or real estate property manager's inactive license, \$110.

(9) For the reactivation of a real estate broker's, principal real estate broker's or real estate property manager's inactive license, \$75.

(10) In addition to the renewal fee, for late renewal, \$30.

(11) For a temporary license issued under ORS 696.205, \$40, and for an extension thereof, \$40.

(12) For initial registration of a business name, \$230. [Amended by 1953 c.166 §5; 1955 c.457 §1; subsections (13), (14), (15) enacted as 1955 c.322 §3; 1957 c.383 §2; 1961 c.670 §1; 1965 c.617 §3; 1969 c.674 §15; 1971 c.293 §1; 1975 c.746 §20; 1977 c.191 §3; 1977 c.649 §52; 1981 c.566 §4; 1987 c.58 §13; 1987 c.158 §146; 1987 c.611 §20; 1989 c.724 §8; 1991 c.5 §39; 1991 c.462 §3; 1997 c.451 §1; 2001 c.300 §25; 2003 c.398 §10; 2005 c.116 §20]

**696.275** [1977 c.873 §18; repealed by 1987 c.58 §15]

**696.280 Records of real estate brokers; rules.** (1) A real estate broker or principal real estate broker shall maintain within this state, except as provided in subsection (4) of this section, complete and adequate records of all professional real estate activity conducted by or through the broker. The Real Estate Agency shall specify by rule the records required to establish complete and adequate records of a broker's professional real estate activity. The only documents the agency may require by rule a real estate broker or principal real estate broker to use

or generate are documents that are otherwise required by law or are voluntarily generated during a real estate transaction.

(2)(a) The records of a principal real estate broker or a sole practitioner shall include records of attendance in continuing education courses by the sole practitioner or broker. The records of attendance shall state the name of the sole practitioner or broker and the date of the sole practitioner's or broker's attendance, and shall be the basis for self-certification under ORS 696.174.

(b) A principal real estate broker's records shall include records of attendance in continuing education courses by real estate licensees associated with the principal broker. The record of attendance shall state the name of the licensee and the date of the licensee's attendance, and shall be the basis for the certificate of attendance submitted under ORS 696.174.

(3) The records shall at all times be open for inspection by the Real Estate Commissioner or the commissioner's authorized representatives. The records of each transaction shall be maintained by the licensee for a period of not less than six years after the date the transaction closed or failed. The records may be maintained in any format that allows for inspection and copying by the commissioner or the commissioner's representatives, as determined by the commissioner by rule.

(4) The agency may prescribe by rule terms and conditions under which a real estate broker or principal real estate broker may maintain records outside this state. [Amended by 1977 c.649 §38; 1981 c.617 §12b; 1983 c.258 §7; 1983 c.359 §2; 1991 c.5 §40; 1995 c.335 §3; 2001 c.300 §26; 2005 c.116 §21; 2007 c.319 §9a]

**696.290 Sharing compensation with or paying finder's fee to unlicensed person prohibited; exceptions.** (1) A real estate licensee shall not offer, promise, allow, give, pay or rebate, directly or indirectly, any part or share of the licensee's compensation arising or accruing from any real estate transaction or pay a finder's fee to any person who is not a real estate licensee licensed under ORS 696.022. However, a real estate broker or principal real estate broker may pay a finder's fee or a share of the licensee's compensation on a cooperative sale when the payment is made to a licensed real estate broker in another state or country, provided that the state or country in which that broker is licensed has a law permitting real estate brokers to cooperate with real estate brokers or principal real estate brokers in this state and that such nonresident real estate broker does not conduct in this state any acts constituting professional real estate activity and for which compensation is paid. If a country does not license real estate bro-

kers, the payee must be a citizen or resident of the country and represent that the payee is in the business of real estate brokerage in the other country. A real estate broker associated with a principal real estate broker shall not accept compensation from any person other than the principal real estate broker with whom the real estate broker is associated at the time. A principal real estate broker shall not make payment to the real estate broker of another principal real estate broker except through the principal real estate broker with whom the real estate broker is associated. Nothing in this section prevents payment of compensation earned by a real estate broker or principal real estate broker while licensed, because of change of affiliation or inactivation of the broker's license.

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

(3) Nothing in subsection (1) of this section is intended to prevent an Oregon real estate broker or principal real estate broker from sharing compensation on a cooperative nonresidential real estate transaction with a person who holds an active real estate license in another state or country, provided:

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

(b) The cooperating Oregon real estate broker or principal real estate broker accompanies the out-of-state real estate licensee and the client during any property showings or negotiations conducted in this state; and

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

(4) Nothing in subsection (1) of this section is intended to prohibit a real estate licensee from directly compensating a licensed

personal assistant if permitted by the terms, conditions and requirements of a licensed personal assistant agreement under ORS 696.028.

(5) As used in subsection (3) of this section, "nonresidential real estate" means any real property that is improved or available for improvement by commercial structures or five or more residential dwelling units. [Amended by 1953 c.42 §2; 1961 c.670 §2; 1969 c.674 §16; 1975 c.746 §21; 1977 c.649 §40; 1981 c.617 §13; 1989 c.724 §9; 1997 c.307 §1; 1999 c.470 §1; 2001 c.300 §27; 2007 c.337 §5]

**696.294 Opinion letter; rules.** (1) As used in this section, "letter opinion" means a document that expresses a real estate licensee's conclusion regarding a recommended listing, selling or purchase price or a rental or lease consideration of certain real estate and that results from the licensee's competitive market analysis.

(2) The Real Estate Commissioner by rule shall specify the minimum contents of a letter opinion, including but not limited to the distinction between a letter opinion and a real estate appraisal. [2007 c.319 §3]

**Note:** 696.294 was added to and made a part of 696.010 to 696.495 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**696.300** [Amended by 1959 c.585 §1; 1961 c.670 §3; 1969 c.674 §17; 1971 c.743 §409; 1973 c.421 §50; 1974 c.1 §25; repealed by 1975 c.746 §22 (696.301 enacted in lieu of 696.300)]

**696.301 Grounds for discipline.** Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

(1) Created a reasonable probability of damage or injury to a person by making one or more material misrepresentations or false promises in a matter related to professional real estate activity.

(2) Represented, attempted to represent or accepted compensation from a principal real estate broker other than the principal real estate broker with whom the real estate broker is associated.

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

(4) Knowingly or recklessly published materially misleading or untruthful advertising.

(5) Acted as an agent and an undisclosed principal in any transaction.

(6) Intentionally interfered with the contractual relations of others concerning real estate or professional real estate activity.

(7) Intentionally interfered with the exclusive representation or exclusive brokerage relationship of another licensee.

(8) Accepted employment or compensation for the preparation of a competitive market analysis or letter opinion that is contingent upon reporting a predetermined value or for real estate in which the licensee had an undisclosed interest.

(9) Represented a taxpayer as described in ORS 305.230 or 309.100, contingent upon reporting a predetermined value or for real estate in which the licensee had an undisclosed interest.

(10) Failed to ensure, in any real estate transaction in which the licensee performed the closing, that the buyer and seller received a complete detailed closing statement showing the amount and purpose of all receipts, adjustments and disbursements.

(11) Has been convicted of a felony or misdemeanor substantially related to the licensee's trustworthiness or competence to engage in professional real estate activity.

(12) Demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

(13) Violated a term, condition, restriction or limitation contained in an order issued by the commissioner.

(14) Committed an act of fraud or engaged in dishonest conduct substantially related to the fitness of the applicant or licensee to conduct professional real estate activity, without regard to whether the act or conduct occurred in the course of professional real estate activity.

(15) Engaged in any conduct that is below the standard of care for the practice of professional real estate activity in Oregon as established by the community of individuals engaged in the practice of professional real estate activity in Oregon. [1975 c.746 §23 (enacted in lieu of 696.300); 1977 c.649 §41; 1981 c.617 §14; 1989 c.532 §8; 1991 c.5 §41; 1993 c.547 §9; 1993 c.570 §13; 1999 c.470 §2; 2001 c.300 §28; 2003 c.398 §10a; 2005 c.116 §22; 2005 c.393 §3; 2007 c.319 §10; 2007 c.337 §6]

**696.310 Intracompany supervision and control; effect of revocation on licensed associates.** (1) If two or more principal real estate brokers are in business together, the brokers may have equal supervisory control over and shall be equally responsible for the conduct of other principal real estate brokers or real estate brokers associated with the principal real estate brokers, or other employees employed by the principal real estate brokers. The principal real estate brokers shall execute a written agreement between them and establish office policies specifying

the supervisory control and responsibility for each principal real estate broker who is a party to the agreement.

(2) An act constituting a violation of any of the provisions of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.995 or of any rule adopted thereunder by any licensee is not cause for the suspension or revocation of a license of any real estate licensee associated with or engaged by such licensee, unless it appears to the satisfaction of the Real Estate Commissioner that such associated or engaged real estate licensee had guilty knowledge of the act. A course of dealing shown to have been persistently and consistently followed by any real estate licensee shall constitute prima facie evidence of such knowledge upon the part of any real estate licensee associated with or engaged by that licensee. [Amended by 1977 c.649 §42; 1981 c.617 §15; 2001 c.300 §31]

**696.315 Prohibition against licensee permitting nonlicensed individual to engage in activity with or on behalf of licensee.** A real estate licensee may not knowingly permit a nonlicensed individual to engage in professional real estate activity, with or on behalf of the licensee. [1977 c.649 §7; 1981 c.617 §15a; 2007 c.319 §11]

**696.320 Effect of suspension or revocation of principal broker license on associated licensees.** The suspension or revocation of a principal real estate broker's license renders inactive every license of the real estate brokers engaged by the principal real estate broker pending a transfer of the license. The Real Estate Agency shall transfer a license rendered inactive under this section if the real estate licensee requests a transfer within 30 days after the effective date of the suspension or revocation of the principal real estate broker's license and pays a transfer fee. [Amended by 1969 c.674 §18; 1975 c.746 §24; 1977 c.649 §43; 1981 c.617 §15b; 1989 c.724 §10; 2001 c.300 §32; 2005 c.116 §9]

**696.325** [1975 c.746 §36; 1977 c.649 §44; repealed by 1981 c.617 §41]

**696.330** [Amended by 1967 c.206 §1; repealed by 1971 c.734 §21]

**696.340** [Repealed by 1971 c.734 §21]

**696.345** [1977 c.649 §4; repealed by 1991 c.5 §46]

**696.350** [Repealed by 1971 c.734 §21]

**696.355** [1977 c.649 §6; 1987 c.468 §4; 1991 c.5 §42; repealed by 2001 c.300 §84]

**696.359** [1981 c.617 §39; repealed by 2001 c.300 §84]

**696.360** [Amended by 1967 c.206 §2; repealed by 1971 c.734 §21]

**696.361 Regulation of real estate property manager.** A real estate property manager is regulated and bound as a real estate broker and as a principal real estate broker. [1987 c.611 §18; 1989 c.724 §17; 1991 c.5 §43; 2001 c.300 §33]

**696.363 Relationship between licensees as independent contractors or employer and employee.** Nothing contained in ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and 696.995 prevents the establishment of an independent contractor relationship between real estate licensees or requires the establishment of an employer-employee relationship. [1981 c.617 §40]

**696.365 City or county business license tax.** (1) A city or county may not impose a business license tax on or collect a business license tax from an individual licensed as a real estate broker who engages in professional real estate activity only as an agent of a principal real estate broker.

(2) As used in this section, "business license tax" has the meaning given that term in ORS 701.015. [1987 c.581 §4; 2001 c.300 §78; 2007 c.319 §12]

**Note:** 696.365 was added to and made a part of ORS 696.010 to 696.495 but was not added to any smaller series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

#### (Administration)

**696.375 Real Estate Agency; Real Estate Commissioner; confirmation, salary and security of commissioner.** (1) The Real Estate Agency is established.

(2) The Real Estate Agency shall be under the supervision and control of an administrator who shall be known as the Real Estate Commissioner. The Governor shall appoint the Real Estate Commissioner who shall have been, before the date of appointment, for five years a real estate broker or principal real estate broker actively engaged in business as such in this state. The Governor also may appoint an individual who has been actively connected with the administration of the agency for at least one year as acting or temporary commissioner. The commissioner shall hold office at the pleasure of the Governor and shall be responsible for the performance of the duties imposed upon the agency. The Real Estate Commissioner shall receive such salary as may be provided by law.

(3) The appointment of the commissioner is subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(4) Before entering upon the duties of office the commissioner shall give to the state a fidelity bond with one or more corporate sureties authorized to do business in this state, or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, in either case in the sum fixed by the Governor. The premium for the bond or the fee for the letter of credit shall be paid by the agency. [1963 c.580 §§40,41; 1974 c.25 §1; 1975

c.746 §25; 1987 c.414 §38; 1991 c.331 §104; 1995 c.674 §1; 1997 c.631 §523; 2001 c.300 §34; 2007 c.319 §13]

**696.380** [Repealed by 1963 c.580 §103]

**696.385 Power of agency; rulemaking procedures.** The Real Estate Agency shall have the power to:

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

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

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

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

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

(b) Consider any recommendations that the board, by majority vote, makes concerning the proposed rule.

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

(5) Subsection (4) of this section does not apply to a temporary rule that is adopted, amended or suspended pursuant to ORS 183.335 (5). However, the agency shall submit to the board a copy of any proposed temporary rule as soon as practicable and, to the extent possible under the circumstances, consider any recommendations that the board may make by majority vote regarding the temporary rule. [1963 c.580 §48; 1965 c.617 §5; 1981 c.617 §16; 1985 c.565 §116]

**696.390** [Repealed by 1963 c.580 §103]

**696.392 Power of commissioner to administer oaths, take depositions and issue subpoenas.** (1) The Real Estate Commissioner may administer oaths, take depositions and issue subpoenas to compel the attendance of witnesses and the production of books, papers, records, memoranda or other information necessary to the carrying out of the laws the commissioner is charged with administering.

(2) If any person fails to comply with a subpoena issued under this section or refuses to testify on any matters on which the person may be lawfully interrogated, the proce-

dures provided in ORS 183.440 shall be followed to compel obedience. [1995 c.217 §13]

**696.395 Power of commissioner.** The Real Estate Commissioner shall have the power to:

(1) For the purpose of administration, organize and reorganize, as necessary, the Real Estate Agency in the manner that the commissioner deems necessary to properly conduct the work of the agency.

(2) Appoint all subordinate officers and employees of the agency, or such other agents or representatives, and prescribe their duties and fix their compensation, subject to the applicable provisions of the State Personnel Relations Law. Subject to any other applicable law regulating travel expenses, the officers, employees, agents or representatives of the agency shall be allowed such reasonable and necessary travel and other expenses as may be incurred in the performance of their duties.

(3) Require a fidelity bond or an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 of any officer or employee of the agency who has charge of, handles or has access to any state money or property, and who is not otherwise required by law to give a bond or letter of credit. The amounts of the bonds or letters of credit shall be fixed by the commissioner, except as otherwise provided by law, and the sureties or letter of credit issuers shall be approved by the commissioner. The agency shall pay the premium on the bonds and the fees for the letters of credit. [1963 c.580 §42; 1977 c.649 §45; 1987 c.414 §38a; 1991 c.331 §105; 1997 c.631 §524]

**696.396 Investigation of complaints and progressive discipline; rules.** (1) The Real Estate Commissioner shall provide by rule for the progressive discipline of real estate licensees and an objective method for investigation of complaints alleging grounds for discipline under ORS 696.301.

(2) The rules adopted by the commissioner under this section:

(a) Must establish procedures for the discovery of material facts relevant to an investigation and for the reporting of those facts without conclusions of violation or grounds for discipline to the commissioner or the commissioner's designee by the individual assigned to investigate the complaint.

(b) Must provide for progressive discipline designed and implemented to correct inappropriate behavior.

(c) May not authorize imposition of a suspension or a revocation of a real estate license unless the material facts establish a

violation of a ground for discipline under ORS 696.301 that:

(A) Results in significant damage or injury;

(B) Exhibits incompetence in the performance of professional real estate activity;

(C) Exhibits dishonesty or fraudulent conduct; or

(D) Repeats conduct or an act that is substantially similar to conduct or an act for which the real estate licensee was disciplined previously. [2005 c.393 §5]

**696.398 Delegation by commissioner to employees; requirements.** (1) The Real Estate Commissioner may delegate to any of the officers and employees of the Real Estate Agency to exercise or discharge in the commissioner's name any power, duty or function vested in or imposed upon the commissioner under this chapter. The power to administer oaths and affirmations, subpoena witnesses, take evidence and require the production of books, papers, correspondence, memoranda, agreements or other documents or records, and to sign notices and orders may be exercised by an officer or employee of the agency only when specified in writing by the commissioner and filed in the records of the Real Estate Agency.

(2) An official act of an individual acting in the commissioner's name and by authority of the commissioner shall be deemed to be an official act of the commissioner. [1975 c.746 §26; 2007 c.319 §14]

**696.400** [Repealed by 1963 c.580 §103]

**696.405 Real Estate Board; appointment; term; qualifications; compensation; expenses.** (1) The Real Estate Board is established within the Real Estate Agency. The board shall consist of nine members appointed by the Governor to hold office for a period of four years, but to serve at the pleasure of the Governor. Seven members of the board appointed by the Governor must have been, before the date of their appointment, real estate licensees actively engaged for five years in professional real estate activity in this state. Two members to be appointed by the Governor shall not be real estate licensees or have been connected with, or employed by, the Real Estate Agency or a predecessor thereof. In case of a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(2) A member of the board is entitled to compensation or expenses as provided in ORS 292.495. [1963 c.580 §43; 1969 c.314 §97; 1975 c.746 §27; 1977 c.649 §46; 1981 c.617 §17; 1987 c.414 §39; 1993 c.744 §250]

**696.410** [Repealed by 1963 c.580 §103]

**696.415 Officers; meetings; quorum.** (1) The Real Estate Board shall annually select one of its members as chairperson, who shall preside at the meetings of the board. In the absence of the chairperson some other member of the board may serve as chairperson. The board shall meet at such times and places as determined by the board and may also meet upon call of the chairperson.

(2) A majority of the board shall constitute a quorum for the transaction of business. A vacancy on the board shall not impair the right of the remaining members to perform all the duties and exercise all the functions and authority of the board. [1963 c.580 §45]

**696.420** [Repealed by 1963 c.580 §103]

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

(2) The board shall conduct all examinations for applicants for real estate licenses, prepare or cause to be prepared the questions to be asked in the examinations and grade or cause to be graded the papers of each applicant after the completion of the examination and file a written report with the agency as to applicants taking the examination who have passed and who have failed to pass the examination. The board shall provide the manner and methods for conducting examinations.

(3) The expenses of the board shall be paid from moneys available to the agency for payment of administrative expenses relating to the real estate activities of the agency. [1963 c.580 §46; 1969 c.674 §19; 1977 c.649 §47; 1981 c.617 §18; 1987 c.414 §39a; 1993 c.744 §179]

**696.430 Records of commissioner as evidence; records open to inspection; rules.** Copies of all records and papers in the office of the Real Estate Commissioner duly certified and authenticated by the seal of the commissioner shall be received in evidence in all courts equally and with like effect as the original. Except for records of open investigations, all records kept in the office of the commissioner under authority of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.995 shall be open to public inspection under such reasonable rules and

regulations as shall be prescribed by the commissioner. [Amended by 2001 c.300 §35]

**696.435** [1963 c.546 §5; 1965 c.617 §6; repealed by 2001 c.300 §84]

**696.440** [Repealed by 1963 c.580 §103]

**696.445 Advancement of education and research; Oregon Real Estate News Journal; content as to disciplinary actions.** (1) Pursuant to ORS 696.385 (2), the Real Estate Agency shall provide for the advancement of education and research in connection with the educational requirements for the securing of licenses for real estate licensees under ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.995.

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

(3) The commissioner shall publish in the Oregon Real Estate News Journal the names and addresses of all applicants for real estate or escrow licenses whose licenses have been refused, of real estate licensees who have been reprimanded, of real estate and escrow licensees whose licenses have been suspended or revoked and of real estate and escrow licensees who have been assessed civil penalties. Each such publication shall include a brief description of the situation involved and the grounds for the commissioner's action. [1974 c.26 §5; 1975 c.746 §28; 1977 c.649 §48; 1981 c.617 §19; 1983 c.258 §8; 2001 c.300 §64]

**696.450** [Repealed by 1963 c.580 §103]

**696.460** [Repealed by 1963 c.580 §103]

**696.470** [Repealed by 1963 c.580 §103]

**696.480** [Amended by 1977 c.649 §49; repealed by 1981 c.617 §41]

**696.490 Real Estate Account; disposition of receipts.** (1) There is established in the General Fund of the State Treasury the Real Estate Account. All moneys, fees and charges collected or received by the Real Estate Agency shall be deposited in the account.

(2) The moneys in the Real Estate Account are continuously appropriated for the payment of the expenses of the agency in carrying out the provisions of ORS 92.305 to 92.495, 94.803, 94.807 to 94.945, 100.005 to 100.910, 100.990, 696.010 to 696.785, 696.800 to 696.870 and 696.995. [Amended by 1955 c.457 §2; 1961 c.309 §4; 1963 c.440 §16; 1963 c.580 §50; 1965 c.617 §7; 1971 c.293 §2; 1974 c.26 §1; 1977 c.41 §2; 1981 c.85 §11; 1983 c.17 §30; 1983 c.530 §53; 1985 c.565 §117]

**696.495 Revolving fund; amount; use; procedure for repayment.** (1) Upon written request by the Real Estate Agency, the Oregon Department of Administrative Services shall draw a warrant on the Real Estate Account, established by ORS 696.490, for use as a revolving fund. Warrants drawn to establish or increase the revolving fund, rather than to reimburse the revolving fund, may not exceed the aggregate sum of \$1,500. The State Treasurer shall hold the revolving fund in a special account against which the Real Estate Agency may draw checks.

(2) The Real Estate Agency may use the revolving fund for the purpose of paying witness fees and other administrative expenses.

(3) All claims for reimbursement of monies paid from the revolving fund are subject to approval by the Director of the Oregon Department of Administrative Services and by the Real Estate Commissioner. When such claims have been approved, a warrant covering them shall be drawn in favor of the Real Estate Agency and used to reimburse the revolving fund. Such warrants shall be charged against the Real Estate Account established by ORS 696.490. [1974 c.26 §3; 1977 c.41 §3]

**696.500** [Amended by 1959 c.27 §1; repealed by 1961 c.309 §5]

### ESCROWS AND ESCROW AGENTS (Generally)

**696.505 Definitions for ORS 696.505 to 696.590.** As used in ORS 696.505 to 696.590, unless the context requires otherwise:

(1) "Collection escrow" means an escrow in which the escrow agent:

(a) Receives:

(A) Installment payments;

(B) Instruments evidencing or securing an obligation; or

(C) Instruments discharging the security interest; and

(b) Disburses the payments or delivers the instruments upon specified conditions pursuant to the written instructions of an obligor and obligee.

(2) "Commissioner" means the Real Estate Commissioner.

(3) "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 otherwise.

(4) "Escrow" means any transaction wherein any written instrument, money, evidence of title to real or personal property or other thing of value is delivered, for the purpose of paying an obligation or effecting the sale, transfer, encumbrance or lease of

real or personal property, to a person not otherwise having any right, title or interest therein, to be held by that person as a neutral third party until the happening of a specified event or the performance of a prescribed condition, when it is then to be delivered by the neutral third party to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, bailor or any agent or employee of any of them pursuant to the written instructions of the principals to the transaction.

(5) "Escrow agent" means any person who engages in the business of receiving escrows for deposit or delivery and who receives or is promised any fee, commission, salary or other valuable consideration, whether contingent or otherwise, for or in anticipation of performance.

(6) "Principal" means:

(a) The buyer and seller, lessor and lessee and the exchanging parties in an escrow transaction involving the sale, lease, lease-option or exchange of real property or personal property; and

(b) The borrower in an escrow transaction involving the refinancing of real or personal property, including but not limited to the refinancing of an obligation secured by a land sale contract requiring a deed to be delivered as part of such refinancing.

(7) "Real estate closing escrow" means an escrow where the escrow fee is paid in whole or in part by the principals to a real estate transaction and wherein the unpaid purchase price is delivered to an escrow agent for disbursement pursuant to the written instructions of the principals to the transaction simultaneously on the transfer of specified title to the real property.

(8) "Subservicer" means an escrow agent, a financial institution or a trust company, as those terms are defined in ORS 706.008, or a collection agency registered under ORS 697.015 when providing, pursuant to written instructions, a portion of the escrow services for an escrow to an escrow agent, or a person in the business of receiving escrows under the laws of another state, that would otherwise provide the escrow services directly to the principals. [1963 c.440 §1; 1977 c.351 §4; 1981 c.617 §20; 1991 c.874 §1; 1993 c.18 §150; 2003 c.427 §4; 2005 c.116 §23; 2007 c.337 §2]

### **696.508 Legislative finding; short title.**

(1) The Legislative Assembly finds the activity of escrow agents in handling large sums of money and important rights of clients to be of public concern. In order to permit uniform and equitable regulation of all escrow agents and to improve the standards of escrow conduct, the provisions of ORS 696.505 to 696.590 shall be construed to grant

the Real Estate Commissioner authority to protect the public.

(2) ORS 696.505 to 696.590 may be cited as the Oregon Escrow Law. [1977 c.351 §2]

**696.510** [Repealed by 1961 c.309 §6]

### (Licensing)

**696.511 License required; application and information required; issuance.** (1) A person may not directly or indirectly engage in or carry on, or purport to engage in or carry on, the business of an escrow agent, or act in the capacity of an escrow agent, unless the person holds an active license as an escrow agent under the provisions of ORS 696.505 to 696.590.

(2)(a) Every escrow agent before engaging in the escrow business shall file in the office of the Real Estate Commissioner an application for a license, in writing, verified by the applicant and in the form prescribed by the commissioner. The application must include the location of the agent's main office and all branch offices in this state, the name or style of doing business, the names, resident and business addresses of all persons interested in the business as principals, partners, elected officers, trustees and directors, specifying as to each the person's capacity and title, the general plan and character of business and the length of time the agent has been engaged in business. Notification of changes in the information contained in the application or in the ownership of the business must be immediately filed with the commissioner.

(b) If the applicant is an individual, the applicant must be 18 years of age or older.

(3) For the initial license of an escrow agent, the commissioner may require information and evidence the commissioner considers necessary to demonstrate the applicant's qualifications to transact escrow business including, but not limited to, information regarding the applicant's financial resources, the applicant's escrow business in another state or the experience or training of employees in escrow business, or a testimonial of an escrow agent licensed in this state. Subject to subsection (4) of this section, an applicant:

(a) Who is an individual must demonstrate a minimum of three years of experience in the administration of escrows within Oregon or a state with comparable escrow laws; or

(b) Who is not an individual must demonstrate a minimum collective experience among its personnel of three years in the administration of escrows within Oregon or a state with comparable escrow laws.

(4) The commissioner may waive the three-year experience requirement in subsection (3) of this section for an applicant who demonstrates other qualifications sufficient to ensure the protection of the public.

(5) For the initial license or license renewal of an escrow agent, the commissioner shall require fingerprints and a state or nationwide criminal records check under ORS 181.534 of an applicant for an initial license and may require fingerprints and a state or nationwide criminal records check under ORS 181.534 of an applicant for license renewal. The commissioner may require additional information for an initial license or license renewal under this subsection that the commissioner considers necessary for protecting the public. For purposes of requiring fingerprints and a criminal records check, "applicant" means an individual who has more than five percent ownership interest in the escrow agency and the corporate officers in direct control of escrow operations.

(6) For license renewal, an escrow agent shall provide:

(a) A certification of training, by which the applicant certifies that the applicant provides escrow agency staff within Oregon with an average of six hours or more of training per year per permanent, full-time employee in subjects that bear directly on the administration of escrows; and

(b) A statement identifying by name, address and telephone number one or more individuals who can respond to the inquiries of or referrals by the commissioner or the commissioner's authorized representative regarding the applicant's escrow business.

(7) The commissioner, if satisfied that the applicant should not be refused a license under ORS 696.535, shall issue or renew an escrow agent license for an applicant that complies with the requirements of ORS 696.505 to 696.590.

(8) To qualify for issuance or renewal of an escrow agent license, an applicant shall pay any outstanding civil penalties or other moneys due and owing to the Real Estate Agency except civil penalties or other moneys due that are the subject of judicial or administrative review on the date of the application for license or license renewal. [1963 c.440 §§4,17; 1975 c.746 §29; 1977 c.351 §5; 1981 c.617 §21; 1991 c.874 §2; 2001 c.300 §36; 2003 c.427 §5; 2005 c.730 §§38,86; 2007 c.319 §15]

**696.515** [1963 c.440 §3; repealed by 1981 c.617 §41]

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

(1) Any person doing business under the laws of this state or the United States relating to banks, mutual savings banks, trust companies, savings and loan associations, consumer finance companies, or insurance companies except to the extent that the person provides real estate closing escrow services other than those permitted under subsection (3) of this section.

(2) An attorney at law rendering services in the performance of duties as attorney at law.

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

(4) Any person doing any of the acts specified in ORS 696.505 (4) under order of any court.

(5) Any real estate broker or principal real estate broker licensed under ORS 696.022 who performs the closing for the principals in a real estate transaction handled by the broker, if the principals are not charged a separate fee for escrow services.

(6) Any collection agency registered under ORS 697.015 that is engaged in any collection or billing activity without holding documents relating to the debt. [1963 c.440 §2; 1967 c.359 §701; 1971 c.398 §1; 1977 c.351 §6; 1981 c.617 §22; 1991 c.874 §3; 2001 c.300 §37; 2003 c.427 §6; 2007 c.337 §7]

**696.523 Application of ORS 696.505 to 696.590 to title insurance activities.** The provisions of ORS 696.505 to 696.590 apply to those escrow activities of a title insurance company, or an insurance producer of a title insurance company which prepares abstracts or makes searches of title which are used as a basis for the insurance of titles by a title insurance company. [1971 c.398 §3; 1977 c.351 §7; 2003 c.364 §55]

**696.525 Bond for escrow agents.** (1) At the time of filing an application for an escrow agent license, the applicant shall deposit with the Real Estate Commissioner a corporate surety bond running to the State of Oregon, executed by a surety company satisfactory to the commissioner, in the amount required by this section.

(2) If the total annual receipts of client trust funds, as reported in the required annual report of the escrow agent, are:

(a) Less than \$30 million, the bond or deposit must be \$50,000.

(b) \$30 million or more, but less than \$60 million, the bond or deposit must be \$125,000.

(c) \$60 million or more, but less than \$100 million, the bond or deposit must be \$250,000.

(d) \$100 million or more, but less than \$300 million, the bond or deposit must be \$375,000.

(e) \$300 million or more, the bond or deposit must be \$500,000.

(3) The provisions of the corporate surety bond must be in the form substantially as follows:

---

Know All Persons by These Presents, That we, \_\_\_\_\_ as principal, and \_\_\_\_\_, a corporation, qualified and authorized to do business in the State of Oregon as surety, are held and firmly bound unto the State of Oregon for the use and benefit of any interested person, in the sum of \$\_\_\_\_\_, lawful money of the United States of America, to be paid to the State of Oregon for the use and benefit aforesaid, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

The condition of the above obligation is such that: Whereas the above-named principal has made application for registration as an escrow agent within the meaning of ORS 696.505 to 696.590 and is required by the provisions of ORS 696.505 to 696.590 to furnish a bond in the sum above named, conditioned as herein set forth:

Now, therefore, if the principal, the principal's agents and employees, shall strictly, honestly and faithfully comply with the provisions of ORS 696.505 to 696.590, and shall pay all actual damages suffered by any person by reason of the violation of any of the provisions of ORS 696.505 to 696.590, now or hereafter enacted, or by reason of any fraud, dishonesty, misrepresentation or concealment of material facts growing out of any transaction governed by the provisions of ORS 696.505 to 696.590, then this obligation shall be void; otherwise to remain in full force and effect.

This bond shall become effective on the \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, and shall remain in force until the surety is released from liability by the commissioner, or until this bond is canceled by the surety. The surety may cancel this bond and be relieved of further liability hereunder by giving 30 days' written notice to the principal and to the commissioner.

This bond shall be one continuing obligation, and the liability of the surety for the aggregate of any and all claims which may

arise hereunder shall in no event exceed the amount of the penalty hereof.

In witness whereof, the seal and signature of the principal hereto is affixed, and the corporate seal and the name of the surety hereto is affixed and attested by its duly authorized officers at \_\_\_\_\_, Oregon, this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

\_\_\_\_\_  
Principal (Seal)

\_\_\_\_\_  
Surety (Seal)

Surety

By \_\_\_\_\_

[1963 c.440 §5; 1971 c.398 §4; 1977 c.351 §8; 1981 c.617 §23; 1983 c.258 §9; 1991 c.874 §4; 2001 c.300 §72; 2003 c.427 §7]

**696.527 Deposits in lieu of bond; payment of claims; waiver.** (1) Any escrow agent may satisfy the requirements of ORS 696.525 by depositing with the State Treasurer, in an amount equal to the surety bond required, a deposit consisting only of the following:

- (a) Cash;
- (b) Ample secured obligations of the United States, a state or a political subdivision thereof;
- (c) Certificates of deposit or other investments described in ORS 733.650 (4), to the extent that such investments are insured by the Federal Deposit Insurance Corporation; or
- (d) Any combination of paragraphs (a), (b) or (c) of this subsection.

(2) The State Treasurer shall accept and hold the deposit for the faithful performance of escrow activity by the escrow agent. No claimant or judgment creditor or the escrow agent shall have the right to attach or levy upon any of the assets or securities held on deposit.

(3) The Real Estate Commissioner, by order, may authorize the State Treasurer to use such deposit, as follows:

(a) To satisfy any final judgment entered against the escrow agent for actual damages suffered by any person by reason of the violation of any of the provisions of ORS 696.505 to 696.590, now or hereafter enacted, or by reason of any fraud, dishonesty, misrepresentation or concealment of material fact growing out of any escrow transaction;

(b) For use in the liquidation of the escrow agent under the provisions of ORS 696.555; or

(c) To release any or all of such deposit to the escrow agent when, in the opinion of

the commissioner, such deposit is no longer necessary to protect the public.

(4) The commissioner may waive the requirement of the surety bond or deposit for any escrow agent that:

(a) Demonstrates to the commissioner's satisfaction that the capital and surplus or net worth, of such escrow agent as of the end of the previous business accounting year of the agent is equal to, or greater than, the average month-end balance of custodial funds held by such agent during the previous business accounting year;

(b) Provides a certified, annually renewable letter of credit executed by a financial institution and satisfactory to the commissioner in the amount of the surety bond required by ORS 696.525; or

(c) Provides a certified, personal guarantee executed by one or more owners of the escrow agency and satisfactory to the commissioner in the amount of the surety bond required by ORS 696.525.

(5) All other claims against the bond or deposit of an escrow agent must be paid by the commissioner only upon the receipt of a final court judgment against the escrow agent and only in the amount of actual damages as ordered by the court. [1977 c.351 §3; 1981 c.617 §24; 1991 c.874 §5; 1999 c.107 §11; 2003 c.427 §8]

**696.530 Expiration and renewal of license; fees; rules.** (1) The license of an escrow agent expires on June 30 next after the date of issuance or on such date as may be specified by rule of the Real Estate Commissioner. A license may be renewed by filing a renewal application in writing, verified by the applicant and in the form prescribed by the commissioner, and paying the annual license fee for the next succeeding fiscal year.

(2) The filing fees are:

(a) For filing an original or a renewal application, \$300 for the main office and \$150 for each branch office.

(b) For filing an application for a duplicate copy of a license, upon satisfactory showing of loss of the license, the sum of \$20.

(c) For a name change or a change of address of an escrow agent, \$10 for the main office plus \$10 for each affected branch office.

(3) The commissioner, by rule, may provide an opportunity for the late renewal of an expired escrow agent license by an applicant who fails to renew the license by the date specified under subsection (1) of this section. [1963 c.440 §6; 1977 c.351 §9; 1977 c.873 §19; 1981 c.617 §25; 1991 c.874 §14; 1997 c.451 §2; 2003 c.427 §9; 2005 c.116 §11; 2007 c.225 §1; 2007 c.768 §54a]

**696.532 Limited license.** (1) The Real Estate Commissioner may issue or renew a limited escrow agent license if:

(a) An applicant elects not to apply for an escrow agent license; or

(b) An applicant does not qualify for an escrow agent license.

(2) The commissioner may limit a license issued under this section:

(a) By term;

(b) To activities subject to supervision by a specific escrow agent;

(c) By conditions to be observed in the exercise of the privileges granted; or

(d) In other ways determined by the commissioner as necessary or appropriate to protect the public.

(3) A limited licensee shall comply with the requirements of ORS 696.505 to 696.590 and shall:

(a) Restrict the escrow business of the licensee to those escrows specified in the application; or

(b) Limit its escrow business to collection escrows. [2003 c.427 §2]

**Note:** 696.532 and 696.534 were added to and made a part of 696.505 to 696.590 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**696.534 Records of escrow agents; rules.** (1) An escrow agent shall keep and maintain at all times in the licensed office of the agent, complete and suitable records of escrow transactions made by the agent and of the business of the agent including, but not limited to, books, papers and data clearly reflecting the financial condition of the business of the agent. The records must be open for inspection by the Real Estate Commissioner or the commissioner's authorized representatives at all times. An escrow agent shall keep escrow records for a period of six years from the date the escrow closes or is terminated. An escrow agent may maintain the records in any format, as determined by the commissioner by rule, that allows for inspection and copying by the commissioner or the commissioner's representatives. When an escrow agent acts as a subservicer for another escrow agent, the subservicer shall keep its records in the manner required for an escrow agent under this section.

(2) Notwithstanding the requirement of subsection (1) of this section that an escrow agent maintain escrow records in the agent's licensed office, an escrow agent shall keep escrow records in the office in which the transaction occurred for one year from the date the escrow closes or is terminated.

(3) Notwithstanding the requirements of subsections (1) and (2) of this section to maintain escrow records in specified locations, an escrow agent may maintain escrow records at another location satisfactory to the commissioner if the escrow agent provides the commissioner with prior written notice of the proposed location. [2003 c.427 §3]

**Note:** See note under 696.532.

**696.535 Grounds for refusing, suspending or revoking license.** (1) The Real Estate Commissioner may refuse to issue or may suspend or revoke any license by entering an order to that effect with the commissioner's findings in respect thereto if, upon examination into the affairs of the applicant or licensee in the performance of routine duties, upon field examination or upon hearing, the commissioner determines that the applicant or licensee:

(a) Has, under generally accepted accounting principles, a deficit net worth;

(b) Has demonstrated unworthiness to transact the business of an escrow agent;

(c) Does not conduct business in accordance with law or has violated any provisions of ORS 696.505 to 696.590;

(d) Has committed fraud in connection with any transaction governed by ORS 696.505 to 696.590;

(e) Has made any misrepresentations or false statement of an essential or material fact to, or concealed any essential or material fact from, any person in the course of the escrow business;

(f) Has knowingly made or caused to be made to the commissioner any false representation of a material fact, or has suppressed or withheld from the commissioner any information the applicant or licensee possesses that, if submitted, would have disqualified the applicant or licensee from original or renewed licensing under ORS 696.505 to 696.590;

(g) Has failed to account to the principals or persons entitled thereto in a real estate transaction for the moneys, documents or other things of value received in the transaction;

(h) Has not delivered, after a reasonable time, to persons entitled thereto, moneys, documents or other things of value held or agreed to be delivered by the licensee, as and when paid for and due to be delivered;

(i) Has caused uncompensated material loss to principals by engaging in a pattern of failures to act with neutrality between principals in multiple escrows;

(j) Has refused to permit an examination by the commissioner of the escrow agent's books and affairs, or has refused or failed,

within a reasonable time, to furnish any information, records or files or make any report that may be required by the commissioner under the provisions of ORS 696.505 to 696.590; or

(k) Has been convicted of a felony or any misdemeanor that is substantially related to the escrow agent's competency or trustworthiness to engage in the business of an escrow agent.

(2) It is sufficient cause for refusal or revocation of a license in case of a partnership or corporation or any unincorporated association, if any member of a partnership or any officer or director of the corporation or association has been guilty of any act or omission which would be cause for refusing or revoking the registration of an individual agent. [1963 c.440 §7; 1971 c.734 §159; 1977 c.351 §10; 1981 c.617 §26; 1985 c.399 §3; 1991 c.874 §6; 1995 c.760 §5; 1997 c.812 §1; 2001 c.300 §38; 2003 c.427 §10]

**696.540** [1963 c.440 §8; repealed by 1977 c.351 §11 and 1977 c.842 §17 (696.541 enacted in lieu of 696.540)]

**696.541 Authority of commissioner over escrow agents; rules.** (1) The Real Estate Commissioner shall have general supervision and control over all escrow agents doing business in this state. Subject to ORS chapter 183, the commissioner may adopt such rules as reasonably necessary for the administration and enforcement of ORS 696.505 to 696.590.

(2) All escrow agents are subject to audits or examinations by the commissioner, or the commissioner's authorized representatives at any time the commissioner considers advisable. The commissioner may collect from each escrow agent the reasonable expenses of such audit or examination including but not limited to any administrative expense for travel.

(3) The provisions of this section and of any other section relating to the examination of the affairs of an escrow agent shall extend to an escrow agent whose license has expired or been revoked or suspended, if in the judgment of the commissioner, such agent has violated any provisions of ORS 696.505 to 696.590. [1977 c.351 §12 (enacted in lieu of 696.540); 1981 c.617 §27; 1985 c.399 §4; 1991 c.874 §7; 2001 c.300 §39; 2003 c.427 §11]

**(Enforcement)**

**696.545 Investigation; injunction; jurisdiction.** (1) The Real Estate Commissioner may investigate either upon complaint or otherwise whenever it appears that an escrow agent has violated ORS 696.505 to 696.590 or that any person is engaging in the escrow business without being licensed under the provisions of ORS 696.505 to 696.590.

(2) If upon investigation it appears that such agent is so conducting business 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 and any other person acting in violation of ORS 696.505 to 696.590, to enjoin such person and such other person from continuing any act in violation of ORS 696.505 to 696.590.

(3) The circuit court of any county of this state is vested with jurisdiction to restrain illegal practices or transactions and may grant injunctions to prevent and restrain such illegal practices or transactions, in addition to the penalties and other remedies provided in ORS 696.505 to 696.590. The court shall have power, during the pendency of the proceedings before it to issue such preliminary restraining orders as may appear to be just and proper; and the findings of the commissioner shall be deemed to be prima facie evidence and sufficient ground, in the discretion of the court, for the issue ex parte of a preliminary restraining order.

(4) In any such court proceedings the commissioner may apply for and on due showing be entitled to have issued the court's subpoena requiring forthwith the appearance of any defendant and employees of the defendant and the production of documents, books and records as may appear necessary for the hearing of such petition, to testify and give evidence concerning the acts or conduct or things complained of in such application for injunction. [1963 c.440 §9; 1979 c.284 §194; 1981 c.617 §28; 1991 c.874 §8]

**696.550** [1963 c.440 §10(1), (2); repealed by 1971 c.734 §21]

**696.555 Commissioner to take possession of property and assets of escrow agent when assets or capital impaired; appointment of receiver.** (1) When the Real Estate Commissioner ascertains by examination or otherwise that the assets or capital of any agent are impaired, as described in ORS 696.535 (1)(a), the commissioner may immediately take possession of all the property, business and assets of the agent which are located in this state and retain possession of them pending the further proceedings specified in this section.

(2) Pursuant to subsection (1) of this section, the commissioner may apply to the circuit court of the county in which the agent's principal place of business is located for an order directing the agent to show cause why a receiver should not be appointed to take charge of and manage or liquidate if necessary the assets of the agent utilized in professional escrow activity in such a manner as to prevent or minimize such financial loss to others.

(3) If the court is satisfied from reading the commissioner's petition that the facts

therein alleged, if established, warrant such receivership action, the court shall issue such order to show cause. The court may at such time, without notice, issue a temporary injunction restraining such agent, or any of the agent's officers, directors, stockholders, members, agents or employees, from the transaction of any professional escrow activity, or the waste or disposition of any such assets until further order of the court. Should such an injunction be issued, a hearing on whether the injunction shall be continued shall be held within five business days of its service.

(4) On return of the order to show cause, and after a full hearing, the court shall either deny the application or grant the same, together with such other relief as the court may deem necessary.

(5) Notwithstanding any other provision of law, no bond shall be required of the commissioner or the commissioner's authorized representatives as a prerequisite for the issuance of any injunction or other order pursuant to this section.

(6) At any time during such proceedings, the agent may satisfy the court that the activity which prompted such proceedings has been rectified or that financial loss to others no longer will likely occur, in which case the court may dismiss such proceedings.

(7) The expenses of the receiver, compensation of the legal counsel of the receiver, as well as all expenditures of the receiver required in such proceedings shall be fixed by the court and shall be paid out of funds in the hands of the receiver or entered as a judgment against such licensee. [1963 c.440 §10(3), (4); 1975 c.746 §30; 1981 c.617 §29; 1991 c.874 §9; 2001 c.300 §40]

**696.560** [1963 c.440 §11; 1975 c.746 §31; 1981 c.617 §30; 1985 c.589 §5; renumbered 696.578]

**696.565** [1963 c.440 §12; renumbered 696.579]

**696.570 Hearings procedure under ORS 696.505 to 696.590; subpoena.** (1) All hearings before the Real Estate Commissioner or the commissioner's authorized representative conducted under the authority of ORS 696.505 to 696.590 shall be conducted in accordance with the provisions of ORS chapter 183.

(2) The commissioner, or anyone authorized by the commissioner, shall have the power to subpoena witnesses and administer oaths in connection with hearings in the enforcement of ORS 696.505 to 696.590. [1963 c.440 §13; 1981 c.617 §30a]

**696.575 Civil or criminal actions not limited by ORS 696.505 to 696.590.** Nothing in ORS 696.505 to 696.590 shall limit any statutory or common law right of any person to bring any action in any court for any act involved in the transaction of the escrow

business or the right of the state to punish any person for any violation of any law. [1963 c.440 §14]

**696.577 Commissioner's order against unlicensed agent.** Whenever the Real Estate Commissioner finds that any person is offering to engage in or engaging in the business of an escrow agent without a license as an escrow agent as required under ORS 696.505 to 696.590, the commissioner may order the person to cease and desist from offering to engage in or engaging in the business of an escrow agent. Any proceeding under this section is subject to the requirements of ORS chapter 183. [1981 c.617 §36]

### (Escrow Property)

**696.578 Deposit and designation of money held in escrow; treatment of earnings on escrow account; notice.** (1) All money deposited in escrow to be delivered upon the close of the escrow or upon any other contingency shall be deposited and maintained in a bank authorized to do business within this state and kept separate, distinct and apart from funds belonging to the escrow agent. Such funds, when deposited, are to be designated as trust funds, escrow accounts, or under some other appropriate name indicating that the funds are not the funds of the escrow agent.

(2) Trust funds received by an escrow agent may be placed by the agent in a federally insured interest-bearing bank account, designated a clients' trust account, but only with the prior written approval of all parties having an interest in the trust funds. The earnings of such interest-bearing account may inure to the benefit of the escrow agent if expressly approved in writing before deposit of the trust funds by all parties having an interest in the trust funds.

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

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

(5) Clients' trust funds may be invested in secured obligations of the United States, if:

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

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

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

(d) The escrow agent does not have any interest in the investment or earnings from the investment.

(6) If the funds to be invested represent earnest money in a transaction, both principals in the transaction must give prior written approval for the investment and are both considered depositing principals. [Formerly 696.560; 1991 c.874 §10; 2003 c.224 §2; 2003 c.427 §12]

**696.579 Funds exempt from execution or attachment; designation of funds.** (1) Escrow or trust funds are not subject to execution or attachment on any claim against the escrow agent.

(2) No person shall knowingly keep or cause to be kept any funds or money in any bank under the heading of "trust funds" or "escrow accounts" or any other name designating such funds or money as belonging to the clients of any escrow agency, except actual escrow or trust funds deposited with such agency. [Formerly 696.565]

**696.580** [1963 c.440 §15; repealed by 1973 c.794 §34]

**696.581 Written escrow instructions or agreement required; statement; instructions containing blank prohibited; one-sided escrow; exception.** (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) 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.

(3) 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.

---

(4) 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 shall 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.

(5) An escrow agent may accept client 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 funds may be disbursed with only the separate written instructions of the principal who deposited the funds into escrow.

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

(7) Except as authorized in ORS 105.475, 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. [1985 c.399 §2; 1991 c.874 §11; 2007 c.289 §1]

**696.582 Escrow agent to hold certain compensation; conditions; notice of demand; disbursement of money; copy of notice to principal.** (1) An escrow agent shall hold, as provided in subsection (3) of this section, the amount of money or other

property agreed to as compensation in a written real estate broker's or principal real estate broker's compensation agreement, if the escrow agent has at the office at which the escrow is being closed, before the date of closing:

(a) A written notice of compensation, signed by the real estate broker or principal real estate broker who is authorized under rules adopted by the Real Estate Commissioner to enter into the compensation agreement and sign the written notice of compensation, in substantially the form set out in subsection (2) of this section; and

(b) The written closing instructions of the principals which do not honor the amount and terms of payment in the notice of compensation.

(2) The notice of compensation required by subsection (1) of this section may not be incorporated into any document of agreement between the principals or between the broker and a principal, and shall be in substantially the following form:

---

Notice of  
 Real Estate Compensation  
 To: \_\_\_\_\_  
 (Name of Escrow Company)  
 Re: \_\_\_\_\_  
 (Names of Principals to  
 Transaction)  
 Your Escrow Number: \_\_\_\_\_

The undersigned real estate broker or principal real estate broker states that such broker has a valid written compensation agreement with \_\_\_\_\_ (Name of Principal), one of the principals to the transaction referred to above, and that such principal is obligated to pay the broker the compensation on account of that transaction. The compensation amount is \$\_\_\_\_\_ and is to be paid on the following terms: \_\_\_\_\_. Request is hereby made that the compensation be paid in that amount and on those terms, out of escrow and as a part of your closing of that transaction.

---

(Name and Signature of Real Estate Broker  
 or Principal Real Estate Broker)

---

(3) An escrow agent in a transaction described in subsection (1) of this section may only disburse the moneys or other property to:

(a) The broker and principal, based upon a written agreement between those parties and directed to the escrow agent as disbursement instructions;

(b) Any persons, as directed by order of a court of competent jurisdiction; or

(c) The court, upon filing by the escrow agent of an interpleader action for the moneys or property.

(4) If the filing of a notice of compensation with an escrow agent under subsection (1) of this section is made more than 10 days prior to the scheduled closing date, the real estate broker or principal real estate broker filing the notice shall deliver a copy of the notice to the principal identified in the notice. If the notice is filed within 10 days of the scheduled closing date, a copy of the notice shall be provided by the escrow agent to the principal identified in the notice at the time of closing. [1985 c.449 §2; 2001 c.300 §41; 2007 c.337 §1]

**(Civil Penalties)**

**696.585 Civil penalties.** (1) Any person who violates any provision of ORS 696.505 to 696.545, or any lawful rule or final order of the Real Estate Commissioner or any final judgment made by any court upon application of the commissioner, may be required to forfeit and pay to the General Fund of the State Treasury, a civil penalty in an amount determined by the commissioner of not more than \$3,000 for each offense. Each violation shall be deemed a separate offense.

(2) In addition to the civil penalty set forth in subsection (1) of this section, any person who violates any provision of ORS 696.505 to 696.590, any lawful rule or final order of the commissioner or any final judgment made by a court upon application to the commissioner, may be required 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 which violates any such provision, rule, order or judgment.

(3) Civil penalties under this section are imposed as provided in ORS 183.745.

(4) The provisions of this section are in addition to and not in lieu of any other enforcement provision contained in ORS 696.505 to 696.590. [1975 c.746 §32; 1981 c.617 §31; 1983 c.696 §26a; 1989 c.706 §24; 1991 c.734 §85; 1991 c.874 §12; 2003 c.427 §13; 2003 c.576 §544]

**696.590 Penalty amounts.** (1) Any person who violates ORS 696.511 (1) 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 \$500 nor more than \$1,000 for the first offense of unlicensed professional escrow activity; and

(b) Not less than \$1,000 nor more than \$3,000 for the second and subsequent offenses of unlicensed professional escrow activity.

(2) In addition to the civil penalty set forth in subsection (1) of this section, any person who violates ORS 696.511 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 which violates ORS 696.511.

(3) Civil penalties under this section must be imposed in the manner provided in ORS 183.745.

(4) The civil penalty provisions of subsections (1) and (2) of this section are in addition to and not in lieu of the criminal penalties for unlicensed professional escrow activity in ORS 696.990 (1) and (2). [1991 c.874 §17; 2003 c.427 §14]

## REAL ESTATE MARKETING

**696.600 Definitions for ORS 696.392, 696.600 to 696.785 and 696.995.** As used in ORS 696.392, 696.600 to 696.785 and 696.995:

(1) “Employee” includes an individual who has an independent contractual relationship with a real estate marketing organization and performs real estate marketing activity.

(2) “Real estate marketing activity” means procuring or offering to procure prospects to purchase, sell, lease or rent real estate by telemarketing, mail or otherwise.

(3) “Real estate marketing organization” means any person, including a partnership, association, corporation, limited liability company or other organization, other than a real estate marketing employee, that engages in real estate marketing activity and is licensed under ORS 696.606.

(4)(a) “Real estate marketing employee” means an individual who receives compensation from a real estate marketing organization for performing real estate marketing activity.

(b) “Real estate marketing employee” does not mean an individual licensed under ORS 696.022. [1995 c.217 §2; 2001 c.300 §65; 2007 c.319 §16]

**696.603 License required for persons engaged in real estate marketing activities.** (1) A person may not engage in real estate marketing activity unless that person is:

(a) Licensed under ORS 696.606;

(b) Licensed under ORS 696.022; or

(c) Registered by a person licensed under ORS 696.606.

(2) No person may employ an individual as a real estate marketing employee unless the person registers the individual with the Real Estate Commissioner as the employee of the real estate marketing organization before the individual commences real estate marketing activity.

(3) This section applies to persons who:

(a) Initiate real estate marketing activity in this state; or

(b) Initiate real estate marketing activity in another state that includes contacting persons in this state.

(4) One act or transaction of real estate marketing activity is sufficient to constitute engaging in real estate marketing activity within the meaning of this section. [1995 c.217 §3; 2001 c.300 §66]

**696.606 Real estate marketing organization license; requirements; deposit required; claims against deposit; rules.** (1) In accordance with any applicable provisions of ORS chapter 183, the Real Estate Commissioner shall establish by rule a system to license real estate marketing organizations. 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 a license.

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

(c) The requirements and procedures to register the names of and other information regarding the real estate marketing employees employed by applicants or licensees.

(d) Those actions or circumstances that constitute failure to achieve or maintain licensing 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 license or registration or may impose a penalty.

(e) Those activities of principals of the organization that 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. For purposes of this section, “principal” means a person who has permitted or directed another to act for the person’s benefit with respect to a real estate marketing organization.

(2) Licenses for real estate marketing organizations shall be granted only if the principal persons of the organization are trustworthy and competent to conduct real estate marketing activity 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 the fingerprints and a criminal records check of the applicant. For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the commissioner may require the fingerprints of the applicant.

(3) At the time of filing an application for a license as a real estate marketing organization, the applicant shall deposit with the commissioner a corporate surety bond running to the State of Oregon, executed by a surety company satisfactory to the commissioner, in the amount of \$35,000 in a form and under terms and conditions established by the commissioner.

(4) Any real estate marketing organization may satisfy the requirements of subsection (3) of this section by depositing with the commissioner, in an amount equal to the surety bond required, a deposit consisting of any of the following:

(a) Cash;

(b) Ample secured obligations of the United States, a state or a political subdivision thereof;

(c) Certificates of deposit or other investments described in ORS 733.650 (4) to the extent that such investments are insured by the Federal Deposit Insurance Corporation; or

(d) Any combination of paragraphs (a), (b) and (c) of this subsection.

(5) Any real estate marketing organization making a deposit with the commissioner shall assign in trust, to the Real Estate Commissioner, and the commissioner's successors in office, all cash certificates or securities deposited in accordance with this section.

(6) The deposit shall be accepted and held by the commissioner for the faithful performance of real estate marketing activity by the real estate marketing organization. No claimant or judgment creditor of the real estate marketing organization shall have the right to attach or levy upon any of the assets or securities held on deposit.

(7) The commissioner, by order, may use such deposit under subsection (3) or (4) of this section, as follows:

(a) To satisfy any final judgment entered against the real estate marketing organiza-

tion for actual damages suffered by any person by reason of the violation of ORS 696.603, 696.606 or 696.612 or a rule adopted pursuant thereto, or by reason of any fraud, dishonesty, misrepresentation or concealment of material fact growing out of any real estate marketing activity.

(b) To satisfy an order of the commissioner if the commissioner determines that a violation of ORS 696.603, 696.606 or 696.612 or a rule adopted pursuant thereto has occurred and directs the payment of a claim from the deposit provided the following conditions have been met:

(A) The amount of actual damages claimed, excluding attorney fees, by the consumer is \$1,000 or less.

(B) The consumer has first contacted the real estate marketing organization involved and, in writing, has made demand for payment of actual damages.

(C) The real estate marketing organization has had 30 calendar days from the date of the consumer's written demand to deal with the demand.

(D) The claim is only for actual damages sustained by the consumer.

(8) All claims against the deposit under subsection (3) or (4) of this section of a real estate marketing organization, other than those described in subsection (7) of this section, must be paid by the commissioner only upon the receipt of a final court judgment against the real estate marketing organization and only in the amount of actual damages as ordered by the court. [1995 c.217 §4; 1999 c.107 §12; 2005 c.730 §39]

**696.609 Exemptions from ORS 696.392, 696.600 to 696.785 and 696.995.** ORS 696.392, 696.600 to 696.785 and 696.995 do not apply to an individual licensed under ORS 696.022 or to those persons exempt under ORS 696.030 from licensing under ORS 696.020. [1995 c.217 §5; 2001 c.300 §42; 2007 c.319 §17]

**696.610** [Repealed by 1981 c.617 §41]

**696.612 Grounds for disciplinary action.** The Real Estate Commissioner may suspend or revoke the license of any real estate marketing organization or reprimand any licensee, or may deny the issuance or renewal of a license to an applicant who has done any of the following:

(1) Knowingly or negligently pursued a course of material misrepresentation in matters related to real estate marketing activity, whether or not damage or injury resulted, or knowingly or negligently made any material misrepresentation or material false promise in a matter related to real estate marketing activity 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) Failed, within a reasonable time, to account for or to remit any moneys or to surrender to the rightful owner any documents or other valuable property coming into the possession of the real estate marketing organization that belongs to others.

(3) Disregarded or violated any provision of this section, ORS 696.603 or 696.606 or any rule adopted pursuant thereto.

(4) Guaranteed, authorized or permitted any person to guarantee future profits that may result from the resale of real property.

(5) Failed or refused upon demand to produce or to supply true copies of any document, book or record in the possession or control of the real estate marketing organization for inspection by the commissioner or the commissioner's authorized representative.

(6) Failed to register and maintain the current and accurate names of, and information regarding, each real estate marketing employee of the real estate marketing organization.

(7) Procured or attempted to procure a real estate marketing license by fraud, misrepresentation or deceit or by making any material misstatement of fact in an application for a real estate marketing license.

(8) Failed to exercise supervision over the activities of real estate marketing employees. For the purposes of this subsection, "supervision" means that management by an organization that is reasonably designed and implemented to result in compliance by the employees of the organization with this section, ORS 696.603 or 696.606 or any rule adopted pursuant thereto.

(9) 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.

(10) Failed to meet or maintain the deposit requirements of ORS 696.606 (3) or (4).

(11) Failed to pay in full any final judgment on claims adjudged by the commissioner or by a court of competent jurisdiction.

(12) Violated ORS 646.608. [1995 c.217 §6]

**696.615 Publication of sanctions imposed for violations.** The Real Estate Commissioner shall publish information in local newspapers pertaining to sanctions imposed for violations of ORS 696.603, 696.606 or 696.612 in a manner allowed under ORS 696.430 and 696.445 (3). [1995 c.217 §7]

**696.618 Denial of right to court action for unlicensed real estate marketing organization.** No person carrying on, conducting or transacting any real estate marketing activity may maintain any suit or action in any of the courts of this state to enforce any claim arising out of real estate marketing activity without alleging and proving that the person was licensed under ORS 696.606 at the time of performing such activities. [1995 c.217 §8]

**696.620** [Amended by 1975 c.491 §7; repealed by 1981 c.617 §41]

**696.621 Real Estate Marketing Account.** The Real Estate Marketing Account is established as an account in the General Fund of the State Treasury. All moneys received by the Real Estate Agency pursuant to ORS 696.392, 696.600 to 696.785 and 696.995 shall be paid into the State Treasury and credited to the account. All moneys in the account are appropriated continuously to the Real Estate Agency to carry out the provisions of ORS 696.392, 696.600 to 696.785 and 696.995. [1995 c.217 §9; 2001 c.300 §67]

**696.624 Consent by nonresident real estate marketing organization to service of summons or process required.** (1) Every nonresident real estate marketing organization, at the time of licensing, shall file with the Real Estate Commissioner an irrevocable consent that if, in any suit or action commenced against the nonresident organization in this state arising out of a violation of any provision of ORS 696.603, 696.606 or 696.612, personal service of summons or process upon the nonresident organization cannot be made in this state after the exercise of due diligence, a valid service may be made upon the nonresident organization by service on the commissioner.

(2) The consent shall be in writing, executed and verified by an officer of the real estate marketing organization and shall set forth:

(a) The name of the real estate marketing organization.

(b) The address to which documents served upon the commissioner are to be forwarded.

(c) If the real estate marketing organization is a corporation or unincorporated association, that the consent signed by such officer was authorized by resolution duly adopted by the board of directors.

(3) The address for forwarding documents served under this section may be changed by filing a new consent in the form prescribed in subsection (2) of this section.

(4) Service on the commissioner of any summons or process shall be made by delivery to the commissioner or a clerk on duty

in any office of the commissioner, and shall include duplicate copies of such summons or process, together with duplicate copies of any papers required by law to be delivered in connection with such service.

(5) When the commissioner is served with any such summons or process, the commissioner shall immediately cause one of the copies thereof, with any accompanying papers, to be forwarded by registered or certified mail, return receipt requested, to the real estate marketing organization at the address set forth in the consent.

(6) The commissioner shall keep a record of all summonses and processes, notices and demands served upon the commissioner under this section, and shall record therein the time of such service and the action with reference thereto. [1995 c.217 §11]

**696.627 On-site inspection allowed; deposit.** (1) The Real Estate Commissioner may make an on-site inspection of any real estate marketing organization.

(2) When an on-site inspection under subsection (1) of this section is to be made, the commissioner may require the organization to advance a deposit not to exceed \$200 per day, in addition to any other fee, for making the on-site inspection. Any unexpended portion of the deposit shall be refunded to the organization. [1995 c.217 §12]

**696.630** [Repealed by 1981 c.617 §41]

**696.640** [Repealed by 1981 c.617 §41]

## ACTIONS AND REMEDIES

**696.710 Necessity of alleging license in action to collect compensation.** (1) An individual engaged in the business of, or acting in the capacity of, a real estate broker or principal real estate broker within this state may not bring or maintain any action in the courts for the collection of compensation without alleging and proving that the individual was a licensed broker when the alleged cause of action arose.

(2) An action in the courts for collection of compensation for an individual engaged in the business of, or acting in the capacity of, a real estate broker associated with a principal real estate broker may not be brought or maintained except by the principal real estate broker with whom the real estate broker was associated when the alleged cause of action arose. [Amended by 1981 c.617 §32; 1991 c.5 §44; 2001 c.300 §43; 2007 c.319 §18]

**696.720 Remedies are concurrent.** The remedies provided for in ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.995 are in addition to and not exclusive of any other remedies provided by law.

**696.730 Jurisdiction of courts for violations; revoking license upon conviction; copy of order to commissioner.** 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, 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. The clerk of the court shall forward a copy of any order revoking a real estate license to the Real Estate Commissioner. [Amended by 1987 c.468 §5; 2001 c.300 §79; 2007 c.319 §19]

**696.740** [1971 c.734 §161; repealed by 1981 c.617 §41]

**696.745** [1975 c.746 §33; 1977 c.649 §56; repealed by 1981 c.617 §41]

**696.775 Authority of commissioner when license lapsed, expired, revoked, suspended or surrendered.** The lapsing, expiration, revocation or suspension of a real estate license, whether by operation of law, order of the Real Estate Commissioner or decision of a court of law, or the inactive status of the license or voluntary surrender of the license by the real estate licensee, does not deprive the commissioner of jurisdiction to:

(1) Proceed with an investigation of the licensee;

(2) Conduct disciplinary proceedings relating to the licensee;

(3) Take action against a licensee, including assessment of a civil penalty against the licensee for a violation of ORS 696.020 (2); or

(4) Revise or render null and void an order suspending or revoking a license. [1977 c.649 §3; 1981 c.617 §32a; 2005 c.116 §12; 2007 c.319 §20]

**696.785 Commissioner duties when illegal commingling of funds found; receivership procedure.** (1) When the Real Estate Commissioner ascertains by audit, investigation or otherwise that a real estate licensee has commingled trust funds with personal funds or has embezzled trust funds and that such activity is likely to cause significant financial loss to others as a result of professional real estate activity engaged in by such licensee, the commissioner may communicate such fact to the Attorney General, whereupon it shall become the duty of the Attorney General to forthwith assist the commissioner in instituting such proceedings as may be necessary to carry out the purposes of this section.

(2) Pursuant to subsection (1) of this section, the commissioner may apply to the cir-

cuit court of the county in which the licensee's principal place of business is located for an order directing the licensee to show cause why a receiver should not be appointed to take charge of and manage or liquidate if necessary the assets of the licensee utilized in professional real estate activity in such a manner as to prevent or minimize such financial loss to others.

(3) If the court is satisfied from reading the commissioner's petition that the facts therein alleged, if established, warrant such receivership action, the court shall issue such order to show cause. The court may at such time, without notice, issue a temporary injunction restraining such licensee, or any of the licensee's officers, directors, stockholders, members, agents or employees, from the transaction of any professional real estate activity, or the waste or disposition of any such assets until further order of the court. Should such an injunction be issued, a hearing on whether the injunction shall be continued shall be held within five business days of its service.

(4) On return of the order to show cause, and after a full hearing, the court shall either deny the application or grant the same, together with such other relief as the court may deem necessary.

(5) Notwithstanding any other provision of law, no bond shall be required of the commissioner or the commissioner's authorized representatives as a prerequisite for the issuance of any injunction or other order pursuant to this section.

(6) At any time during such proceedings, the licensee may satisfy the court that the activity which prompted such proceedings has been rectified or that financial loss to others no longer will likely occur, in which case the court may dismiss such proceedings.

(7) The expenses of the receiver, compensation of the legal counsel of the receiver, as well as all expenditures of the receiver required in such proceedings shall be fixed by the court and shall be paid out of funds in the hands of the receiver or entered as a judgment against such licensee. [1977 c.649 §8; 1981 c.617 §33]

### MISCELLANEOUS

**696.790 Authority of commissioner to require fingerprints.** For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the Real Estate Commissioner may require the fingerprints of an individual who:

(1) Is applying for a license, or renewal of a license, under this chapter; or

(2)(a)(A) Is employed or applying for employment by the Real Estate Agency; or

(B) Provides services or seeks to provide services to the Real Estate Agency as a contractor or volunteer; and

(b) Is, or will be, working or providing services in a position:

(A) In which the individual is providing information technology services and has control over, or access to, information technology systems that would allow the individual to harm the information technology systems or the information contained in the systems;

(B) In which the individual has access to information that state or federal laws, rules or regulations prohibit disclosing or define as confidential;

(C) That has payroll functions or in which the individual has responsibility for receiving, receipting or depositing money or negotiable instruments, for billing, collections or other financial transactions or for purchasing or selling property or has access to property held in trust or to private property in the temporary custody of the state;

(D) That has mailroom duties as a primary duty or job function;

(E) That has personnel or human resources functions as a primary responsibility;

(F) In which the individual has access to Social Security numbers, dates of birth or criminal background information of employees or members of the public; or

(G) In which the individual has access to tax or financial information about individuals or business entities. [1989 c.724 §14; 2005 c.730 §40; 2007 c.619 §4]

**696.793** [1989 c.724 §15; repealed by 2005 c.730 §77]

### **696.795 Authority of commissioner to conduct investigations and proceedings.**

(1) For the purpose of an investigation or proceeding under this chapter, the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of books, papers, correspondence, memoranda, agreements or other documents or records which the commissioner deems relevant or material to the inquiry. Each witness who appears before the commissioner under a subpoena shall receive the fees and mileage provided for witnesses in civil cases.

(2) If a person fails to comply with a subpoena so issued or a party or witness refuses to testify on any matters, the judge of the circuit court or of any county, on the application of the commissioner, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. [1989 c.724 §16]

**AGENTS' OBLIGATIONS**

**696.800 Definitions.** 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 real estate broker or principal real estate broker who has entered into:

(A) A listing agreement with a seller;

(B) A service contract with a buyer to represent the buyer; or

(C) A disclosed limited agency agreement; or

(b) An individual licensed under ORS 696.022 who has entered into a written contract with a real estate broker or principal real estate broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the 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 buyer's service agreement with a real estate broker or principal real estate broker, whether or not a sale or transfer of property results.

(3) "Confidential information" means information communicated to a real estate licensee or the licensee's 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 licensee or the licensee's agent to disclose about the buyer to the seller or the seller instructs the licensee or the licensee's agent to disclose about the seller to the buyer; and

(b) The licensee or the licensee's 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 a seller of real property and a real estate broker or principal real estate broker by which the broker has been authorized to act as an agent of the seller for compensation to offer the real property for sale or to find and obtain 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) "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) "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 and offers to purchase.

(12) "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) "Seller" means a potential transferor in a real property transaction and includes an owner:

(a) Who enters into a listing agreement with a real estate broker or principal real estate broker, whether or not a transfer results; or

(b) Who receives an offer to purchase real property, of which the seller is the owner, from an agent acting on behalf of a buyer. [1993 c.570 §2; 2001 c.300 §44; 2003 c.655 §84; 2005 c.116 §§13,14; 2007 c.319 §21]

**Note:** Section 351, chapter 79, Oregon Laws 1995, provides:

**Sec. 351.** The provisions of ORS 696.800 to 696.855 [series became 696.800 to 696.870] apply to ORS 696.010 to 696.495. [1995 c.79 §351]

**696.805 Real estate licensee as seller's agent; obligations.** (1) A real estate licensee who acts under a listing agreement with the seller acts as the seller's agent only.

(2) 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) 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) 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) Except as provided in subsection (3)(g) of this section, an affirmative duty may not be waived.

(6) 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. [1993 c.570 §3; 2001 c.300 §45; 2003 c.398 §11; 2005 c.393 §6]

**Note:** See note under 696.800.

**696.810 Real estate licensee as buyer's agent; obligations.** (1) A real estate licensee 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) 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) 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) 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) Except as provided in subsection (3)(g) of this section, an affirmative duty may not be waived.

(6) 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. [1993 c.570 §4; 2001 c.300 §46; 2003 c.398 §12; 2005 c.393 §7]

**Note:** See note under 696.800.

**696.815 Representation of both buyer and seller; obligations.** (1) A real estate licensee may represent both the seller and the buyer in a real estate transaction under a disclosed limited agency agreement, with full disclosure of the relationship under the agreement.

(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. [1993 c.570 §5; 2001 c.300 §47]

**Note:** See note under 696.800.

**696.820 Agency disclosure pamphlet; rules.** (1) The Real Estate Commissioner shall prescribe by rule the format and content of an initial agency disclosure pamphlet. The rules must provide that the initial agency disclosure pamphlet is informational only and may not be construed to be evidence of intent to create an agency relationship.

(2) An agent shall provide a copy of the initial agency disclosure pamphlet at the first contact with each party to a real property transaction, including but not limited to contacts in person, by telephone, over the Internet or the World Wide Web, or by electronic mail, electronic bulletin board or a similar electronic method. [1993 c.570 §6; 2001 c.300 §48; 2005 c.116 §15]

**Note:** See note under 696.800.

**696.822 Liability of principal for act, error or omission of agent or subagent.** (1) A principal is not liable for an act, error or omission by an agent or subagent of the principal arising out of an agency relationship established under ORS 696.805, 696.810, 696.815 or 696.820:

(a) Unless the principal participates in or authorizes the act, error or omission; and

(b) Only to the extent that:

(A) The principal benefited from the act, error or omission; and

(B) A court or arbitrator determines that it is highly probable that the claimant would be unable to enforce a judgment against the agent or subagent of the principal.

(2) A real estate licensee is not liable for an act, error or omission by a principal or an agent of a principal that is not related to the licensee unless the licensee participates in or authorizes the act, error or omission. This subsection does not limit the liability of a principal real estate broker for an act, error or omission by a real estate licensee under the principal broker's supervision.

(3) Unless acknowledged by a principal in writing, facts known by an agent or subagent of the principal may not be imputed to the

principal if the principal does not have actual knowledge.

(4) Unless acknowledged by a real estate licensee in writing, facts known by a principal or an agent of the principal may not be imputed to the licensee if the licensee does not have actual knowledge. This subsection does not limit the knowledge imputed to a principal real estate broker of facts known by a real estate licensee under the supervision of the principal real estate broker. [2001 c.300 §52]

**Note:** See note under 696.800.

**696.825** [1993 c.570 §7; repealed by 2001 c.300 §84]

**696.830** [1993 c.570 §8; repealed by 2001 c.300 §84]

**696.835 Buyer and seller responsibilities.** None of the affirmative obligations of a real estate licensee or agent in a real estate transaction under ORS 696.805, 696.810 or 696.815 relieves a seller or a buyer from the responsibility to protect the seller's or buyer's own interests respectively. [1993 c.570 §9]

**Note:** See note under 696.800.

**696.840 Compensation and agency relationships.** 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. 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. [1993 c.570 §10; 2007 c.337 §8]

**Note:** See note under 696.800.

**696.845 Acknowledgment of existing agency relationships form; rules.** When signing an offer to purchase, each buyer shall acknowledge the existing agency relationships, if any. When a seller accepts or rejects an offer to purchase in writing, each seller shall acknowledge the existing agency relationships, if any. An agent to the real property transaction shall obtain the signatures of the buyers and the sellers to the acknowledgment, which shall be incorporated into or attached as an addendum to the offer to purchase or to the acceptance. The Real Estate Agency shall prescribe by rule the form and content of the acknowledgment of existing agency relationships. [1993 c.570 §11; 2001 c.300 §49; 2003 c.398 §13; 2005 c.116 §16]

**Note:** See note under 696.800.

**696.855 Common law application to statutory obligations and remedies.** (1) ORS 696.301, 696.392, 696.600 to 696.785 and 696.995 do not directly, indirectly or by implication limit or alter any preexisting common law or statutory right or remedy including actions for fraud, negligence or equitable relief.

(2) The terms "loyalty," "obedience," "disclosure," "confidentiality," "reasonable care and diligence" and "accounting in dealings" shall be interpreted under the common law of agency.

(3) Common law and statutory remedies are not affected by ORS 696.301, 696.392, 696.600 to 696.785 and 696.995. [1993 c.570 §12; 2001 c.300 §49a]

**Note:** See note under 696.800.

**696.870 Duties of real estate licensee under ORS 105.462 to 105.490, 696.301 and 696.870.** (1)(a) A real estate licensee representing a seller of real property has a duty to inform each represented seller of the seller's duties created by this section and ORS 105.462 to 105.490 and 696.301.

(b) A real estate licensee representing a buyer of real property has a duty to inform each represented buyer of the buyer's rights under this section and ORS 105.462 to 105.490 and 696.301.

(2) If a real estate licensee performs the duties set forth in subsection (1) of this section, the real estate licensee shall have no further duties under this section.

(3) Notwithstanding subsections (1) and (2) of this section, for the purposes of ORS 696.301, a real estate licensee:

(a) Representing a seller by written agreement or course of conduct is bound by the standards of conduct and duties created under ORS 696.805;

(b) Representing a buyer by written agreement or course of conduct is bound by the standards of conduct and duties created under ORS 696.810; and

(c) Acting as a disclosed limited agent by a written agreement or course of conduct is bound by the standards of conduct and duties created under ORS 696.815. [1993 c.547 §6; 2001 c.300 §50]

**Note:** See note under 696.800.

**696.880 Licensee not required to disclose proximity of registered sex offender.** Nothing in ORS 181.586, 181.587, 181.588, 181.589, 696.301, 696.805, 696.810, 696.815 or 696.855 creates an obligation on the part of a person licensed under this chapter to disclose to a potential purchaser of residential property that a convicted sex offender registered under ORS 181.595,

181.596 or 181.597 resides in the area. [1999 c.732 §2; 2001 c.300 §73]

**Note:** 696.880 was added to and made a part of ORS chapter 696 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

### PENALTIES

**696.990 Penalties.** (1) Violation of any provision of ORS 696.010 to 696.130, 696.200, 696.205, 696.241 to 696.375, 696.392, 696.395 to 696.430, 696.490, 696.600 to 696.785 and 696.995 is a Class A misdemeanor.

(2) Any officer, director or shareholder or agent of a corporation, or member or agent of a partnership or association, who personally participates in or is an accessory to any violation of ORS 696.010 to 696.130, 696.200, 696.205, 696.241 to 696.375, 696.392, 696.395 to 696.430, 696.490, 696.600 to 696.785 and 696.995 by the partnership, association or corporation, is subject to the penalties prescribed in subsection (1) of this section.

(3) A violation of any one of the provisions of ORS 696.505 to 696.590 is a Class A misdemeanor.

(4) Any person that violates ORS 696.020 (2) 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 \$100 nor more than \$500 for the first offense of unlicensed professional real estate activity; and

(b) Not less than \$500 nor more than \$1,000 for the second and subsequent offenses of unlicensed professional real estate activity.

(5) In addition to the civil penalty set forth in subsection (4) of this section, any person that violates ORS 696.020 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 ORS 696.020.

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

(7) The civil penalty provisions of subsections (4) and (5) of this section are in addition to and not in lieu of the criminal penalties for unlicensed professional real es-

tate activity in subsections (1) and (2) of this section.

(8) For the purposes of subsection (4) of this section, any violation of ORS 696.020 (2) that results from a failure of a real estate licensee to renew a license within the time allowed by law constitutes a single offense of unlicensed professional real estate activity for each 30-day period after expiration of the license during which the individual engages in professional real estate activity. A civil penalty imposed for a violation of ORS 696.020 (2) that results from a failure of a real estate licensee to renew a license within the time allowed by law is not subject to the minimum dollar amounts specified in subsection (4) of this section.

(9) Subsection (5) of this section does not apply to a violation of ORS 696.020 (2) that results from a failure of a real estate licensee to renew a license within the time allowed by law. [Subsection (3) enacted as 1963 c.440 §18; 1977 c.649 §50; 1981 c.617 §34; 1989 c.724 §11; 1991 c.734 §86; 2001 c.300 §68; 2005 c.116 §17; 2005 c.393 §8; 2007 c.319 §23]

**696.995 Civil penalties for violation of ORS 696.603, 696.606 or 696.612.** (1) Any person who violates ORS 696.603, 696.606 or 696.612 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 \$100 nor more than \$500 for the first violation of ORS 696.603, 696.606 or 696.612 or a rule adopted pursuant thereto; or

(b) Not less than \$500 nor more than \$1,000 for the second and subsequent violations of ORS 696.603, 696.606 or 696.612 or a rule adopted pursuant thereto.

(2) In addition to the civil penalty set forth in subsection (1) of this section, any person who violates ORS 696.603 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 from the transaction in violation of ORS 696.603.

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

(4) The civil penalty provisions of this section are in addition to and not in lieu of other administrative sanctions. [1995 c.217 §10]

Real Estate Agency  
Oregon Administrative Rules “OAR”)

OAR chapter 863

Rules effective: January 1, 2009

*This page intentionally left blank.*

**DIVISION 1**

**PROCEDURAL RULES**

- 863-001-0000 Notice of Proposed Rule
- 863-001-0005 Rules of Procedure
- 863-001-0006 Hearing Notices and Postponements
- 863-001-0007 Refunds and Charges
- 863-001-0010 Public Records

**DIVISION 5**

**CRIMINAL RECORDS CHECK AND CRIMINAL BACKGROUND FITNESS DETERMINATION RULES**

- 863-005-0000 Purpose
- 863-005-0005 Definitions
- 863-005-0010 Criminal Records Check Process
- 863-005-0020 Criminal Background Fitness Determination
- 863-005-0030 Crimes Relevant to a Criminal Background Fitness Determination
- 863-005-0040 Incomplete Criminal Background Application
- 863-005-0050 Notice to Subject Individual of Incomplete Criminal Background Application
- 863-005-0060 Notice to Subject Individual of Criminal Background Fitness Determination
- 863-005-0070 Appeals
- 863-005-0080 Recordkeeping and Confidentiality
- 863-005-0090 Fees

**DIVISION 10**

**REAL ESTATE MARKETING ORGANIZATION RULES**

- 863-010-0600 Definitions
- 863-010-0610 Application for Licensing
- 863-010-0620 Term of License
- 863-010-0630 Issuance of License
- 863-010-0640 Fees
- 863-010-0650 Real Estate Marketing Employee Registration
- 863-010-0660 Onsite Inspection of Nonresident Real Estate Marketing Organizations

**DIVISION 14**

**REAL ESTATE BROKER LICENSING**

- 863-014-0000 Application and Purpose
- 863-014-0003 Definitions
- 863-014-0005 Education
- 863-014-0010 License Application Form and Content
- 863-014-0015 Background Check Application and Fingerprint Card
- 863-014-0020 Examinations
- 863-014-0030 License Issue, Term, Form, and Inspection
- 863-014-0035 Real Estate Broker Licensing Requirements
- 863-014-0038 Sole Practitioner Licensing Requirements
- 863-014-0040 Principal Real Estate Broker Licensing Requirements
- 863-014-0042 Waiver of Experience Requirements
- 863-014-0050 License Renewal
- 863-014-0055 Continuing Education
- 863-014-0060 Limited Licenses
- 863-014-0061 Affiliated and Subsidiary Organizations
- 863-014-0062 Mailing Address, Address Change, Service of Notice
- 863-014-0063 Real Estate License Transfers, Principal Brokers' Responsibilities, Authority to Use Registered Business Name
- 863-014-0065 Inactive License, Change License Status to Active, Change License Category, License Reactivation
- 863-014-0070 License Surrender

- 863-014-0075 Reissuing Suspended License
- 863-014-0076 Signature Requirements
- 863-014-0080 Nonresident License Recognition
- 863-014-0085 Authorization to Control Broker's Business
- 863-014-0095 Business Name Registration
- 863-014-0100 Branch Office Registration
- 863-014-0160 Deceased or Incapacitated Broker

**DIVISION 15**

**REAL ESTATE BROKER REGULATION**

- 863-015-0000 Applicability and Purpose
- 863-015-0003 Definitions
- 863-015-0100 Branch Office Registration

**General Rules**

- 863-015-0125 Advertising
- 863-015-0130 Listing Agreements
- 863-015-0135 Offers to Purchase
- 863-015-0140 Principal Real Estate Broker Supervision Responsibilities
- 863-015-0145 Real Estate Transactions Involving a Licensee as a Principal to the Transaction
- 863-015-0150 Closing Real Estate Transactions
- 863-015-0155 Attorney's Advice
- 863-015-0175 Reporting Litigation Involving Licensees
- 863-015-0186 Clients' Trust Accounts — Disbursal of Disputed Funds
- 863-015-0188 Compensation Agreements
- 863-015-0190 Competitive Market Analyses; Letter Opinions; Lending Collateral Analysis; Default Collateral Analysis
- 863-015-0200 Agency Relationships
- 863-015-0205 Disclosed Limited Agency
- 863-015-0210 Disclosed Limited Agency Agreement
- 863-015-0215 Initial Agency Disclosure Pamphlet

**Records Rules**

- 863-015-0250 Professional Real Estate Activity Records
- 863-015-0255 Clients' Trust Account Records Requirements and Document Transmittal Requirements
- 863-015-0260 Records Retention
- 863-015-0265 Interest-Bearing Accounts
- 863-015-0275 Clients' Trust Account Reconciliation and Records

**DIVISION 24**

**REAL ESTATE PROPERTY MANAGER LICENSING**

- 863-024-0000 Application and Purpose
- 863-024-0003 Definitions
- 863-024-0005 Education
- 863-024-0010 License Application Form and Content
- 863-024-0015 Background Check Application and Fingerprint Card
- 863-024-0020 Examinations
- 863-024-0030 License Issue, Term, Form, and Inspection
- 863-024-0045 Property Manager Licensing Requirements
- 863-024-0050 License Renewal
- 863-024-0055 Continuing Education
- 863-024-0060 Limited Licenses
- 863-024-0061 Affiliated and Subsidiary Organizations
- 863-024-0062 Mailing Address, Address Change, Service of Notice
- 863-024-0063 Property Manager License Transfers, Principal Brokers' Responsibilities, Authority to Use Registered Business Name
- 863-024-0065 Inactive License, Change License Status to Active, License Reactivation

- 863-024-0070 License Surrender
- 863-024-0075 Reissuing Suspended License
- 863-024-0076 Signature Requirements
- 863-024-0085 Authorization to Control Property Manager's Business
- 863-024-0095 Business Name Registration
- 863-024-0100 Branch Office Registration

**DIVISION 25**

**PROPERTY MANAGEMENT**

- 863-025-0005 Application and Purpose
- 863-025-0010 Definitions
- 863-025-0015 Written Policies and Delegation of Authority
- 863-025-0020 Property Management Agreements
- 863-025-0025 Clients' Trust Account and Security Deposits Account Requirements
- 863-025-0030 Tenant Security Deposits
- 863-025-0035 Records; Required Records; Maintenance; Production
- 863-025-0040 Record of Receipts and Disbursements
- 863-025-0045 Tenant Agreements
- 863-025-0050 Tenant Ledger
- 863-025-0055 Owner Ledger
- 863-025-0060 Cash Receipts
- 863-025-0065 Deposits and Funds Received
- 863-025-0070 Termination, Transfer of Property Management
- 863-025-0080 Compliance Reviews and Mail-in Audits

**DIVISION 27**

**INVESTIGATIONS AND DISCIPLINE**

- 863-027-0000 Applicability and Purpose
- 863-027-0005 Definitions
- 863-027-0010 Investigation of Licensees: Procedures and Reporting
- 863-027-0020 Progressive Discipline of Licensees

**DIVISION 30**

**OREGON SUBDIVISION CONTROL LAW**

**Timeshare Plans**

- 863-030-0050 Definitions
- 863-030-0060 Filing with Commissioner
- 863-030-0065 Presales of Timeshare Plans
- 863-030-0075 Exchange Programs
- 863-030-0080 Promotional Programs

**DIVISION 40**

**MEMBERSHIP CAMPING CONTRACT RULES**

- 863-040-0010 Application for Membership Camping Contract Registration
- 863-040-0040 Membership Camping Contract Salesperson Registration and Renewal

**DIVISION 50**

**RULES AND REGULATIONS  
ESCROWS AND ESCROW AGENTS**

**General Rules**

- 863-050-0000 Definitions
- 863-050-0015 Documents or Property Held in Escrow
- 863-050-0020 Disclosure of Interest
- 863-050-0025 Closing Statement

- 863-050-0030 Bank Charges
- 863-050-0033 Notice of Judgments
- 863-050-0035 Letters of Credit

**Accounting Rules**

- 863-050-0050 Accounting Controls; Record Inspection
- 863-050-0052 Disbursal of Disputed Real Estate Broker Compensation
- 863-050-0055 Accounting Practices
- 863-050-0060 Interest-Bearing Accounts
- 863-050-0065 Disclosure of Bank Services and Refunds
- 863-050-0066 Deposits

**Records Rules**

- 863-050-0100 Records
- 863-050-0105 Record Location
- 863-050-0115 Records Retention

**Audit Rules**

- 863-050-0150 Annual Report; Financial Statements; Audit or Examination Expenses
- 863-050-0240 Fingerprint Requirements for Escrow Licensing

**DIVISION 60**

**CONDOMINIUM SALE**

- 863-060-0015 Condominium Onsite Inspection Expenses

**DIVISION 1**

**PROCEDURAL RULES**

**863-001-0000  
Notice of Proposed Rule**

Prior to the adoption, amendment, or repeal of any rule, the Real Estate Commissioner shall give notice of the proposed adoption, amendment, or repeal:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least twenty-one (21) days prior to the effective date.
- (2) By mailing a copy of the notice at least twenty-eight (28) days before the effective date of the rule to persons on the Real Estate Commissioner's mailing list established pursuant to ORS 183.335(7) and all appropriate Legislators as designated by ORS 183.335(14).
- (3) By mailing a copy of the notice to the following persons, organizations, or publications:
  - (a) For Real Estate Brokers rules:
    - (A) All local Boards or Associations of Realtors;
    - (B) The Associated Press and the Capitol Press Room;
    - (C) Oregon Association of Realtors;
    - (D) The Oregon Realtor, publication of the Oregon Association of Realtors;
    - (E) All multiple listing services;
    - (F) Oregon Land Title Association.
  - (b) For Oregon Subdivision and Series Partition Control Law rules, Oregon Condominium Act rules, rules for ORS 94.803 to 94.945, relating to timeshare estates, or rules for ORS 94.953 to 94.985 relating to the sale of membership camping contracts:
    - (A) Sawhorse, publication of the Oregon Building Industry Association;
    - (B) The Associated Press and the Capitol Press Room;
    - (C) Oregon Association of Realtors;
    - (D) The Oregon Realtor, publication of the Oregon Association of Realtors;
    - (E) Oregon Building Industry Association;
    - (F) Oregon County Courts and Boards of Commissioners.
  - (c) For Oregon Escrow Law rules:
    - (A) The Associated Press, and the Capitol Press Room;
    - (B) Oregon Escrow Council, Inc.;

(C) Oregon Escrow Council Educator, publication of the Oregon Escrow Council, Inc.;

(D) Licensed Escrow Agents;

(E) Oregon Land Title Association.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183, 192 & 696

Stats. Implemented: ORS 183.385(3)

Hist.: REC 43, f. & ef. 11-6-75; REC 1-1982, f. & ef. 2-3-82; REC 2-1984, f. & ef. 6-18-84; REA 1-1987, f. 12-3-87, ef. 1-1-88; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97; REA 4-1997, f. 11-24-97, cert. ef. 12-1-97; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

**863-001-0005**

**Rules of Procedure**

The Real Estate Agency adopts by reference the Attorney General's Uniform and Model Rules OAR 137-001-0005 through 137-005-0070 bearing the effective date of January 1, 2008.

Stat. Auth.: ORS 183.341, 183.502 & 696.385

Stats. Implemented: ORS 183.341 & 183.502

Hist.: REC 32, f. 11-2-71, ef. 11-15-71; REC 36, f. 1-15-74, ef. 2-11-74; REC 48, f. & ef. 7-19-76; REC 4-1978, f. & ef. 7-2-78; REC 1-1982, f. & ef. 2-3-82; REC 2-1983, f. & ef. 10-13-83; REC 1-1986, f. & ef. 2-11-86; REA 2-1988, f. & cert. ef. 9-9-88; REA 2-1989(Temp), f. & cert. ef. 9-22-89; REA 3-1990, f. 12-13-90, cert. ef. 2-1-90; REA 6-1992, f. 11-4-92, cert. ef. 1-1-93; REA 1-1996, f. 6-3-96, cert. ef. 6-10-96; REA 1-1998, f. & cert. ef. 4-3-98; REA 2-1998, f. 5-28-98, cert. ef. 6-1-98; REA 1-2000, f. & cert. ef. 1-28-00; REA 2-2000, f. 3-27-00, cert. ef. 3-31-00; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 4-2006, f. 12-28-06, cert. ef. 1-1-07; REA 4-2008, f. 9-10-08, cert. ef. 10-1-08

**863-001-0006**

**Hearing Notices and Postponements**

(1) A notice of intent is properly served by the Real Estate Agency when delivered personally or deposited in the United States mail, registered or certified mail, addressed to the real estate licensee or to any other person having an interest in a proceeding before the Commissioner at the licensee's or other person's last known address of record with the Agency. All other notices are properly served by the Agency when delivered personally or deposited in the United States mail, regular mail, to the addressee's last known address of record with the Agency.

(2) The Commissioner or Agency may grant a postponement of a hearing at the request of a party to the hearing if:

(a) The request is made not later than six business days prior to the date of the hearing. "Business days" are days on which the office of the Real Estate Agency is regularly open for the transaction of business; and

(b) The party has shown good cause in the request for not attending the hearing as scheduled. "Good cause" exists if the circumstances causing the request are beyond the reasonable control of the requesting party and the failure to grant the postponement would result in undue hardship to the requesting party.

Stat. Auth.: ORS 183 & 696

Stats. Implemented: ORS 183.415

Hist.: REC 2-1984, f. & ef. 6-18-84; REA 1-1987, f. 12-3-87, ef. 1-1-88

**863-001-0007**

**Refunds and Charges**

(1) The agency shall not refund fees, civil penalties or other moneys overpaid by an amount of \$15 or less unless such repayment is requested in writing by the payor within one year after the date of the overpayment.

(2) If the Agency receives payment of any fees by check and the check is returned to the Agency as an NSF check, the payor of the fees will be assessed an NSF charge of \$25 in addition to the required payment of the fees.

Stat. Auth.: ORS 181, 183, 293 & 696

Stats. Implemented: ORS 293.445(4)

Hist.: REA 3-1990, f. 12-13-90, cert. ef. 2-1-90; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04

**863-001-0010**

**Public Records**

Pursuant to ORS 192.430 and 192.440, the Commissioner shall charge the following fees for certification or copying of any public

records in the Commissioner's custody and not otherwise exempt from disclosure:

(a) For each certification containing five pages or less, \$5;

(b) For each page of a certified document in excess of five pages, 25¢ per page;

(c) For uncertified copies:

(A) From one to 10 pages are free, from 11 to 20 pages are a flat fee of \$5 and any pages in excess of 20 are 25¢ per page; or

(B) \$15 per hour or any portion of an hour plus 3¢ per page; or

(C) In the case of extraordinarily large copy requests, the total actual cost of providing a temporary employee to complete the request (Usual minimum of four hours), plus 3¢ per page.

(d) All charges for both certified and uncertified copies, except those sent by facsimile, must be paid for prior to delivery of the copies to the person requesting the copies;

(e) For copies to be sent by facsimile (fax), \$5 for the first three pages (not including the fax cover sheet and the billing sheet) and 50¢ for each additional page over three. Costs will be billed to the person requesting the copies on a billing sheet which will be sent by facsimile with the requested copies.

(2) In addition to the charges prescribed in section (1) of this rule, may charge an amount, as determined reasonable by the Commissioner, to reimburse the Agency for the actual cost of making the records available.

(3) The Commissioner shall make all public records of the Agency, not otherwise exempt from disclosure by law, available for inspection and copying during regular business hours of the Agency.

(4) Service will be delivered on the basis of first-come, first-served. Walk-in customers or customers with large requests may be asked to make their requests in writing for later mail delivery as workload priorities permit.

(5) Access to investigation files which are scheduled for a hearing shall be governed by the Public Records Law. Requests to review such a file or to obtain copies from such a file must be in writing and received by the Agency not later than ten working days prior to the scheduled date of the hearing. The review appointment or the requested copies must be provided not later than five working days prior to the scheduled date of the hearing.

(6) May condition the time and manner of inspection or copying as necessary under the circumstances to protect the records and to prevent interference with the regular discharge of the duties of the Agency, its officers and employees.

Stat. Auth.: ORS 183.355, 192 & 696.385

Stats. Implemented: ORS 192.430 & 192.440

Hist.: REC 1-1982, f. & ef. 2-3-82; REA 4-1992, f. 6-25-92, cert. ef. 7-1-92

**DIVISION 5**

**CRIMINAL RECORDS CHECK AND CRIMINAL BACKGROUND FITNESS DETERMINATION RULES**

**863-005-0000**

**Purpose**

These rules control the agency's acquisition of information about a subject individual's criminal history through criminal records checks or other means and its use of that information to determine whether the subject individual is trustworthy and competent to hold a real estate license or registration. The criminal background check is only one portion of the approval process required to obtain a license or registration.

Stat. Auth.: ORS 181.534, 696.022, 696.301, 696.790

Stats. Implemented: ORS 181.534

Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

**863-005-0005**

**Definitions**

As used in OAR chapter 863, division 5 unless the context requires otherwise, the following definitions apply:

(1) "Agency" means the State of Oregon Real Estate Agency.

(2) "Authorized Designee" means a person authorized by the commissioner to obtain and review criminal offender information

and other criminal records information about a subject individual through criminal records checks and other means, and to conduct a criminal background fitness determination in accordance with these rules.

(3) “Conviction” means that a court of law has entered a final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere (no contest) against a subject individual in a criminal case, unless that judgment has been reversed or set aside by a subsequent court decision.

(4) “Criminal Background Clearance” means that, pursuant to a criminal background check, an authorized designee has determined that a subject individual is trustworthy and competent to be a licensee through a criminal background fitness determination.

(5) “Criminal Offender Information” includes:

(a) Records and related data concerning physical description and vital statistics;

(b) Fingerprints received and compiled by the Oregon Department of State Police to identify criminal offenders and alleged offenders;

(c) Records of arrests; and

(d) The nature and disposition of criminal charges, including sentencing, confinement, parole and release records.

(6) “Crime Relevant to a Criminal Background Fitness Determination” means a crime listed or described in OAR 863-005-0030.

(7) “Criminal Records Check and Criminal Background Fitness Determination Rules” or “These Rules” means OAR chapter 863, division 5.

(8) “Criminal Records Check” means any of the following three processes undertaken by the agency to check the criminal history of a subject individual:

(a) A check of criminal offender information and motor vehicle registration and driving records conducted through the Law Enforcement Data System (LEDS) maintained by the Oregon Department of State Police, in accordance with the Department’s rules;

(b) A check of Oregon criminal offender information through fingerprint identification and other means conducted by the Oregon Department of State Police at the agency’s request (Oregon Criminal Records Check); or

(c) A nationwide check of federal criminal offender information through fingerprint identification and other means conducted by the Oregon Department of State Police through the Federal Bureau of Investigation or otherwise at the agency’s request (Nationwide Criminal Records Check).

(9) “Denied” means that, following a criminal background fitness determination under OAR 863-005-0020, an authorized designee has determined that a subject individual is not trustworthy and competent to hold a license or registration.

(10) “False Statement” means that, in association with an activity governed by these rules, a subject individual either:

(a) Provided the agency with false information about the subject individual’s criminal history, including, but not limited to, false information about the individual’s identity or conviction record; or

(b) Failed to provide the agency information material to determining the individual’s criminal history.

(11) “Fingerprint Card” means a form prescribed by the Oregon Department of State Police and Federal Bureau of Investigation.

(12) “Criminal Background Fitness Determination” means a determination made by an authorized designee pursuant to the process established in OAR 863-005-0020 whether a subject individual is trustworthy and competent to be a licensee or registrant.

(13) “Licensee” means a principal real estate broker, a real estate broker, a real estate property manager as defined in ORS 696.010, or a real estate marketing organization licensed under ORS 696.606. Licensee shall also mean an escrow agent as defined in ORS 696.505(5).

(14) “Other Criminal Records Information” means any information, in addition to criminal offender information, sought or obtained by the agency about a subject individual and used by the agency to determine the individual’s criminal history.

(15) “Registrant” means a person registered as a membership camping contract broker or salesperson as provided in ORS 94.980.

(16) “Subject Individual” means an applicant for a license or renewal of a license under ORS 696.020, a real estate marketing organization license under ORS 696.606, an escrow agent license or renewal under ORS 696.511, a membership camping contract broker or salesperson registrant under ORS 94.980 as someone from whom the agency may require fingerprints in order for the agency to conduct a criminal records check.

Stat. Auth.: ORS 181.534, 696.022, 696.790

Stats. Implemented: ORS 181.534

Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

**863-005-0010**

**Criminal Records Check Process**

(1) A subject individual shall complete and sign an agency background check application and an applicant fingerprint card approved by the agency.

(2) Within a reasonable period of time, a subject individual shall provide additional information as requested by the agency to resolve any issue hindering the completion of a criminal records check.

(3) An authorized designee shall request that the Oregon Department of State Police conduct a criminal records check for all new licensee and registrant applications.

(4) An authorized designee may request that the Oregon Department of State Police conduct a criminal background records check for licensee and registrant renewal applications when there is reason to believe that:

(a) A subject individual committed a crime listed in OAR 863-005-0030; or

(b) A factor relevant to a criminal background fitness determination listed in OAR 863-005-0020 was not previously identified.

(5) When an authorized designee requires a criminal record check to be performed under section(3) or (4) of this rule, an authorized designee shall request that the Oregon Department of State Police conduct Oregon and nationwide criminal records checks through fingerprint identification. The authorized designee may also perform a Law Enforcement Data System (LEDS) criminal records check as part of any criminal background fitness determination conducted in regard to a subject individual.

Stat. Auth.: ORS 181.534, 696.022, 696.790

Stats. Implemented: ORS 181.534

Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

**863-005-0020**

**Criminal Background Fitness Determination**

(1) An authorized designee shall make a criminal background fitness determination about a subject individual based on:

(a) Background check application and fingerprint card;

(b) Any criminal records check(s) conducted; and

(c) Any false statements made by the subject individual.

(2) In addition to the information in section (1) of this rule, an authorized designee may obtain any other criminal records information about the subject individual from any source, including law enforcement agencies or courts within or outside of Oregon.

(3) A criminal background fitness determination shall be based on the factors described in section (5) of this rule in relation to information provided by the subject individual under OAR 863-005-0010.

(4) An authorized designee may request to meet with the subject individual to obtain additional criminal offender information necessary to complete a criminal background fitness determination.

(5) An authorized designee shall consider all collected information in determining:

(a) Whether the subject individual has been convicted of, found guilty except for insanity (or a comparable disposition) of, or has a pending indictment for a crime listed in OAR 863-005-0030;

(b) The nature of any crime identified under subsection (a) of this section of the rule;

(c) The facts that support the conviction, a finding of guilty except for insanity, or that a pending indictment or uncompleted diversion exists;

(d) The facts that indicate the subject individual made a false statement;

(e) The relevance, if any, of a crime identified under subsection (a) of this section of the rule or of a false statement made by the subject individual to the specific requirements of the subject individual's license or registration; and

(f) The following intervening circumstances, to the extent that they are relevant to the responsibilities and circumstances of the license or registration for which the criminal background fitness determination is being made:

(A) The passage of time since the commission or alleged commission of a crime identified under subsection (a) of this section of the rule;

(B) The age of the subject individual at the time of the commission or alleged commission of a crime identified under subsection (a) of this section of the rule;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another crime listed in OAR 863-005-0030;

(E) Whether a conviction identified under subsection (a) of this section of the rule has been set aside or pardoned, and the legal effect of setting aside the conviction or pardon;

(F) The disposition of a pending indictment identified under subsection (a) of this section of the rule;

(G) Whether the subject individual:

(i) Has been arrested for or charged with a crime listed under OAR 863-005-0030 within the last five years;

(ii) Is being investigated, or has an outstanding warrant, for a crime listed under OAR 863-005-0030;

(iii) Is currently on probation, parole or another form of post-prison supervision for a crime listed under OAR 863-005-0030;

(iv) Has a deferred sentence or conditional discharge or is participating in a diversion program in connection with a crime listed under OAR 863-005-0030;

(v) Has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed in OAR 863-005-0030 if committed by an adult;

(vi) Has been incarcerated and length of incarceration; and

(vii) Has a history of drug or alcohol abuse which relates to the criminal activity and the history of treatment or rehabilitation for such abuse.

(6) Approval. An authorized designee shall approve a criminal background clearance application if the information described in sections (1) and (2) of this rule shows no credible evidence that the subject individual:

(a) Has been convicted of, has a pending indictment or has been found guilty except for insanity (or comparable disposition) of a crime listed in OAR 863-005-0030;

(b) Has an uncompleted diversion; or

(c) Has made a false or incomplete statement or omitted information; and

(d) No discrepancies exist between the criminal offender information, other criminal records information and information obtained from the subject individual.

(7) Denial. An authorized designee shall not approve a criminal background clearance application if a criminal background fitness determination based on the factors described in section (5) of this rule demonstrates that the subject person is not trustworthy and competent to hold a professional real estate license or registration in a manner that protects the public.

(8) A denial of a criminal background clearance shall become a final order of the agency unless the subject individual appeals the authorized designee's criminal background fitness determination by requesting a contested case hearing as provided by OAR 863-005-0070.

Stat. Auth.: ORS 181.534, 696.022, 696.790

Stats. Implemented: ORS 181.534

Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

**863-005-0030  
Crimes Relevant to a Criminal Background Fitness  
Determination**

- (1) Permanent Review Crimes:
  - (a) ORS 162.015, Bribe giving;
  - (b) ORS 162.025, Bribe receiving;
  - (c) ORS 162.065, Perjury;
  - (d) ORS 162.085, Unsworn falsification;
  - (e) ORS 162.117, Public Investment Fraud
  - (f) ORS 162.155, Escape II;
  - (g) ORS 162.165, Escape I;
  - (h) ORS 162.235, Obstructing governmental or judicial administration;
  - (i) ORS 162.265, Bribing a witness;
  - (j) ORS 162.275, Bribe receiving by a witness;
  - (k) ORS 162.305, Tampering with public records;
  - (l) ORS 162.325, Hindering prosecution;
  - (m) ORS 162.355, Simulating legal process;
  - (n) ORS 162.367, Criminal impersonation of peace officer;
  - (o) ORS 162.405, Official misconduct II;
  - (p) ORS 162.415, Official misconduct I;
  - (q) ORS 162.425, Misuse of confidential information;
  - (r) ORS 163.005, Criminal homicide;
  - (s) ORS 163.095, Aggravated murder;
  - (t) ORS 163.115, Murder;
  - (u) ORS 163.118, Manslaughter I;
  - (v) ORS 163.125, Manslaughter II;
  - (w) ORS 163.145, Criminally negligent homicide;
  - (x) ORS 163.160, Assault IV;
  - (y) ORS 163.165, Assault III;
  - (z) ORS 163.175, Assault II;
  - (aa) ORS 163.185, Assault I;
  - (bb) ORS 163.187, Strangulation;
  - (cc) ORS 163.190, Menacing;
  - (dd) ORS 163.205, Criminal mistreatment I;
  - (ee) ORS 163.207, Female genital mutilation;
  - (ff) ORS 163.208, Assault of Public Safety Officer;
  - (gg) ORS 163.213, Unlawful use of an electrical stun gun, tear gas, or mace I;
  - (hh) ORS 163.225, Kidnapping II;
  - (ii) ORS 163.235, Kidnapping I;
  - (jj) ORS 163.257, Custodial interference I;
  - (kk) ORS 163.275, Coercion;
  - (ll) ORS 163.355, Rape III;
  - (mm) ORS 163.365, Rape II;
  - (nn) ORS 163.375, Rape I;
  - (oo) ORS 163.385, Sodomy III;
  - (pp) ORS 163.395, Sodomy II;
  - (qq) ORS 163.405, Sodomy I;
  - (rr) ORS 163.408, Unlawful Sexual penetration II;
  - (ss) ORS 163.411, Unlawful Sexual penetration I;
  - (tt) ORS 163.415, Sexual abuse III;
  - (uu) ORS 163.425, Sexual abuse II;
  - (vv) ORS 163.427, Sexual abuse I;
  - (ww) ORS 163.452, Custodial sexual misconduct I;
  - (xx) ORS 163.454, Custodial sexual misconduct II;
  - (yy) ORS 163.465, Public indecency;
  - (zz) ORS 163.476, Unlawfully being in a location where children regularly congregate;
  - (aaa) ORS 163.479, Unlawful contact with a child;
  - (bbb) ORS 163.525, Incest;
  - (ccc) ORS 163.535, Abandonment of a child;
  - (ddd) ORS 163.537, Buying or selling a person under 18 years of age;
  - (eee) ORS 163.547, Child neglect I;
  - (fff) ORS 163.555, Criminal nonsupport;
  - (ggg) ORS 163.575, Endangering the welfare of a minor;
  - (hhh) ORS 163.670, Using child in display of sexually explicit conduct;
  - (iii) ORS 163.684, Encouraging child sexual abuse I;
  - (jjj) ORS 163.686, Encouraging child sexual abuse II;
  - (kkk) ORS 163.687, Encouraging child sexual abuse III;
  - (lll) ORS 163.688, Possession of materials depicting sexually explicit conduct of a child;

(mmm) ORS 163.689, Possession of materials depicting sexually explicit conduct of a child;  
 (nnn) ORS 163.732, Stalking;  
 (ooo) ORS 163.750, Violating court's stalking order;  
 (ppp) ORS 164.045, Theft II;  
 (qqq) ORS 164.055, Theft I;  
 (rrr) ORS 164.057, Aggravated theft I;  
 (sss) ORS 164.075, Theft by extortion;  
 (ttt) ORS 164.085, Theft by deception;  
 (uuu) ORS 164.095, Theft by receiving;  
 (vvv) ORS 164.125, Theft of services;  
 (www) ORS 164.135, Unauthorized use of a vehicle;  
 (xxx) ORS 164.162, Mail theft or receipt of stolen mail;  
 (yyy) ORS 164.170, Laundering a monetary instrument;  
 (zzz) ORS 164.172, Engaging in a financial transaction in property derived from unlawful activity;  
 (aaaa) ORS 164.215, Burglary II;  
 (bbbb) ORS 164.225, Burglary I;  
 (cccc) ORS 164.235, Possession of burglar's tools or theft device;  
 (dddd) ORS 164.255, Criminal trespass I;  
 (eeee) ORS 164.265, Criminal trespass while in possession of firearm;  
 (ffff) ORS 164.315, Arson II;  
 (gggg) ORS 164.325, Arson I;  
 (hhhh) ORS 164.365, Criminal Mischief I;  
 (iiii) ORS 164.377, Computer crime;  
 (jjjj) ORS 164.395, Robbery III;  
 (kkkk) ORS 164.405, Robbery II;  
 (llll) ORS 164.415, Robbery I;  
 (mmmm) ORS 164.885, Endangering aircraft;  
 (nnnn) ORS 165.007, Forgery II;  
 (oooo) ORS 165.013, Forgery I;  
 (pppp) ORS 165.017, Criminal possession of a forged instrument II;  
 (qqqq) ORS 165.022, Criminal possession of a forged instrument I;  
 (rrrr) ORS 165.032, Criminal possession of a forgery device;  
 (ssss) ORS 165.042, Fraudulently obtaining a signature;  
 (tttt) ORS 165.055, Fraudulent use of a credit card;  
 (uuuu) ORS 165.065, Negotiating a bad check;  
 (vvvv) ORS 165.074, Unlawful factoring of payment card transaction;  
 (wwww) ORS 165.080, Falsifying business records;  
 (xxxx) ORS 165.095, Misapplication of entrusted property;  
 (yyyy) ORS 165.100, Issuing a false financial statement;  
 (zzzz) ORS 165.102, Obtaining execution of documents by deception;  
 (aaaaa) ORS 165.581, Cellular counterfeiting I;  
 (bbbbb) ORS 165.800, Identity theft;  
 (ccccc) ORS 165.810, Unlawful possession of a personal identification device;  
 (dddd) ORS 165.813, Unlawful possession of fictitious identification;  
 (eeee) ORS 166.005, Treason;  
 (ffff) ORS 166.015, Riot;  
 (ggggg) ORS 166.085, Abuse of corpse II;  
 (hhhhh) ORS 166.087, Abuse of corpse I;  
 (iiii) ORS 166.155, Intimidation II;  
 (jjjj) ORS 166.165, Intimidation I;  
 (kkkkk) ORS 166.220, Unlawful use of weapon;  
 (lllll) ORS 166.270, Possession of weapons by certain felons;  
 (mmmmm) ORS 166.272, Unlawful possession of machine guns, certain short-barreled firearms and firearm silencers;  
 (nnnnn) ORS 166.275, Possession of weapons by inmates of institutions;  
 (ooooo) ORS 166.385, Possession of hoax destructive device;  
 (ppppp) ORS 166.429, Firearms used in felony;  
 (qqqqq) ORS 166.720, Racketeering activity unlawful;  
 (rrrrr) ORS 167.012, Promoting prostitution;  
 (sssss) ORS 167.017, Compelling prostitution;

(ttttt) ORS 167.062, Sadomasochistic abuse or sexual conduct in live show;  
 (uuuuu) ORS 167.065, Furnishing obscene materials to minors;  
 (vvvvv) ORS 167.070, Sending obscene materials to minors;  
 (wwwww) ORS 167.075, Exhibiting an obscene performance to a minor;  
 (xxxxx) ORS 167.080, Displaying obscene materials to minors;  
 (yyyyy) ORS 167.212, Tampering with drug records;  
 (zzzzz) ORS 167.262, Adult using minor in commission of controlled substance offense;  
 (aaaaa) ORS 167.315, Animal abuse II;  
 (bbbbb) ORS 167.320, Animal abuse I;  
 (ccccc) ORS 167.322, Aggravated animal abuse I;  
 (ddddd) ORS 167.333, Sexual assault of animal;  
 (eeeee) ORS 181.599, Failure to report as sex offender;  
 (ffffff) ORS 192.852/865, Prohibited obtaining or disclosing of protected information;  
 (ggggg) ORS 411.630, Unlawfully obtaining public assistance;  
 (hhhhh) ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance);  
 (iiii) ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits;  
 (jjjjj) ORS 471.410, Providing liquor to person under 21 or to intoxicated  
 (kkkkk) ORS 475.525, Sale of drug paraphernalia prohibited;  
 (lllll) ORS 475.805, Providing hypodermic device to minor prohibited;  
 (mmmmm) ORS 475.840, Prohibited acts generally (regarding drug crimes);  
 (nnnnn) ORS 475.846, Unlawful manufacture of heroin;  
 (ooooo) ORS 475.848, Unlawful manufacture of heroin within 1,000 feet of school;  
 (ppppp) ORS 475.850, Unlawful delivery of heroin;  
 (qqqqq) ORS 475.852, Unlawful delivery of heroin within 1,000 feet of school;  
 (rrrrr) ORS 475.854, Unlawful possession of heroin;  
 (sssss) ORS 475.856, Unlawful manufacture of marijuana;  
 (ttttt) ORS 475.858, Unlawful manufacture of marijuana within 1,000 feet of school;  
 (uuuuu) ORS 475.860, Unlawful delivery of marijuana;  
 (vvvvv) ORS 475.862, Unlawful delivery of marijuana within 1,000 feet of school;  
 (wwwww) ORS 475.864, Unlawful possession of marijuana;  
 (xxxxx) ORS 475.866, Unlawful manufacture of 3,4-methylenedioxymethamphetamine;  
 (yyyyy) ORS 475.868, Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;  
 (zzzzz) ORS 475.870, Unlawful delivery of 3,4-methylenedioxymethamphetamine;  
 (aaaaa) ORS 475.872, Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;  
 (bbbbb) ORS 475.874, Unlawful possession of 3,4-methylenedioxymethamphetamine;  
 (ccccc) ORS 475.876, Unlawful manufacture of cocaine;  
 (ddddd) ORS 475.878, Unlawful manufacture of cocaine within 1,000 feet of school;  
 (eeeee) ORS 475.880, Unlawful delivery of cocaine;  
 (ffffff) ORS 475.882, Unlawful delivery of cocaine within 1,000 feet of school;  
 (ggggg) ORS 475.884, Unlawful possession of cocaine;  
 (hhhhh) ORS 475.886, Unlawful manufacture of methamphetamine;  
 (iiii) ORS 475.888 Unlawful manufacture of methamphetamine within 1,000 feet of school;  
 (jjjjj) ORS 475.890, Unlawful delivery of methamphetamine;  
 (kkkkk) ORS 475.892, Unlawful delivery of methamphetamine within 1,000 feet of school;  
 (lllll) ORS 475.894, Unlawful possession of methamphetamine;

(mmmmmm) ORS 475.904, Penalty for manufacture or delivery of controlled substance within 1,000 feet of school;  
 (nnnnnn) ORS 475.906, Penalties for distribution to minors;  
 (oooooo) ORS 475.908, Causing another person to ingest a controlled substance;  
 (pppppp) ORS 475.910, Application of controlled substance to the body of another person;  
 (qqqqqq) ORS 475.914, Prohibited acts for registrants (with the State Board of Pharmacy; regarding felony crimes);  
 (rrrrrr) ORS 475.916, Prohibited acts involving records and fraud;  
 (ssssss) ORS 475.918, Falsifying drug test results;  
 (tttttt) ORS 475.920, Providing drug test falsification equipment  
 (uuuuuu) ORS 475.967, Possession of precursor substance with intent to manufacture controlled substance;  
 (vvvvvv) ORS 475.975, Unlawful possession and distribution of iodine in its elemental form;  
 (wwwwww) ORS 475.976, Unlawful possession and distribution of iodine matrix;  
 (xxxxxx) ORS 475.977, Possessing or disposing of methamphetamine manufacturing waste;  
 (yyyyyy) ORS 677.080, Prohibited acts (regarding the practice of medicine);  
 (zzzzzz) ORS 803.080, Unlawfully publishing certificate of title forms prohibited;  
 (aaaaaaa) ORS 803.230, Forging, altering or unlawfully producing or using title or registration;  
 (bbbbbbb) ORS 807.500, Unlawful production of certain documents; affirmative defense;  
 (ccccccc) ORS 807.520, False swearing to receive license;  
 (ddddddd) ORS 807.530, False application for license;  
 (eeeeeee) ORS 807.620, Giving false information to police officer;  
 (ffffff) ORS 811.182, Criminal driving while suspended or revoked;  
 (ggggggg) ORS 811.540, Fleeing or attempting to elude police officer;  
 (hhhhhhh) ORS 811.700, Failure to perform duties of driver when property is damaged;  
 (iiiiiii) ORS 811.705, Failure to perform duties of driver to injured persons;  
 (jjjjjjj) ORS 811.740, False accident report;  
 (kkkkkkk) ORS 813.010, Driving under the influence of intoxicants (DUI);  
 (lllllll) ORS 819.300, Possession of a stolen vehicle;  
 (mmmmmmm) ORS 819.310, Trafficking in stolen vehicles;  
 (nnnnnnn) ORS 822.605, False swearing relating to regulation of vehicle related businesses;  
 (oooooooo) ORS 830.035/990, Fleeing or attempting to elude a peace officer (small watercraft);  
 (ppppppp) ORS 830.053/990, Fraudulent report of theft of boat;  
 (qqqqqqq) ORS 830.325, Operating boat while under the influence of intoxicating liquor or controlled substance;  
 (rrrrrrr) ORS 830.475, Duties of operators and witnesses at accidents;  
 (sssssss) Any federal crime;  
 (ttttttt) Any unclassified felony defined in Oregon Revised Statutes not listed elsewhere in this rule;  
 (uuuuuuu) Any other felony under the statutes of Oregon or any other jurisdiction not listed elsewhere in this rule that an authorized designee determines is relevant to performance under the subject individual's license or registration;  
 (vvvvvvv) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section of the rule pursuant to ORS 161.405, 161.435, or 161.450;  
 (wwwwwww) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this section of the rule;

(xxxxxxx) Any crime in any other jurisdiction that is the substantial equivalent of any of the Oregon crimes listed in this section of the rule as determined by an authorized designee; or  
 (yyyyyyy) Any offense that no longer constitutes a crime under Oregon law or the laws of any other jurisdiction, but is the substantial equivalent of any of the crimes listed in this section of the rule as determined by an authorized designee.  
 (2) Ten-Year Review Crimes.  
 (a) ORS 133.076, Failure to appear on criminal citation;  
 (b) ORS 162.075, False swearing;  
 (c) ORS 162.145, Escape III;  
 (d) ORS 162.175, Unauthorized departure;  
 (e) ORS 162.185, Supplying contraband;  
 (f) ORS 162.195, Failure to appear II;  
 (g) ORS 162.205, Failure to appear I;  
 (h) ORS 162.247, Interfering with a peace officer or parole & probation officer;  
 (i) ORS 162.285, Tampering with a witness;  
 (j) ORS 162.295, Tampering with physical evidence;  
 (k) ORS 162.315, Resisting arrest;  
 (l) ORS 162.335, Compounding;  
 (m) ORS 162.365, Criminal impersonation;  
 (n) ORS 162.369, Possession of false law enforcement identification card;  
 (o) ORS 162.375, Initiating a false report;  
 (p) ORS 162.385, Giving false information to police officer for a citation or arrest warrant;  
 (q) ORS 163.195, Recklessly endangering another person;  
 (r) ORS 163.200, Criminal mistreatment II;  
 (s) ORS 163.212, Unlawful use of an electrical stun gun, tear gas, or mace II;  
 (t) ORS 163.245, Custodial interference II;  
 (u) ORS 163.435, Contributing to the sexual delinquency of a minor;  
 (v) ORS 163.445, Sexual misconduct;  
 (w) ORS 163.467, Private indecency;  
 (x) ORS 163.700, Invasion of personal privacy;  
 (y) ORS 164.043, Theft III;  
 (z) ORS 164.140, Criminal possession of rented or leased personal property;  
 (aa) ORS 164.272, Unlawful entry into motor vehicle;  
 (bb) ORS 164.335, Reckless burning;  
 (cc) ORS 164.354, Criminal Mischief II;  
 (dd) ORS 165.037, Criminal simulation;  
 (ee) ORS 165.070, Possessing fraudulent communications device;  
 (ff) ORS 165.540, Obtaining contents of communication;  
 (gg) ORS 165.543, Interception of communications;  
 (hh) ORS 165.570, Improper use of emergency reporting system;  
 (ii) ORS 165.572, Interference with making a report;  
 (jj) ORS 165.577, Cellular counterfeiting III;  
 (kk) ORS 165.579, Cellular counterfeiting II;  
 (ll) ORS 165.692, Making false claim for health care payment;  
 (mm) ORS 166.023, Disorderly conduct I;  
 (nn) ORS 166.025, Disorderly conduct II;  
 (oo) ORS 166.065, Harassment;  
 (pp) ORS 166.076, Abuse of a memorial to the dead;  
 (qq) ORS 166.116, Interfering with public transportation;  
 (rr) ORS 166.180, Negligently wounding another;  
 (ss) ORS 166.190, Pointing firearm at another;  
 (tt) ORS 166.240, Carrying of concealed weapon;  
 (uu) ORS 166.250, Unlawful possession of firearms;  
 (vv) ORS 166.370, Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school;  
 (ww) ORS 166.382, Possession of destructive device prohibited;  
 (xx) ORS 166.384, Unlawful manufacture of destructive device;  
 (yy) ORS 166.470, Limitations and conditions for sales of firearms;

- (zz) ORS 166.480, Sale or gift of explosives to children;
- (aaa) ORS 166.649, Throwing an object off an overpass II;
- (bbb) ORS 166.651, Throwing an object off an overpass I;
- (ccc) ORS 166.660, Unlawful paramilitary activity;
- (ddd) ORS 167.007, Prostitution;
- (eee) ORS 167.090, Publicly displaying nudity or sex for advertising purposes;
- (fff) ORS 167.222, Frequenting a place where controlled substances are used;
- (ggg) ORS 167.337, Interfering with law enforcement animal;
- (hhh) ORS 433.010, Spreading disease (willfully) prohibited;
- (iii) ORS 475.900, Commercial drug offense;
- (jjj) ORS 475.912, Unlawful delivery of imitation controlled substance;
- (kkk) ORS 475.914, Prohibited acts for registrants (with the State Board of Pharmacy; regarding misdemeanor crimes);
- (lll) ORS 475.950, Failure to report precursor substance;
- (mmm) ORS 475.955, Failure to report missing precursor substances;
- (nnn) ORS 475.960, Illegally selling drug equipment;
- (ooo) ORS 475.962, Distribution of equipment, solvent, etc., with intent to manufacture controlled substance;
- (ppp) ORS 475.965, Providing false information on precursor substances report;
- (qqq) ORS 475.979 Unlawful possession of lithium or sodium metal;
- (rrr) ORS 807.580, Using invalid license;
- (sss) ORS 811.140, Reckless driving;
- (ttt) ORS 819.420, Failure to obtain vehicle identification number for vehicle with altered or removed number;
- (uuu) ORS 819.430, Trafficking in vehicles with destroyed or altered identification numbers;
- (vvv) ORS 830.730/990, False information to peace officer or State Marine Board;
- (www) Any unclassified misdemeanor defined in Oregon's or any other jurisdiction's statutes and not listed elsewhere in this rule;
- (xxx) Any other misdemeanor under the statutes of Oregon or any other jurisdiction and not listed elsewhere in this rule that an authorized designee determines is relevant to performance of the subject individual's license or registration;
- (yyy) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section of the rule pursuant to ORS 161.405, 161.435, or 161.450;
- (zzz) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this section of the rule;
- (aaaa) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section of the rule as determined by an authorized designee; or
- (bbbb) Any offense that no longer constitutes a crime under Oregon law or the laws of another jurisdiction, but is the substantial equivalent of any of the crimes listed in this section of the rule as determined by an authorized designee.
  - (3) Five-Year Review Crimes.
    - (a) ORS 164.245, Criminal trespass II;
    - (b) ORS 164.345, Criminal mischief III;
    - (c) ORS 165.805, Misrepresentation of age by a minor;
    - (d) ORS 166.090, Telephonic harassment;
    - (e) ORS 166.416, Providing false information in connection with a transfer of a firearm;
    - (f) ORS 166.425, Unlawful purchase of firearm;
    - (g) ORS 418.630, Operating uncertified foster home;
    - (h) ORS 685.990, Violations pertaining to naturopathic medicine;
      - (i) ORS 803.070, False statement in application or assignment;
      - (j) ORS 803.075, False swearing prohibited;
      - (k) ORS 803.375, False application prohibited;
      - (l) ORS 803.385, False swearing relating to registration;
      - (m) ORS 807.430, Misuse of identification card;
      - (n) ORS 807.510, Transfer of documents for purposes of misrepresentation;

- (o) ORS 807.590, Permitting misuse of license;
- (p) ORS 807.600, Using another's license;
- (q) ORS 822.005, Acting as vehicle dealer without certificate;
- (r) ORS 822.045, Crimes relating to conducting a vehicle dealer business;
- (s) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section of the rule pursuant to ORS 161.405, 161.435 or 161.450;
- (t) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this section of the rule;
- (u) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section of the rule as determined by an authorized designee; or
- (v) Any offense that no longer constitutes a crime under Oregon law or the law of another jurisdiction, but is the substantial equivalent of any of the crimes listed in this section of the rule as determined by an authorized designee.
  - (4) An authorized designee shall evaluate a crime on the basis of Oregon laws and, if applicable, federal laws or the laws of any other jurisdiction in which a criminal records check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the criminal background fitness determination.
  - (5) A subject individual's criminal background fitness determination shall not be denied under these rules based on the existence or contents of a record that has been expunged pursuant to ORS 419A.260 and 419A.262 or other similar process under the laws of this state or another jurisdiction.
    - Stat. Auth.: ORS 181.534, 696.022, 696.790
    - Stats. Implemented: ORS 181.534
    - Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

**863-005-0040  
Incomplete Criminal Background Application**

The agency will close an incomplete criminal background application and terminate a criminal background fitness determination without issuing a decision when:

- (1) The subject individual submits a written request to withdraw a criminal background application for a new license or registration, or license or registration renewal, or otherwise requests the agency to terminate a criminal records check;
- (2) The subject individual does not provide the agency all of the materials and information required under OAR 863-005-0010 within a reasonable period of time;
- (3) A subject individual does not respond to an authorized designee's request for additional information within a reasonable period of time; or
- (4) The subject individual fails or refuses to cooperate with an authorized designee's attempts to acquire other criminal records information under OAR 863-005-0020.
  - Stat. Auth.: ORS 181.534, 696.022, 696.790
  - Stats. Implemented: ORS 181.534
  - Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

**863-005-0050  
Notice to Subject Individual of Incomplete Criminal Background Application**

(1) When an authorized designee proposes to close an incomplete criminal background application and terminate a criminal background fitness determination without issuing a decision the authorized designee shall:

- (a) Provide written notice via first class mail to the subject individual within 14 calendar days of a decision to terminate the subject individual's criminal background fitness determination due to incompleteness;
- (b) State the reason the subject individual's criminal background fitness determination application was found to be incomplete; and
- (c) Record on the notice the date the criminal background fitness determination application was terminated and closed due to incompleteness.
  - (2) A subject individual that receives notice that the agency intends to terminate a criminal background fitness determination due to incompleteness may submit a written request to the agency

requesting the agency to continue the fitness determination process. A subject individual's written request to continue the criminal background fitness determination process must be received by the agency within 30 days of the date of the original notice of termination. The request must include all information previously requested by the agency but not provided by the subject individual. If a subject individual fails to submit a written request to continue a fitness determination process within 30 days of receiving the notice described in section (1) of this rule, the subject individual shall be required to submit a new background check application, fingerprint card and fee.

Stat. Auth.: ORS 181.534, 696.022, 696.790  
 Stats. Implemented: ORS 181.534  
 Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

**863-005-0060  
 Notice to Subject Individual of Criminal Background Fitness Determination**

(1) An authorized designee shall provide written notice to a subject individual that the agency has completed a requested criminal background fitness determination. The notice shall state the date the agency completed the criminal background fitness determination and the agency's decision to approve or deny a criminal background fitness determination application. If the agency denies a criminal background fitness determination, the notice shall state the reason for the denial based on the factors described in OAR 863-005-0020(5).

(2) The agency shall mail notice of a criminal background fitness determination via first class mail to the address provided by the subject individual on the agency background check application, or to an updated address as provided in writing by the subject individual no later than 14 calendar days after the date the agency has completed a criminal background fitness determination.

Stat. Auth.: ORS 181.534, 696.022, 696.790  
 Stats. Implemented: ORS 181.534  
 Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

**863-005-0070  
 Appeals**

(1) A subject individual may not appeal a criminal background fitness determination or a decision to close a criminal background fitness determination for reason of incompleteness.

(2) If a licensing or registration applicant wishes to, they may complete any additional pre-licensing/registration requirements and submit a completed license/registration application together with the required fees. Upon review of a completed license/registration application, the agency shall issue a "notice of intent to deny" that describes the reason for the denial. The notice shall also include information required by OAR 137-003-0505 that describes the subject individual's right to request a contested case hearing to appeal the agency's decision.

(3) Contested case hearings on criminal background fitness determinations shall be closed to non-participants.

(4) A subject individual may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or any other agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation.

(5) Any challenge to any information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or any other agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation must follow the appeal process prescribed by the reporting agency.

(6) If the subject individual successfully challenges the accuracy or completeness of any information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or an agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation that the agency relied on to support a decision to deny a criminal background fitness determination, the subject individual may request the agency to conduct a new criminal records check and re-evaluate the original criminal background fitness determination made under OAR 863-005-0020. The subject individual shall submit a new background check application to the agency within 30 days of the date the Oregon Department of State Police, the Federal Bureau of Investigation, or an agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation issues a corrected criminal background report.

Stat. Auth.: ORS 181.534, 696.022, 696.790  
 Stats. Implemented: ORS 181.534  
 Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

**863-005-0080  
 Recordkeeping and Confidentiality**

(1) An authorized designee shall maintain all documents on a criminal background fitness determination or the closing of a criminal background fitness determination due to incompleteness in accordance with applicable archive retention requirements.

(2) Records the agency receives from the Oregon Department of State Police resulting from a criminal records check, including but not limited to Law Enforcement Data System (LEDS) reports and state or federal criminal offender information originating with the Oregon Department of State Police or the Federal Bureau of Investigation, are confidential pursuant to ORS 181.534.

(3) Within the agency, only an authorized designee shall have access to records the agency receives from the Oregon Department of State Police resulting from a criminal records check.

(4) An authorized designee shall maintain and disclose any records received from the Oregon Department of State Police resulting from a criminal records check in accordance with applicable requirements and restrictions in ORS chapter 181 and other applicable federal and state laws, rules adopted by the Oregon Department of State Police in OAR chapter 257, division 15, these rules, and any written agreement between the agency and the Oregon Department of State Police.

(5) If a fingerprint-based criminal records check was conducted on a subject individual, the agency shall permit that subject individual to inspect the state and federal criminal offender information, unless prohibited by state or federal law.

(6) If a subject individual with a right to inspect criminal offender information under section (5) of this rule requests, the agency shall provide the subject individual with a copy of the individual's own state and federal criminal offender information, unless prohibited by state or federal law.

(7) In addition to the records described in section (2) of this rule, the agency shall treat all records received or created under these rules that concern a subject individual's criminal history as confidential pursuant to ORS 181.534.

(8) Within the agency, only an authorized designee shall have access to the records identified under section (7) of this rule.

Stat. Auth.: ORS 181.534, 696.022, 696.790  
 Stats. Implemented: ORS 181.534  
 Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

**863-005-0090  
 Fees**

The agency shall charge a fee for acquiring criminal offender information to make a criminal background fitness determination, including re-evaluations of criminal background determinations made pursuant to OAR 863-005-0070. The fee shall not exceed the fee(s) charged the agency by the Oregon Department of State Police and the Federal Bureau of Investigation.

Stat. Auth.: ORS 181.534, 696.022, 696.790  
 Stats. Implemented: ORS 181.534  
 Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

**DIVISION 10**

**REAL ESTATE MARKETING ORGANIZATION RULES**

**863-010-0600  
 Definitions**

As used in OAR 863-010-0600 to 863-010-0660, unless the context requires otherwise:

(1) "Principal" or "Principal person" includes owners of real estate marketing organizations having not less than 10% ownership interest in the organization, on-site managers who provide direct

supervision of real estate marketing employees in their real estate marketing activity and any telemarketing independent contractor employee.

(2) "Telemarketing independent contractor employee" means any person or other legal entity employed by a real estate marketing organization by means of an Independent Contractor's Agreement or some similar agreement to carry out real estate marketing on behalf of the real estate marketing organization. Any employees of the telemarketing independent contractor employee must be registered with the Agency as a real estate marketing employee.

Stat. Auth.: Section 4(1), Ch. 217, OL 1995

Stats. Implemented: ORS 696.606

Hist.: REA 1-1995(Temp), f. & cert. ef. 6-5-95; REA 2-1995, f. 11-27-95, cert. ef. 12-3-95; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97

**863-010-0610**

**Application for Licensing**

(1) Prior to being issued a real estate marketing organization license, a real estate marketing organization shall file with the Real Estate Commissioner, on a form provided by the Real Estate Commissioner or otherwise in written form, the following information:

(a) The name of the organization and any and all names under which the organization will engage in real estate marketing activity;

(b) The address and telephone number of the main office of the organization and the address or addresses and telephone numbers of all locations at which the organization will engage in real estate marketing activity;

(c) The names and addresses of all owners of the real estate marketing organization and the percentage of ownership for each owner if it is 10% or greater;

(d) If the organization is a partnership, L.L.C. or corporation, the names and addresses of the members and/or officers;

(e) The names of all on-site managers acting on behalf of the real estate marketing organization; and

(f) The name and address of all land developments or other clients for whom real estate marketing will be conducted; and

(g) The executed independent contractor agreements for any telemarketing independent contractor employees.

(2) The following information shall be provided for each and every principal person of the organization:

(a) Have you ever made application for, or ever been issued a real estate license in the State of Oregon? If yes, provide license type and date of application;

(b) Have you ever held a license or registration in this or any other state or in a foreign country to engage in any regulated occupation, trade or profession? If so, identify each such license or registration, state whether it is current and in what state or foreign country;

(c) Have you ever used any name other than the one herein given, either initials, surname, maiden name or alias? If so, please list;

(d) Are you the subject of any current investigation, administrative sanction proceeding, hearing, trial or similar action in progress at this time by any agency that has granted you a license or registration to engage in a regulated occupation, trade or profession? If so, explain and submit copies of documentation that describes the charges against you;

(e) Have you or any partnership or corporation in which you were a participant ever been reprimanded, fined, had any license or registration suspended or revoked, surrendered or resigned the license or registration, or in any way been sanctioned or penalized by the agency issuing the license or registration? If so, explain fully and submit a copy of the final order of the agency imposing or accepting the action taken;

(f) Have you ever entered a plea of nolo contendere, or been found guilty of, or been convicted of a felony or misdemeanor, or other criminal offense or offenses? Are you now awaiting trial or sentencing in any criminal proceeding? If so, explain fully and submit a copy of all legal documentation describing the charges and sanctions imposed for any and all offenses.

(3) In addition to the information set forth in sections (1) and (2) of this rule, the real estate organization shall submit the following with its license application:

(a) A full and complete list of the true names of all real estate marketing employees whom it will be employing at the time of license issuance;

(b) One completed fingerprint card for each principal person of the real estate marketing organization;

(c) Documentation to satisfy the bonding requirements of ORS 696.606(3) including, but not limited to, completion of the Agency's Bond form or Assignment of Security form and any supporting documentation required by the Real Estate Commissioner; and

(d) If the real estate marketing organization is a nonresident real estate marketing organization, a completed and executed irrevocable Consent to Service form; and

(e) The appropriate fee required by OAR 863-010-0640; and

(f) Any other information the Real Estate Commissioner may determine is necessary.

(4) The documentation providing the information required by sections (1), (2), and (3) of this rule shall be accompanied by the following verification executed by the owner of a sole proprietorship, the partners of a partnership or an officer of a corporation: "I acknowledge that the information contained in this application for a real estate marketing organization license is true, correct, and complete to the best of my knowledge."

(5) Notification of any changes in the information required by sections (1), (2) and (3) of this rule must be filed immediately with the Real Estate Commissioner.

Stat. Auth.: Sec. 4(1), Ch. 217, OL 1995

Stats. Implemented: ORS 696.606

Hist.: REA 1-1995(Temp), f. & cert. ef. 6-5-95; REA 2-1995, f. 11-27-95, cert. ef. 12-3-95; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97; REA 4-1997, f. 11-24-97, cert. ef. 12-1-97; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

**863-010-0620**

**Term of License**

(1) A new real estate marketing organization license shall be for a period of not more than 13 months and a renewal of such license shall be for a period of not more than 12 months from the expiration of the prior license.

(2) Renewal of a current license is accomplished by submitting a request in writing for the renewal of the license accompanied by the fee set out in OAR 863-010-0640.

(3) If a renewal of a current real estate marketing organization license is not completed before the expiration of the current license, the current license will expire and a complete application must be made for a new license.

Stat. Auth.: Sec. 4(1), Ch. 217, OL 1995

Stats. Implemented: ORS 696.606

Hist.: REA 1-1995(Temp), f. & cert. ef. 6-5-95; REA 2-1995, f. 11-27-95, cert. ef. 12-3-95; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97

**863-010-0630**

**Issuance of License**

(1) Upon receipt of all information required under OAR 863-010-0610 and completion of all processing of the information except for the completion of a criminal history check of the principal persons, a letter of authorization shall be issued to the real estate marketing organization which will allow it to engage in real estate marketing activity pending the completion of the criminal history check.

(2) Upon satisfactory completion of the criminal history check on all principal persons of the organization, a real estate marketing organization license will be issued effective as of the date of the letter of authorization.

Stat. Auth.: Sec. 4(1), Ch. 217, OL 1995

Stats. Implemented: ORS 696.606

Hist.: REA 1-1995(Temp), f. & cert. ef. 6-5-95; REA 2-1995, f. 11-27-95, cert. ef. 12-3-95

**863-010-0640**

**Fees**

The following fees shall apply to filings made pursuant to Chapter 217, Oregon Laws 1995:

- (1) Issuance or renewal of a real estate marketing organization license: \$500.00;
  - (2) Filing of change of information required by OAR 863-010-0610(5): \$75.00; and
  - (3) Processing of each fingerprint card and criminal history check: \$40.00.
- Stat. Auth.: Sec. 4(1), Ch. 217, OL 1995  
 Stats. Implemented: ORS 696.606  
 Hist.: REA 1-1995(Temp), f. & cert. ef. 6-5-95; REA 2-1995, f. 11-27-95, cert. ef. 12-3-95; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2005(Temp), f. 6-9-05, cert. ef. 7-1-05 thru 12-26-05; Suspended by REA 3-2005(Temp), f. 7-18-05, cert. ef. 7-22-05 thru 12-26-05; Administrative correction 1-20-06

**863-010-0650  
 Real Estate Marketing Employee Registration**

- (1) Each real estate marketing employee must be hired by, registered under, work under and use his or her legal name in real estate marketing activity for a licensed real estate marketing organization.
  - (2) No person may act as a real estate marketing employee until such time as his or her name has been registered with the Real Estate Commissioner as a real estate marketing employee. There is no fee for such registration other than the initial application fee or change of information fee. It is the obligation of the real estate marketing organization to provide such registration prior to allowing an employee to engage in real estate marketing activity.
  - (3) In accordance with OAR 863-010-0610(5), real estate marketing organizations shall immediately notify the Real Estate Commissioner upon the termination of any real estate marketing employee.
  - (4) A real estate licensee whose real estate license is on active status may not become a registered real estate marketing employee until such time as the real estate license is placed on inactive status with the Real Estate Agency or otherwise removed from active status.
  - (5) A registered real estate marketing employee is not a real estate licensee and therefore not required to make the disclosures contemplated by ORS 696.800 to 696.855. However, if the services of a real estate marketing organization are retained by a real estate broker, then the real estate marketing organization and its employees will be required to make any disclosures required to be made by the employing real estate broker.
- Stat. Auth.: Sec. 4(1), Ch. 217, OL 1995  
 Stats. Implemented: ORS 696.606  
 Hist.: REA 1-1995(Temp), f. & cert. ef. 6-5-95; REA 2-1995, f. 11-27-95, cert. ef. 12-3-95; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97

**863-010-0660  
 Onsite Inspection of Nonresident Real Estate Marketing Organizations**

The Real Estate Commissioner may delegate any necessary onsite inspection of nonresident real estate marketing organizations to an agency of the state or foreign country in which the nonresident real estate marketing organization is located and which is found by the Real Estate Commissioner to be the appropriate local regulatory agency.

Stat. Auth.: Sec. 4(1), Ch. 217, OL 1995  
 Stats. Implemented: ORS 696.627  
 Hist.: REA 1-1995(Temp), f. & cert. ef. 6-5-95; REA 2-1995, f. 11-27-95, cert. ef. 12-3-95

**DIVISION 14**

**REAL ESTATE BROKER LICENSING**

**863-014-0000  
 Application and Purpose**

- (1) This division sets forth the requirements and process for licensing real estate brokers, sole practitioners, and principal real estate brokers, as those terms are defined in ORS 696.010.
  - (2) The purpose of this division is to specify the requirements for obtaining the desired real estate license.
- Stat. Auth.: ORS 696.385  
 Stats. Implemented: ORS 696.020 & 696.022  
 Hist.: REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

**863-014-0003  
 Definitions**

- As used in this division, unless the context requires otherwise, the following definitions apply:
- (1) "Agency" is defined in ORS 696.010.
  - (2) "Board" means the Real Estate Board established pursuant to ORS 696.405.
  - (3) "Branch office" is defined in ORS 696.010.
  - (4) "Commissioner" is defined in ORS 696.010.
  - (5) "Incapacitated" means the physical or mental inability to perform the professional real estate activities described in ORS 696.010.
  - (6) "Licensed Name" means the name of a real estate licensee as it appears on the current, valid real estate license issued to the licensee pursuant to ORS 696.020.
  - (7) "Principal broker" means "principal real estate broker," as defined in ORS 696.010.
  - (8) "Real estate activity," "professional real estate activity," and "real estate business" mean "professional real estate activity" as defined in ORS 696.010.
  - (9) "Real estate broker" is defined in ORS 696.010 and includes a principal real estate broker and a sole practitioner, as those terms are defined in 696.010, unless the context requires otherwise.
  - (10) "Real estate licensee" and "licensee" mean a "real estate licensee" as defined in ORS 696.010, unless the context requires otherwise.
  - (11) "Registered business name" is defined in ORS 696.010.
  - (12) "Sole Practitioner" is defined in ORS 696.010. A sole practitioner engages in professional real estate activity under the individual's licensed name or under a registered business name.
- Stat. Auth.: ORS 696.385  
 Stats. Implemented: ORS 696.020 & 696.022  
 Hist.: REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

**863-014-0005  
 Education**

- (1) The required courses of study for a real estate broker's license, sole practitioner's license, or principal real estate broker's license must be designed pursuant to the Guidelines for Oregon Private Real Estate Schools and Instructional Guidelines and approved by the commissioner.
  - (2) The commissioner may at any time reevaluate an approved course or instructor. If the commissioner finds there is basis for consideration of revocation of the approved course or the instructor, the commissioner shall give notice by ordinary mail to the coordinator of that provider or instructor of a hearing on the possible revocation of that provider or instructor at least 20 days prior to the hearing.
  - (3) The commissioner may deny or revoke approval of a program, course, activity, or instructor, but that decision may be appealed to the commissioner within 20 days of the date of mailing the notice of denial or revocation and is subject to the contested case hearing provisions of the Oregon Administrative Procedures Act, ORS Chapter 183.
- Stat. Auth.: ORS 696.385 & 183.335  
 Stats. Implemented: ORS 696.020 & 696.022  
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; Renumbered from 863-015-0005, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

**863-014-0010  
 License Application Form and Content**

- (1) Applicants for a real estate broker's license, sole practitioner's license, and principal real estate broker's license must submit a license application in writing on an Agency-approved form with all information provided by the applicant and verified by the applicant.
- (2) The license application must contain:
  - (a) The applicant's legal name, mailing address, and phone number;
  - (b) If the applicant is to be associated with a principal real estate broker, the name of the principal real estate broker who will supervise the applicant's professional real estate activity;
  - (c) The place or places, including the street address, city, and county where the business will be conducted; and

(d) If the applicant will be associated with a principal real estate broker, the principal broker's authorization for the applicant to use the principal broker's registered business name.

(3) Every license application must be accompanied by the license fee authorized by ORS 696.270. At all periods of the year, the fee for all licenses issued is as authorized by 696.270. That is, the Agency does not pro-rate license fees.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; Renumbered from 863-015-0010, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

**863-014-0015**

**Background Check Application and Fingerprint Card**

(1) An applicant for real estate broker, sole practitioner, or principal real estate broker license must submit to a background check, except an applicant who is currently licensed as a real estate broker, sole practitioner, principal real estate broker or real estate property manager or who is eligible for renewal of such licenses. The background check includes a criminal background check as provided in OAR chapter 863, division 005. The applicant must apply for the background check in writing on an Agency-approved form with all information provided by the applicant and verified by the applicant.

(2) The background check application must include, but is not limited to, the following information:

(a) The applicant's legal name, residence address, and telephone number;

(b) The applicant's date and place of birth;

(c) The applicant's Social Security Number;

(d) Whether the applicant:

(A) Has ever been convicted of or is under arrest, investigation, or indictment for a felony or misdemeanor;

(B) Has ever been refused a real estate license or any other occupational or professional license in any other state or country;

(C) Has ever had any real estate license or other occupational or professional license revoked or suspended; or

(D) Has ever been fined or reprimanded as such a licensee; and

(e) Any other information the commissioner considers necessary to evaluate the applicant's trustworthiness and competency to engage in professional real estate activity in a manner that protects the public interest.

(3) As part of any application submitted under section (2) of this rule, the applicant must submit one completed fingerprint card on the form prescribed by the Oregon State Police and FBI and an additional fee sufficient to recover the costs of processing the applicant's fingerprint information and securing any criminal offender information pertaining to the applicant.

(4) The Agency must receive the background check application, fingerprint card, and processing fee before it will issue a license.

(5) As provided in ORS 181.540, all fingerprint cards, photographs, records, reports, and criminal offender information obtained or compiled by the Agency are confidential and exempt from public inspection. The commissioner will keep such information segregated from other information on the applicant or licensee and maintain such information in a secure place.

(6) If the Agency determines that additional information is necessary in order to process the application, the Agency may request such information in writing, and the applicant must provide the requested information in order to complete the application. If the applicant fails to provide the requested information, the Agency may determine that the application is incomplete, which will result in termination of the application.

(7) An applicant who has otherwise qualified for licensing may not be considered for any real estate license until the background check process and review has been completed, including but not limited to the Agency's receipt of criminal offender information from the Oregon State Police, other regulatory or law enforcement agencies, and the FBI. If an individual who has had a successfully completed background check process and review does not successfully complete the remaining portions of the entire licensing application process within twelve months from the date of the successfully com-

pleted background check process and review, the successfully completed background check process and review is no longer valid.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 4-2003(Temp), f. 12-18-03, cert. ef. 1-1-04 thru 6-29-04; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; Renumbered from 863-015-0015, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

**863-014-0020**

**Examinations**

(1) In addition to any other licensing eligibility requirements, a license applicant must pass a real estate examination that includes subject matter determined by the Board.

(2) An applicant may apply for an examination whether or not the Agency has finished processing the applicant's fingerprint card and background check or has received documentation on the applicant's licensing educational courses. However, the Agency will not consider an applicant for a license until the Agency has completed such processing and review.

(3) A real estate licensee who was licensed as a salesperson before July 1, 2002 must apply for and pass a real estate broker examination in order to be licensed as a principal real estate broker.

(4) An applicant must apply for an examination by submitting to the Agency:

(a) An Agency-approved license examination application form; and

(b) An examination application fee authorized by ORS 696.270.

(5) If a real estate license has not been active for two or more consecutive years, before applying to reactivate such license under OAR 863-014-0065, the licensee must apply for and pass a reactivation examination. To apply for the reactivation examination, the licensee must submit to the Agency:

(a) An Agency-approved license reactivation examination application form; and

(b) The examination application fee authorized by ORS 696.270.

(6) Examination fees are not refundable if an applicant:

(a) Fails to appear for a scheduled examination;

(b) Fails to cancel or reschedule an examination appointment at least two business days before the appointment; or

(c) Fails to pass an examination.

(7) If an applicant for a real estate broker license examination passes both the national and the state portions of an examination but is not issued a license within one year from the date of the examination:

(a) The applicant is no longer qualified for the license on the basis of the examination; and

(b) The applicant must reapply for the examination as required by this rule.

(8) An applicant who passes only one portion of a license examination must reapply for and pass the remaining portion within 12 months of the examination date of the passed portion in order to qualify for a license on the basis of the examination.

(9) In lieu of the national portion of the examination required in this rule, the Board may accept an applicant's passing results of the national portion of a broker examination taken in another state if:

(a) The examination was taken after November 1, 1973 and the license issued as a result of that examination has not been expired for more than one year; or

(b) The examination was taken within the 12 months before the application date and the Agency has received the required forms and fees; and

(c) The applicant provides the Agency with the applicant's certified license history from the state where such examination was taken.

Stat. Auth.: ORS 696.385, 696.425 & 183.335

Stats. Implemented: ORS 696.020, 696.022 & 696.425

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 3-2004, f. 4-28-04, cert. ef. 5-3-04; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2005(Temp), f. 6-9-05, cert. ef. 7-1-05 thru 12-26-05; Administrative correction 1-20-06; REA 2-

2007(Temp), f. & cert. ef. 3-21-07 thru 9-16-07; REA 4-2007, f. & cert. ef. 9-26-07; Renumbered from 863-015-0020, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

**863-014-0030**

**License Issue, Term, Form, and Inspection**

(1) The Agency will issue a real estate license to an applicant after determining that the applicant meets the license requirements contained in ORS 696.022 and 696.790 and receiving:

(a) The license application form required by OAR 863-014-0010; and

(b) The fees authorized by ORS 696.270.

(2) A licensee may engage in professional real estate activities allowed for that license by ORS Chapter 696 and OAR chapter 863 from the date the license is issued until the license expires, becomes inactive, or is revoked, surrendered, or suspended.

(3) A licensee may hold only one of the following Oregon real estate licenses at any time:

- (a) Real estate broker;
- (b) Principal real estate broker;
- (c) Sole practitioner; or
- (d) Property manager.

(4) The license expiration date is the last day of the month of a licensee's birth month.

(5) The license term is not more than 24 months plus the number of days between the date the license is issued or renewed and the last day of the month of the licensee's birth month.

(6) The license will include the following information:

- (a) The licensee's legal name;
- (b) The license number, effective date, and expiration date;
- (c) The name under which the licensee conducts real estate business or the registered business name;
- (d) The licensee's business address;
- (e) The seal of the Real Estate Agency; and
- (f) Any other information the Agency deems appropriate.

(7) Each license must be available for inspection in the licensee's principal place of business. If a licensee is associated with a principal real estate broker, the principal broker must make the license available for inspection in the licensee's principal place of business, which is:

- (a) The principal broker's principal place of business; or
- (b) A branch office.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2007(Temp), f. & cert. ef. 3-21-07 thru 9-16-07; REA 4-2007, f. & cert. ef. 9-26-07; Renumbered from 863-015-0030, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

**863-014-0035**

**Real Estate Broker Licensing Requirements**

(1) To be eligible for a real estate broker's license, an individual must:

(a) Submit a complete license application and background check application as required by OAR 863-014-0010 and 863-014-0015;

(b) Pass the licensing examination required by OAR 863-014-0020;

(c) Pay the licensing fees authorized by ORS 696.270; and

(d) Successfully complete the required courses of study for real estate broker licensing as prescribed by the commissioner.

(2) If the applicant's qualifications are based wholly or partially upon an active real estate license held in another state, the applicant must furnish with the application a certification of active licensing from the other state's licensing agency.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; Renumbered from 863-015-0035, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

**863-014-0038**

**Sole Practitioner Licensing Requirements**

(1) To be eligible for a sole practitioner's license, an individual must:

(a) Submit a complete license application and background check application as required by OAR 863-014-0010 and 863-014-0015;

(b) Pass the licensing examination required by OAR 863-014-0020;

(c) Pay the licensing fees authorized by ORS 696.270;

(d) Successfully complete the required courses of study for real estate broker licensing as prescribed by the Commissioner; and

(e) Provide proof satisfactory to the Commissioner that the applicant has met the requirements contained in ORS 696.022 for a sole practitioner.

(2) If the applicant's qualifications are based wholly or partially upon an active real estate license held in another state, the applicant must furnish with the application a certification of active licensing from the other state's licensing agency.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

**863-014-0040**

**Principal Real Estate Broker Licensing Requirements**

(1) Except as allowed by OAR 863-014-0042 concerning waiver of experience requirements, to be eligible for a principal real estate broker's license, an individual must:

(a) Submit a complete license application and background check application as required by OAR 863-014-0010 and 863-014-0015;

(b) Pass the licensing examination required by OAR 863-014-0020;

(c) Pay the licensing fees authorized by ORS 696.270;

(d) Successfully complete the required course of study for principal real estate broker licensing as prescribed by the Agency; and

(e) Provide proof satisfactory to the Agency that the applicant has met the requirements contained in ORS 696.022 for a principal real estate broker.

(2) If the applicant's qualifications are based wholly or partially upon an active real estate license held in another state, the applicant must furnish with the application a certification of active licensing from the other state's licensing agency.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 2-2005(Temp), f. 6-9-05, cert. ef. 7-1-05 thru 12-26-05; Administrative correction 1-20-06; Renumbered from 863-015-0040, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

**863-014-0042**

**Waiver of Experience Requirements**

(1) If an applicant for a principal real estate broker's license or a sole practitioner's license has met all requirements for such license except for the experience requirement, the applicant may petition the Real Estate Board for a waiver of the three-year experience requirement contained in ORS 696.022, OAR 863-014-0038, and 863-014-0040. The petition must contain sufficient information to allow the Board to determine whether the applicant qualifies for a waiver as allowed by this rule.

(2) The applicant must file a petition to waive the experience requirement on an Agency-approved form with the Agency no later than 21 days before the scheduled Real Estate Board meeting at which the applicant wishes the Board to act.

(3) The Board may issue a waiver if the applicant:

(a) Has graduated from a four-year college or university with a degree in real estate in a curriculum approved by the Commissioner, and the applicant has held an active license as a real estate broker for a period of at least one year; or

(b) Has a two-year community college associate degree in real estate in a curriculum approved by the Commissioner, has held an active license as a real estate broker for a period of at least two years and, if the applicant is applying for a principal real estate broker

license, the applicant has completed the course of study for principal real estate brokers as required by OAR 863-014-0040; or

(c) Has had real estate-related experience equivalent to at least three years of active experience as a real estate licensee and provides written details about the nature of such experience.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

**863-014-0050**

**License Renewal**

(1) A real estate license expires if a licensee fails to renew the license on or before the license expiration date. A real estate licensee may not engage in any professional real estate activity after a license expires.

(2) The Agency will renew an active or inactive real estate license to an active real estate license status for the term prescribed in OAR 863-014-0030 when the Agency has received the following:

(a) The renewal fee authorized by ORS 696.270; and

(b) An Agency-approved renewal application form requesting active license status that includes certification that the licensee has met the real estate continuing education renewal requirements for active license status under OAR 863-014-0055.

(3) The Agency will renew an active or inactive real estate license to an inactive real estate license status for the term prescribed in OAR 863-014-0030, when the Agency has received the following:

(a) The renewal fee authorized by ORS 696.270; and

(b) An Agency-approved renewal application form requesting inactive status.

(4) The Agency will renew an expired real estate license to an active or inactive license status under the following conditions:

(a) The licensee applies for a license renewal on a agency-approved renewal application form requesting active or inactive license status within one year of the date the license expired;

(b) The Agency has received both the renewal fee and a late fee authorized by ORS 696.270; and

(c) If the licensee renews to an active license status, the Agency has received an Agency-approved renewal application form that includes certification that the licensee met the real estate continuing education renewal requirements under OAR 863-014-0055.

(5) When the Agency renews an expired license, the renewed license is effective as of the renewal date. The renewal is not retroactive, and the expired license retains the status of expired until the renewal date.

(6) A license that is renewed under this rule expires two years from the date of the original expiration date.

(7) A real estate license that has expired for more than one year is lapsed, as defined in ORS 696.010.

(8) A license may not be renewed if it is lapsed, surrendered, suspended, or revoked. Except as provided in 863-014-0075, the former licensee must reapply and meet all the licensing qualifications required of new license applicants.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2007(Temp), f. & cert. ef. 3-21-07 thru 9-16-07; REA 4-2007, f. & cert. ef. 9-26-07; Renumbered from 863-015-0050, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

**863-014-0055**

**Continuing Education**

(1) To renew an active license, a licensee must certify that the licensee has completed at least 30 clock-hours of real estate oriented continuing education during the preceding two license years.

(a) A licensee must complete 15 clock-hours of continuing education in one or more of the following required topics:

(A) Trust Accounts;

(B) Misrepresentation;

(C) Anti-Trust;

(D) Rule and Law Update;

(E) Property Management;

(F) Commercial Brokerage and Leasing;

(G) Real Estate Taxation: Federal, State, and Local;

(H) Agency;

(I) Fair Housing;

(J) Contracts;

(K) Property Evaluation;

(L) Brokerage Management;

(M) Land;

(N) Business Ethics; or

(O) Compliance Review.

(b) A licensee must complete the remaining 15 hours in any combination of the above course topics or in other elective real estate oriented continuing education courses.

(c) Courses related to personal skills, such as time management, and routine meetings and luncheons are not considered real estate oriented continuing education courses and do not qualify as such.

(d) Courses must be a minimum of one clock-hour in length. A clock-hour is measured in 60-minute increments, excluding meal or rest breaks.

(e) Credit will not be given for repeating a continuing education course with the same content during a two-year renewal period.

(2) Licensees must complete a standard Certificate of Attendance developed by the Agency for each course completed by a licensee. "Certifying licensee" means a principal real estate broker or sole practitioner who certifies on an Agency-approved form that a licensee completed the continuing education requirements.

(3) In completing the standard Certificate of Attendance, the certifying licensee must decide:

(a) Whether a continuing education course meets the continuing education requirements; and

(b) Whether to classify the course as a required topic or an elective topic.

(4) A certifying licensee may approve continuing education courses completed outside of Oregon. However, for courses completed outside of Oregon, the number of approved credit hours must reflect the clock-hours of course content related to the practice of real estate in Oregon. Credit hours will not be approved for courses with content specific to another state or jurisdiction.

(5) The certifying licensee must retain the Certificate of Attendance in its records as prescribed in OAR 863-015-0260. The certifying licensee must produce a copy of the Certificate of Attendance if the associated licensee or the Agency so requests.

(6) Principal real estate brokers and sole practitioners must:

(a) Self-certify that they have completed their continuing education requirements;

(b) Retain their Certificate of Attendance as prescribed in OAR 863-015-0260; and

(c) Produce a copy of the Certificate of Attendance if the Agency so requests.

(7) Providing false information on an Agency license renewal form or Certificate of Attendance or falsely certifying such information is prima facie evidence of a violation of ORS 696.301.

(8) In certifying a continuing education course, the certifying licensee must consider the totality of the information provided and the class content and may consider additional criteria including, but not limited to:

(a) Evidence of the instructor's qualifications to teach the course;

(b) Whether the course content is current and accurate, the learning objectives for the course, and whether the course content fulfills the learning objectives;

(c) Whether the course includes ways of measuring learning outcome, such as a final examination; and

(d) Whether students get to evaluate the course and instructor.

(9) A real estate broker first licensed on or after July 1, 2002 must complete a commissioner-approved course entitled "Advanced Real Estate Practices" before the first active renewal of the real estate broker's license or before the first license reactivation following an inactive first renewal. This requirement does not apply to sole practitioners or principal brokers. An approved Advanced Real Estate Practices course satisfies the continuing education requirements for a licensee's renewal.

(10) Certifying licensees may approve continuing education courses completed through alternative delivery methods. "Alternative delivery" means presentation of continuing education material in a method other than classroom lecture, including but not limited to correspondence, and electronic means such as satellite broadcast, videotape, computer disc, and Internet.

(a) In addition to the certification criteria in section (8), in determining whether to certify an alternative delivery method course, the certifying licensee may consider:

(A) Whether the course offers operational or electronic security measures;

(B) The students' ability to interact with an instructor or access other resources to support their learning;

(C) Whether the learning environment and technical requirements are explained to students in advance of the course; and

(D) Whether the course includes a proctored final examination.

(b) In determining the number of credit hours to approve for an alternative delivery course, the certifying licensee may consider:

(A) The number of questions in the examination, with a minimum standard of 10 questions per hour of credit;

(B) The number of pages for Internet, Computer-Based Training, CD-ROM, and book courses, with a minimum standard of 10 pages per hour of credit; and

(C) The clock hours elapsed for videocassette, audiotape, or teleconference courses.

(11) Continuing education course sponsors may:

(a) State in their advertising that the licensee's principal broker must approve the continuing education requirements, e.g., course content, topics, and hours; and

(b) Complete the following information on a Certificate of Attendance:

(A) Real estate licensee's name;

(B) Continuing education course title and date of completion;

(C) Instructor's name and location of course; and

(D) Method of course delivery and whether a final examination was administered.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.174 & 696.301

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2004(Temp), f. & cert. ef. 1-15-04 thru 6-25-04; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04; Renumbered from 863-015-0055, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

### 863-014-0060

#### Limited Licenses

If the commissioner issues an individual a limited license under ORS 696.130, the licensee must apply in writing for an unrestricted license after the period of limitation.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2005(Temp), f. 6-9-05, cert. ef. 7-1-05 thru 12-26-05; Suspend by REA 3-2005(Temp), f. 7-18-05, cert. ef. 7-22-05 thru 12-26-05; Administrative correction 1-20-06; Renumbered from 863-015-0060, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

### 863-014-0061

#### Affiliated and Subsidiary Organizations

(1) Affiliated organizations are two or more organizations whose controlling ownership interests are owned by the same licensee, licensees, entity, or entities.

(2) A subsidiary organization is one in which the majority of the voting stock or controlling ownership interest is owned by another organization.

(3) Affiliated or subsidiary business organizations may use the same principal broker, provided that the individual registering the business name submits proof satisfactory to the commissioner that the principal real estate broker or brokers involved actually manages and controls each affiliated and subsidiary organization.

(4) As used in this rule, controlling ownership interest(s) means owning 51 percent or more.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; Renumbered from 863-015-0061, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

### 863-014-0062

#### Mailing Address, Address Change, Service of Notice

(1) Each real estate licensee must maintain on file with the Agency a current mailing address and notify the Agency within 10 calendar days of a change of address.

(2) A forwarding address is effective as a "current mailing address" when the Agency receives notice of the forwarding address by the United States Postal Service.

(3) Agency notice by mail, whether registered, certified, or regular, to the real estate licensee's current mailing address on file with the Agency constitutes service.

(4) This rule applies regardless of license status.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; Renumbered from 863-015-0062, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

### 863-014-0063

#### Real Estate License Transfers, Principal Brokers' Responsibilities, Authority to Use Registered Business Name

(1) As used in this rule:

(a) "Authorized licensee" means a licensee who has authority over the use of a registered business name;

(b) "License transfer form" means a completed and signed Agency-approved form that does one of the following:

(A) Transfers a real estate broker license to a receiving principal broker in order to become associated with the receiving principal broker, or

(B) Authorizes a real estate licensee to use a registered business name to conduct professional real estate activity.

(c) "Sending principal broker" means the principal real estate broker with whom an active real estate broker license is associated before the license transfer;

(d) "Receiving principal broker" means the principal real estate broker with whom an active real estate broker license will be associated after the license transfer.

(2) The licensee must provide the following information on a license transfer form:

(a) The name, mailing address, and license number of the licensee who is transferring the license or documenting the authorized use of a registered business name;

(b) The current status of the license, whether active or inactive;

(c) If the real estate broker is associated with a sending principal broker, certification that the real estate broker provided written notice of the transfer to the sending principal broker, and that such notice was provided before the date the transfer form is submitted to the Agency, including:

(A) The date of personal service of such notice; or

(B) The date a certified letter was delivered by the post office to the sending principal broker's address;

(d) If the form is used to authorize the use of a different registered business name, certification that the licensee provided written notice of such change to the authorized licensee for the current registered business name, and that such notice was provided before the date the license transfer form is submitted to the Agency, including:

(A) The date of personal service of such notice; or

(B) The date a certified letter was delivered to the authorized licensee's address;

(e) If applicable, the receiving principal broker's registered business name, street address, and registered business name identification number;

(f) If applicable, the street address, registered business name identification number, and the registered business name under which the real estate licensee will be authorized to conduct professional real estate activity; and

(g) The receiving broker's or authorized licensee's name, license number, telephone number, date, and signature.

(3) The Agency will transfer the license of an active real estate broker associated with a sending principal broker to a receiving prin-

principal broker when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

(4) The Agency will transfer the license of an active sole practitioner or principal real estate broker to a receiving principal broker when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

(5) The Agency will transfer the license of an inactive real estate licensee, who has been inactive for a period of 30 days or less, to a receiving principal broker when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

(6) The Agency will change a real estate license category when the license is transferred under sections (4) and (5) of this rule and will not require a fee payment for changing the license category when the Agency receives the following:

- (a) A license transfer form;
- (b) The transfer fee authorized by ORS 696.270; and
- (c) An Agency-approved form to change the license category.

(7) A principal real estate broker with whom a licensee is associated remains responsible for the licensee's professional real estate activity until the Agency receives one of the following:

- (a) The licensee's real estate license;
- (b) An Agency-approved form submitted by the principal real estate broker terminating the relationship with the licensee under OAR 863-014-0065; or
- (c) A license transfer form and fee.

(8) If a principal real estate broker with whom a real estate broker is associated voluntarily gives the license to the real estate broker named in the license, the principal real estate broker remains responsible for the licensee's subsequent professional real estate activity until the Agency receives one of the following:

- (a) The licensee's real estate license;
- (b) An Agency-approved form submitted by the principal real estate broker terminating the relationship with the licensee under OAR 863-014-0065;
- (c) An Agency-approved form submitted by the licensee terminating the relationship with the principal real estate broker under OAR 863-014-0065; or
- (d) A license transfer form and fee.

(9) The Agency will document the registered business name under which a real estate licensee is authorized to conduct professional real estate activity when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

Stat. Auth.: ORS 696.385 & 183.335  
 Stats. Implemented: ORS 696.020 & 696.022  
 Hist.: REA 4-2007, f. & cert. ef. 9-26-07; Renumbered from 863-015-0063, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

**863-014-0065  
 Inactive License, Change License Status to Active, Change License Category, License Reactivation**

(1) A real estate licensee whose license is on inactive status may not engage in professional real estate activity.

(2) The commissioner may reprimand, suspend, revoke, or impose a civil penalty against an inactive licensee under ORS 696.301.

(3) The Agency will change an active real estate license to inactive license status when the Agency actually receives the following:

- (a) The license;
- (b) A request by the licensee submitted on an Agency-approved form to change the license status to inactive; or
- (c) An Agency-approved form submitted by the licensee terminating the relationship with the principal real estate broker under this rule.

(4) The Agency will change the status of an active real estate broker who is associated with a principal real estate broker to inactive status when the Agency receives one of the following:

- (a) The real estate broker license, submitted by the licensee;
- (b) The real estate broker license, submitted by the principal real estate broker;
- (c) An Agency-approved form, submitted by the principal real estate broker, terminating the principal real estate broker's relationship with the real estate broker; or

(d) An Agency-approved form submitted by the real estate broker terminating the relationship with the principal real estate broker.

(5) An inactive real estate licensee may renew such license under OAR 863-014-0050.

(6) For a period of 30 days after a real estate broker license becomes inactive, the licensee may change such license status from inactive to active and transfer the license to a principal real estate broker under OAR 863-014-0063.

(7) Except as provided in section (8) of this rule, for a period of 30 days after the real estate license becomes inactive, the licensee may change such license category to an active sole practitioner or active principal real estate broker only if:

- (a) The licensee is qualified for such licenses; and
- (b) The licensee submits to the Agency:
  - (A) An Agency-approved application form to change the license category and to change the license status to active,
  - (B) A license transfer form under OAR 863-014-0064, if applicable, and
  - (C) Payment of the transfer fee authorized by ORS 696.270.

(8) If the licensee under section (7) of this rule is changing license category to a principal real estate broker and has never been licensed as a principal real estate broker, the licensee must submit to the Agency:

- (a) An Agency-approved broker license application form; and
- (b) The licensing fee authorized by ORS 696.270.

(9) If a license has not been on active status for two or more consecutive years, before applying for reactivation of such license under sections (10) and (11) of this rule:

- (a) The licensee must submit to the Agency:
  - (A) An application for licensing reactivation examination; and
  - (B) The examination fee authorized by ORS 696.270; and
  - (C) The licensee must pass the reactivation examination.

(10) After the 30-day period specified in sections (6) and (7) of this rule, and subject to the examination requirements in section (9) of this rule, a licensee may change the license status from inactive to active only by submitting to the Agency:

- (a) An application for license reactivation; and
- (b) Payment of the reactivation fee authorized by ORS 696.270.

(11) Subject to the examination requirements in section (9) of this rule, if an inactive licensee renews a license and maintains inactive status under section (5) of this rule, the licensee may, within 60 days of the date of renewal, change the license status to active by submitting to the Agency:

- (a) An Agency-approved application for license reactivation that includes certification that the licensee met the real estate continuing education renewal requirements under OAR 863-014-0055; and
- (b) Payment of the active renewal fee authorized by ORS 696.270, less the amount of the inactive renewal fee already paid by the licensee.

(12) The change of license status, transfer, or change of license category under sections (6) and (7) of this rule, or the reactivation of a license under sections (10) and (11) of this rule, are effective when the Agency actually receives all required forms and fees.

Stat. Auth.: ORS 696.385 & 183.335  
 Stats. Implemented: ORS 696.020 & 696.022  
 Hist.: REA 1-1991, f. & cert. ef. 11-4-91; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0081; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2007(Temp), f. & cert. ef. 3-21-07 thru 9-16-07; REA 4-2007, f. & cert. ef. 9-26-07; Renumbered from 863-015-0065, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

**863-014-0070  
 License Surrender**

(1) A real estate licensee may surrender the licensee's license to the commissioner on an Agency-approved form. Upon surrender, the license is terminated, and the licensee's rights under the surrendered license are terminated. The commissioner retains continuing jurisdiction to investigate the professional real estate activity conducted under the license and to take disciplinary action against the former licensee under ORS Chapter 696 and its implementing rules.

(2) A surrendered license may not be renewed. The former licensee must reapply and meet all the licensing qualifications required of new license applicants.

Stat. Auth.: ORS 696.385 & 183.335  
 Stats. Implemented: ORS 696.020 & 696.022  
 Hist.: REC 21, f. 7-5-67; REC 23, f. 7-3-69, ef. 9-1-69; REC 28, f. 11-1-70, ef. 1-1-71; REC 31, f. 8-6-71, ef. 9-9-71; REC 46, f. & ef. 1-22-76; REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 3-1980, f. 10-20-80, ef. 11-1-80; REC 1-1981, f. 10-30-81, ef. 11-1-81; REC 5-1984, f. 6-18-84, ef. 7-1-84; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0085; Renumbered from 863-015-0070, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

**863-014-0075**

**Reissuing Suspended License**

(1) The Agency may reissue an unexpired real estate license that has been suspended by order of the commissioner if the licensee makes a written request to the Agency that such license be reissued and pays the required fee within 30 days after the close of the suspension period.

(2) If the licensee fails to act within 30 days, the license becomes inactive and may be reactivated only pursuant to OAR 863-014-0065.

(3) If the license expires before the request for reissuance, the Agency will renew the license within the 30-day period only pursuant to OAR 863-014-0050.

(4) A license reissued under this rule is effective for licensing purposes when the Agency receives all required forms and fees.

(5) If the license has had a status other than active for two or more consecutive years, the licensee must comply with the reactivation requirements of OAR 863-014-0065.

Stat. Auth.: ORS 696.385 & 183.335  
 Stats. Implemented: ORS 696.020 & 696.022  
 Hist.: REC 1-1981, f. 10-30-81, ef. 11-1-81; REC 5-1984, f. 6-18-84, ef. 7-1-84; REA 3-1989, f. 12-13-89, cert. ef. 2-1-90; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0086; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; Renumbered from 863-015-0075, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

**863-014-0076**

**Signature Requirements**

(1) Subject to ORS 84.001 to 84.061, the Agency may, but is not required to, accept any electronic or facsimile signature created, generated, sent, communicated, received, or stored regarding licensing documents including, but not limited to, background check applications, examination applications, license applications, license change forms, and license surrender forms.

(2) The Agency may require an individual to submit an original signature on any document.

Stat. Auth.: ORS 696.385 & 183.335  
 Stats. Implemented: ORS 696.020 & 696.022  
 Hist.: REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; Renumbered from 863-015-0076, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

**863-014-0080**

**Nonresident License Recognition**

(1) As used in ORS 696.265 and this rule, unless the context requires otherwise:

(a) "Nonresident real estate broker" means an individual residing in another state or country who is licensed by that state or country to transact professional real estate activity and whose license authorizes that individual to employ, engage, or otherwise supervise other real estate brokers or salespersons.

(b) "Nonresident real estate salesperson" means an individual residing in another state or country who is licensed by that state or country to transact professional real estate activity.

(c) "Nonresident licensee" means either a nonresident real estate broker or a nonresident real estate salesperson.

(d) "State or country of residence" means, presumptively, the state or country where an individual's resident license is located.

(2) An individual who is not a resident of Oregon, is actively engaged in professional real estate activity in his or her state or country of residence, and has been duly licensed by that state or regulatory agency within that country, may obtain an Oregon nonresident license if the applicant's state or county of residence:

(a) Allows an Oregon real estate broker to be licensed in that state or country under terms and conditions similar to those prescribed in ORS 696.255 and 696.265; and

(b) Is capable of assisting and does assist the commissioner in the commissioner's review of real estate transactions and management of rental real estate for enforcement to protect Oregon consumers affected by the nonresident licensees' professional real estate activity.

(3) An applicant for a nonresident license must provide fingerprints and criminal offender information in the same manner as required of a resident licensee under ORS 696.022. The nonresident license application must be accompanied by a background check application, fingerprint card, and processing fees as prescribed by OAR 863-014-0015. The applicant must furnish with the nonresident license application proof that the applicant holds an active and valid license issued by the state or country of residence.

(4) An applicant for a nonresident license must sign and file with the Agency an affidavit stating that the applicant has reviewed and is familiar with ORS Chapter 696 and its implementing rules and agrees to be bound by them.

(5) For a nonresident real estate salesperson who is a resident of a state requiring salespersons to work under licensed real estate brokers, the license issued by that state's Real Estate Agency must contain the business name and business address of the broker under whose license the salesperson works. The Agency will mail the Oregon license to the broker at the broker's business address.

(6) If the Agency requests, nonresident licensees must produce in the Agency's office any and all records of professional real estate activity conducted in Oregon. The nonresident licensee, by applying for and accepting the nonresident license, authorizes the Agency to inspect and examine any transaction escrow records, trust account records, and other records of professional real estate activity, wherever maintained.

(7) With respect to nonresident real estate salespersons who are residents of a state or country requiring salespersons to work under licensed real estate brokers, all advertising (including business signs, business cards, agreements, and other documents) used by those salespersons must contain the name and business address of the nonresident real estate broker.

(8) The commissioner may suspend or revoke, reprimand, deny a license to, or refuse to renew a license to a nonresident real estate licensee upon any of the grounds in ORS 696.301 or if the state or country of residence has suspended, revoked, denied, or refused to renew the individual's license or has limited the license in any way.

(9) Except as otherwise provided in reciprocity agreements entered into pursuant to section (10) below, or except as provided at the commissioner's discretion, the nonresident license application, fees, license terms, license application and renewal processing, license transfer, and all other conditions and requirements of licensure will be as provided for in ORS chapter 696 and its implementing rules.

(10) The commissioner may enter into reciprocity agreements with other states or countries where necessary to permit Oregon real estate licensees to obtain licenses in such other states or countries.

(11) The commissioner may include in such agreements the terms and conditions prescribed in this rule and additional terms and conditions at the commissioner's discretion.

(12) Nonresident licenses granted under reciprocity agreements remain in force, unless suspended or revoked by the commissioner or for failure to pay the biennial renewal fees, only so long as the reciprocity agreement remains in effect between Oregon and the other state or country. If the non-resident licensee subsequently becomes an Oregon resident, such person may obtain, upon filing the proper application and other requisite documents and the applicable fees, the equivalent resident license in Oregon. Application must be made within one year after becoming a resident.

Stat. Auth.: ORS 696.265, 696.385 & 183.335  
 Stats. Implemented: ORS 696.255 & 696.265  
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 4-2003(Temp), f. 12-18-03, cert. ef. 1-1-04 thur 6-29-04; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; Renumbered from 863-015-0080, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

**863-014-0085****Authorization to Control Broker's Business**

(1)(a) A sole practitioner may authorize another sole practitioner or principal real estate broker to control and supervise his or her professional real estate activity during the sole practitioner's absence for a period not to exceed 90 days. Both licensees have joint responsibility for all professional real estate activity conducted during the authorizing sole practitioner's absence.

(b) A principal real estate broker may authorize another principal broker to control and supervise his or her professional real estate activity during the principal broker's absence for a period not to exceed 90 days. Both licensees have joint responsibility for all professional real estate activity conducted during the authorizing principal broker's absence.

(2) A copy of the written authorization, signed by the authorizing sole practitioner or principal real estate broker and the licensee accepting control and supervision responsibility under section (1), must be filed with the commissioner before the effective date of such authorization. The commissioner may allow a later filing for good cause shown.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.026

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04; Renumbered from 863-015-0085, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

**863-014-0095****Business Name Registration**

(1) Before conducting business in a name other than the real estate licensee's legal name, the principal real estate broker or sole practitioner must register the business name with the Agency. For the purposes of this rule, "business name" means an assumed name or the name of a business entity, such as a corporation, partnership, limited liability company, or other business entity recognized by law. A licensee must maintain the registered business name with the Oregon Secretary of State's Corporation Division.

(2) To use or register a business name, the real estate licensee must provide the commissioner with all of the following:

(a) The business name in which the licensee wishes to conduct business; or

(b) Written authority by which the licensee is authorized to use the business name; and

(c) A copy of the registration filed with the Oregon Secretary of State Business Registry.

(3) Business names registered with the Agency do not expire and need not be renewed by the licensee. Any change in the business name registered with the Agency will be treated as the registration of a new business name, and the change in business name must be registered with the Agency together with the fee authorized by ORS 696.270.

(4) If a licensee wishes to transfer the right to use a business name that is registered with the Agency, the licensee acquiring the right to use the name must file a change of business name registration with the Agency together with the fee authorized by ORS 696.270. A licensee must notify the Agency in writing if the licensee terminates its use of a business name.

(5) A business name registration becomes void when the Agency receives notice of termination of the use of a business name. A business name registration becomes void when no licensees are affiliated with the registered business name. A business name registration may be reactivated within one year from the voiding of a registration, unless a new user has registered the business name, without paying the fee authorized by ORS 696.270.

(6) No real estate broker, principal broker, or sole practitioner may engage in professional real estate activities under more than one registered business name. An exception to this requirement is that a principal broker or sole practitioner may engage in professional real estate activities under more than one registered business name if the business entity is an affiliated or subsidiary organization as described in OAR 863-014-0061.

Stat. Auth.: ORS 696.026, 696.385 & 183.335

Stats. Implemented: ORS 696.026

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; Renumbered from 863-015-0095, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

**863-014-0100****Branch Office Registration**

(1) Before engaging in professional real estate activity from a branch office, a principal real estate broker or sole practitioner must provide to the commissioner on an Agency-approved form the branch office street and mailing addresses and the fee authorized by ORS 696.270.

(2) For the purposes of ORS 696.270, a branch office registration does not require renewal.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.026 & 696.200

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; Renumbered from 863-015-0100, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

**863-014-0160****Deceased or Incapacitated Broker**

(1) If the Agency issues temporary license under ORS 696.205, the temporary licensee may only close or terminate the transactions that are in various stages of completion or termination at the broker's death or incapacity. The activities authorized under the temporary license include, but are not limited to:

(a) Terminating all listings and buyer's service agreements in which there were no outstanding offers or earnest money receipts when the broker died or became incapacitated;

(b) Completing all negotiations between buyers and sellers on open transactions;

(c) Depositing and withdrawing monies from the clients' trust account in connection with the completion of all transactions pending when the broker died or became incapacitated;

(d) Promptly paying all real estate commissions owing after closing all transactions, both to the decedent broker's estate and to participating real estate brokers entitled to commissions resulting from the transactions; and

(e) Disbursing earnest moneys or other funds according to any outstanding earnest money receipt or other agreement.

(2) The holder of a temporary license may not enter into any new listing or sale agreements or conduct professional real estate activity for others who are not principals in a current contract with the deceased or incapacitated broker.

(3) The holder of a temporary license is subject to ORS Chapter 696 and its implementing rules while engaging in professional real estate activity under the terms of the temporary license.

Stat. Auth.: ORS 696

Stats. Implemented: ORS 696.205

Hist.: REC 46, f. & ef. 1-22-76; REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 1-1981, f. 10-30-81, ef. 11-1-81; REC 5-1984, f. 6-18-84, ef. 7-1-84; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0092; Renumbered from 863-015-0160, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

**DIVISION 15****REAL ESTATE BROKER REGULATION****863-015-0000****Applicability and Purpose**

(1) This division applies to real estate brokers, sole practitioners, and principal real estate brokers, as those terms are defined by ORS 696.010.

(2) The purposes of this division are:

(a) To specify the regulations for licensees engaged in professional real estate activities, as that term is defined in ORS 696.010;

(b) To protect the owners, buyers, and sellers of real estate; and

(c) To make the sole practitioner and principal real estate broker responsible for establishing a system of recordkeeping that:

(A) Provides the Agency with access to the licensees' records; and

(B) Complies with the requirements contained in OAR chapter 863 and ORS Chapter 696.

(3) The Agency's goal is to encourage real estate licensees to comply with the applicable statutes and implementing rules through education and, if necessary, through progressive discipline, as provided in OAR chapter 863, division 27.

(4) Section (3) of this rule does not limit the Agency's authority to reprimand, suspend, or revoke a license pursuant to ORS 696.301 or assess civil penalties as authorized by 696.990.

Stat. Auth.: ORS 696.385

Stat. Implemented: ORS 696.015

Hist.: REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

**863-015-0003**

**Definitions**

As used in this division, unless the context requires otherwise, the following definitions apply:

(1) "Addendum" means additional material attached to and made part of a document. The addendum must refer to the document and be dated and signed or otherwise acknowledged by all the parties.

(2) "Agent" is defined in ORS 696.800.

(3) "Agency" is defined in ORS 696.010.

(4) "Bank" is defined in ORS 696.010.

(5) "Banking day" means each day a financial institution is required to be open for the normal conduct of its business but does not include Saturday, Sunday, or any legal holiday under ORS 187.010.

(6) "Board" means the Real Estate Board established pursuant to ORS 696.405.

(7) "Branch office" is defined in ORS 696.010.

(8) "Buyer" is defined in ORS 696.800.

(9) "Clients' Trust Account" means an account in a "bank," as defined in ORS 696.010, that is subject to the provisions of 696.241.

(10) "Closing" means the transfer of all property titles and the disbursement or distributions of all monies and documents for a real estate transaction.

(11) "Commissioner" is defined in ORS 696.010.

(12) "Compensation" is defined in ORS 696.010.

(13) "Competitive market analysis" is defined in ORS 696.010.

(14) "Confidential information" is defined in ORS 696.800.

(15) "Day" or "days" means each calendar day, including legal holidays under ORS 187.010.

(16) "Disclosed limited agency" is defined in ORS 696.800.

(17) "First contact with a represented party" means the initial contact by a licensee, whether in person, by telephone, over the Internet, or by electronic mail, electronic bulletin board, or similar electronic method, with an individual who is represented by a real estate licensee or can reasonably be assumed from the circumstances to be represented or seeking representation.

(18) "Letter opinion" is defined in ORS 696.010.

(19) "Licensed Name" means the name of a real estate licensee as it appears on the current, valid real estate license issued to the licensee pursuant to ORS 696.020.

(20) "Listing agreement" is defined in ORS 696.800.

(21) "Offer" is defined in ORS 696.800.

(22) "Offering price" is defined in ORS 696.800.

(23) "Principal" is defined in ORS 696.800.

(24) "Principal broker" means "principal real estate broker," as defined in ORS 696.010.

(25) "Real estate" is defined in ORS 696.010.

(26) "Real estate activity," "professional real estate activity," and "real estate business" mean "professional real estate activity" as defined in ORS 696.010.

(27) "Real estate broker" is defined in ORS 696.010 and includes a principal real estate broker and a sole practitioner, as those terms are defined in ORS 696.010, unless the context requires otherwise.

(28) "Real estate licensee" and "licensee" mean a "real estate licensee" as defined in ORS 696.010, unless the context requires otherwise.

(29) "Real property" is defined in ORS 696.800.

(30) "Real property transaction" is defined in ORS 696.800.

(31) "Registered business name" is defined in ORS 696.010.

(32) "Sale" and "sold" are defined in ORS 696.800.

(33) "Seller" is defined in ORS 696.800.

(34) "Sole Practitioner" is defined in ORS 696.010.

(35) "Timely" means as soon as is practicable under the circumstances.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.010

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; Renumbered from 863-015-0120, REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

**863-015-0005** [Renumbered to **863-014-0005**]

**863-015-0010** [Renumbered to **863-014-0010**]

**863-015-0015** [Renumbered to **863-014-0015**]

**863-015-0020** [Renumbered to **863-014-0020**]

**863-015-0030** [Renumbered to **863-014-0030**]

**863-015-0035** [Renumbered to **863-014-0035**]

**863-015-0040** [Renumbered to **863-014-0040**]

**863-015-0045** [Renumbered to **863-024-0045**]

**863-015-0050** [Renumbered to **863-014-0050**]

**863-015-0055** [Renumbered to **863-014-0055**]

**863-015-0060** [Renumbered to **863-014-0060**]

**863-015-0061** [Renumbered to **863-014-0061**]

**863-010-0062** [Renumbered to **863-014-0062**]

**863-015-0063** [Renumbered to **863-014-0063**]

**863-015-0065** [Renumbered to **863-014-0065**]

**863-015-0070** [Renumbered to **863-014-0070**]

**863-015-0075** [Renumbered to **863-014-0075**]

**863-015-0076** [Renumbered to **863-014-0076**]

**863-015-0080** [Renumbered to **863-014-0080**]

**863-015-0085** [Renumbered to **863-014-0085**]

**863-015-0095** [Renumbered to **863-014-0095**]

**863-015-0100** [Renumbered to **863-014-0100**]

**General Rules**

**863-015-0120** [Renumbered to **863-015-0003**]

**863-015-0125**

**Advertising**

(1) As used in this rule, "advertising" and "advertisement" include all forms of representation, promotion and solicitation disseminated in any manner and by any means for any purpose related to professional real estate activity, including, without limitation, advertising by mail; telephone, cellular telephone, and telephonic advertising; the Internet, E-mail, electronic bulletin board and other similar electronic systems; and business cards, signs, lawn signs, and billboards.

(2) Advertising by a licensee, in process and in substance, must:

(a) Be identifiable as advertising of a real estate licensee;

(b) Be truthful and not deceptive or misleading;

(c) Not state or imply that the real estate broker or property manager associated with a principal real estate broker is the person responsible for operating the real estate brokerage or is a sole practitioner or principal broker;

(d) Not state or imply that the licensee is qualified or has a level of expertise other than as currently maintained by the licensee; and

(e) Be done only with the written permission of the property owner(s) or owner(s) authorized agent.

(3) Advertising that includes the licensee's name must:

(a) Use the licensee's licensed name; or

(b) Use a common derivative of the licensee's first name and the licensee's licensed last name.

(4) The licensed name or registered business name of the principal real estate broker, sole practitioner real estate broker, or property manager must be prominently displayed, immediately noticeable, and conspicuous in all advertising.

(5) Except as provided in section (8) of this rule, a real estate broker must:

(a) Submit proposed advertising to the licensee's principal broker for review and receive the principal broker's approval before publicly releasing any advertisement; and

(b) Keep a record of the principal broker's approval and make it available to the agency upon request.

(6) Except as provided in section (8) of this rule, a principal real estate broker:

(a) Is responsible for all advertising approved by the principal broker that states the principal real estate broker's licensed name or registered business name; and

(b) Must review all advertising of a real estate broker or a property manager who is associated with the principal real estate broker.

(7) A principal real estate broker may delegate direct supervisory authority and responsibility for advertising originating in a branch office to the principal broker who manages the branch office if such delegation is in writing.

(8) A licensee associated with a principal real estate broker may advertise property owned by the licensee for sale, exchange, or lease option without approval of the principal real estate broker, if:

(a) The property is not listed for sale, exchange, or lease option with the principal broker;

(b) The advertising states that the property owner is a real estate licensee; and

(c) The advertising complies with all applicable other applicable provisions of ORS chapter 696 and its implementing rules.

(9) Advertising in electronic media and by electronic communication, including but not limited to the Internet, web pages, E-mail, E-mail discussion groups, blogs, and bulletin boards is subject to the following requirements:

(a) Advertising must comply with all other requirements of this rule;

(b) Advertising by a licensee must include on its first page:

(A) The licensee's licensed name as required in section (3) of this rule;

(B) The licensed name or registered business name of the principal real estate broker, sole practitioner real estate broker, or property manager; and

(C) A statement that the licensee is licensed in the State of Oregon.

(c) Sponsored links, which are paid advertisements located on a search engine results page, are exempt from the requirements contained in subsection (b) of this section if the first page following the link complies with subsection (b).

(d) E-mail from a licensee is exempt from the requirements of subsection (b) of this section if the licensee's initial communication contained the information required by subsection (a).

(10) No advertising may guarantee future profits from any real estate activity.

(11) A licensee may use the term "team" or "group" to advertise if:

(a) The use of the term does not constitute the unlawful use of a trade name and is not deceptively similar to a name under which any other person is lawfully doing business;

(b) The team or group includes at least one real estate licensee;

(c) The licensee members of the team or group are associated with the same principal broker or property manager;

(d) The licensee members of the team or group use each licensee's licensed name as required under section (3) of this rule;

(e) If any non-licensed individuals are named in the advertising, the advertising must clearly state which individuals are real estate licensees and which ones are not; and

(f) The advertising complies with all other applicable provisions of ORS chapter 696 and its implementing rules.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.301(1), (4)

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 3-2006(Temp), f. 12-28-06, cert. ef. 1-1-07 thru 6-29-07; REA 3-2007, f. & cert. ef. 6-29-07; REA 1-2008(Temp), f. & cert. ef. 1-18-08 thru 7-16-08; REA 2-2008, f. 6-12-08, cert. ef. 7-1-08

### 863-015-0130

#### Listing Agreements

(1) A real estate licensee who enters into a listing agreement, as defined by ORS 696.800, must give the seller signing the listing agreement a true, legible copy thereof at the time of securing such listing.

(2) Every listing agreement must meet the following requirements:

(a) It must state an expiration date;

(b) It may not contain a provision requiring the seller signing the listing to notify the licensee of the individual's intention to cancel the listing after the stated, definite expiration date;

(c) It may not contain a provision subjecting the seller of the listed property to the payment of two or more commissions for one sale if the seller lists the same property with a second or subsequent broker after the first or preceding listing agreement expires or is terminated by mutual agreement; and

(d) It must be signed by all parties to the agreement,

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.280

Hist.: REC 20, f. 5-5-65, ef. 7-1-65; REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 1-1981, f. 10-30-81, ef. 11-1-81; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0015; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

### 863-015-0135

#### Offers to Purchase

(1) When a real estate licensee receives an offer to purchase real property or a counter-offer, the licensee must give the individual signing the offer or counter-offer a true, legible copy thereof.

(2) A real estate licensee must promptly deliver to the offeror or offeree every written offer or counter-offer the licensee receives.

(3) The licensee must maintain a written record of the date and time of each written offer or counter-offer delivered pursuant to section (2) of this rule and of the seller's or buyer's response. The licensee must maintain this record as required under OAR 863-015-0250, and if the seller rejects the offer or counter-offer, the licensee must provide a true copy to the offeror.

(4) When a licensee receives a written acceptance of an offer or counter-offer to purchase real property, the licensee must deliver within three banking days true, legible copies of the offer or counter-offer, signed by the seller and buyer, to both the buyer and seller.

(5) Real estate licensees must include all of the terms and conditions of the real estate transaction in the offer to purchase or, directly or by reference, in the counter-offer, including but not limited to whether the transaction will be accomplished by way of deed or land sales contract, and whether and at what time evidence of title will be furnished to the prospective buyer.

(6) The document serving as an earnest money receipt must specifically state the type of earnest money received, whether in the form of cash, check, or promissory note.

(7) In preparing a promissory note for use as earnest money, a licensee must make the note payable upon the seller's acceptance of the offer or payable within a stated time after the seller's acceptance. Absent a written agreement to the contrary, the note must be made payable to the seller.

(8) An offer signed by a prospective buyer is an offer to purchase, regardless of any pending inspections, conditions, or other contingencies.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.280

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.280

Hist.: REC 10, f. 8-27-59; REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 3-1980, f. 10-20-80, ef. 11-1-80; REC 1-1981, f. 10-30-81, ef. 11-1-81; REC 5-1984, f. 6-18-84, ef. 7-1-84; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0020; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

**863-015-0140**

**Principal Real Estate Broker Supervision Responsibilities**

(1) No principal real estate broker may allow any individual to use the principal broker's license for the sole purpose of allowing other real estate licensees to engage in professional real estate activity when the principal broker's only interest is receiving a fee for the use of the principal broker's license by others or when the principal broker only nominally supervises the professional real estate activity conducted under the principal broker's license.

(2) A principal real estate broker may not state or imply to current or prospective licensees or the public that the real estate brokers associated with the principal real estate broker are not fully subject to the principal real estate broker's supervision or are not acting as the principal real estate broker's agents.

(3) A principal real estate broker must supervise and control the professional real estate activity at any main or branch office registered by the principal broker.

(4) The principal real estate broker must directly supervise the licensees associated with the broker in fulfilling their duties and obligations to their respective clients. The principal real estate broker must review each document of agreement generated in a real estate transaction within seven banking days after it has been accepted, rejected, or withdrawn. If the document or agreement originates in a branch office, the principal real estate broker who manages the branch office under ORS 696.200 may review such document. The document review may be done electronically or in hard copy. If the principal broker reviews a document electronically, the principal broker or the principal broker who is the branch office manager must make an electronic record of the review showing the name of the reviewer and the date of the review. If the principal broker reviews such document in hard copy, the principal broker or principal broker who manages the branch office must initial and date the document in writing at the time of review.

Stat. Auth.: ORS 696

Stats. Implemented: ORS 696.301(29) & 696.200

Hist.: REC 17, f. 3-1-63; REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 1-1980, f. 2-1-80, ef. 3-1-80; REC 3-1980, f. 10-20-80, ef. 11-1-80; REC 1-1981, f. 10-30-81, ef. 11-1-81; REC 5-1984, f. 6-18-84, ef. 7-1-84; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0043; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

**863-015-0145**

**Real Estate Transactions Involving a Licensee as a Principal to the Transaction**

(1) If a real estate licensee, whether active or inactive, either directly or indirectly offers or negotiates for the sale, exchange, lease option, or purchase of real estate and the licensee is a principal to the transaction, the licensee must disclose to the other party to the offer or transaction that the licensee is a real estate licensee. The licensee must make the disclosure in any advertising or display signs, and it must appear in writing on at least the first written document of agreement concerning the offer or transaction. The disclosure set forth on the agreement document also must state that the real estate licensee is representing himself or herself as either the buyer or the seller in the transaction.

(2) Transactions described in section (1) of this rule of a principal real estate broker must be processed in the same manner as the licensee's other professional real estate activities and comply with the records requirements under OAR 863-015-0250.

(3) Each transaction described in section (1) of this rule of a real estate broker associated with a principal real estate broker must be conducted under the supervision of the licensee's principal real estate

broker and all documents and funds must be transmitted through the licensee's principal real estate broker.

(4) If the licensee holds an inactive license while an offer or transaction described in section (1) of this rule is being effected:

(a) The licensee must place all funds received in or necessary to effect the offer or transaction into a neutral escrow depository within the state; and

(b) The licensee must maintain documents concerning the matter as required of a real estate broker under OAR 863-015-0250.

(5) This section applies to offers and transactions entered into by corporations, partnerships, limited partnerships, or other legal entities in which any real estate licensee, active or inactive, is an owner and where the licensee at any time participates in negotiations concerning the offer or transaction on behalf of the entity. As used in this rule, "owner" means an individual having an ownership interest equaling more than five percent of the total ownership interest in the legal entity.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.015, 696.020(2), 696.241, 696.280 & 696.301(1)(6) & (29)

Hist.: REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 1-1981, f. 10-30-81, ef. 11-1-81; REA 1-1992, f. 1-13-92, cert. ef. 2-1-92; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0046; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

**863-015-0150**

**Closing Real Estate Transactions**

(1) Unless all parties to the transaction agree in writing to delegate the closing function to an escrow agent licensed in Oregon, an attorney, or another real estate broker engaged in the transaction, a principal broker or sole practitioner must promptly close any real estate transaction in which the broker is the listing broker.

(2) A real estate broker associated with a principal real estate broker may handle a closing function only if authorized in writing by the principal real estate broker and only under the principal real estate broker's direct supervision. A copy of the written authorization bearing the principal real estate broker's signature must be filed with the commissioner.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.301(4) & (29)

Hist.: REC 19, f. 8-5-64; REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 1-1981, f. 10-30-81, ef. 11-1-81; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0060; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

**863-015-0155**

**Attorney's Advice**

A real estate licensee must not discourage any party to a real estate transaction from seeking the advice of an attorney concerning any matter involving real estate activity in which such licensee is involved.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.015 & 696.301(31)

Hist.: REC 10, f. 8-27-59; REC 3-1978, f. 6-15-78, ef. 7-1-78; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered to 863-010-0090; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

**863-015-0160 [Renumbered to 863-014-0160]**

**863-015-0175**

**Reporting Litigation Involving Licensees**

(1) A real estate licensee must notify the commissioner of the following:

(a) Any criminal conviction (felony or misdemeanor), including a "no contest" plea or bail forfeiture;

(b) Any adverse decision or judgment resulting from any civil or criminal suit or action or arbitration proceeding or any administrative or Oregon State Bar proceeding related to the licensee in which the licensee was named as a party and against whom allegations concerning any business conduct or professional real estate activity is asserted; and

(c) Any adverse decision or judgment resulting from any other criminal or civil proceeding that reflects adversely on the "trustworthy and competent" requirements contained in ORS Chapter 696 and its implementing rules.

(2) The Agency's administrative proceeding determinations are not subject to this rule's notification requirements.

(3) The notification required by this rule must be in writing and must include a brief description of the circumstances involved, the names of the parties, and a copy of the adverse decision, judgment, or award and, in the case of a criminal conviction, a copy of the sentencing order. If any such judgment, award, or decision is appealed, each subsequent appellate court decision is subject to this rule's notification requirements.

(4) The notification required by this rule must be made within twenty 20 calendar days after receiving written notification of an adverse judgment, award, or decision described in this rule. Notification must be made under this rule whether or not the decision is appealed.

(5) Arbitration proceedings between licensees concerning only a commission payment dispute are not subject to this rule's notification requirements.

Stat. Auth.: ORS 696

Stats. Implemented: ORS 696.301(26) & (31)

Hist.: REC 23, f. 7-3-69, ef. 9-1-69; REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 1-1981, f. 10-30-81, ef. 11-1-81; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0120; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

**863-015-0186**

**Clients' Trust Accounts — Disbursal of Disputed Funds**

(1) A sole practitioner or principal real estate broker may disburse disputed funds in a clients' trust account using the procedures in this rule or may disburse funds in a clients' trust account under the terms of a lawful contractual agreement, by law, or under the provisions of ORS Chapter 696, Chapter 105, or OAR 863-025-0025.

(2) For purposes of ORS 696.241(10) and this rule, "disputed funds" are funds in a clients' trust account delivered by a person to a sole practitioner or principal real estate broker pursuant to a written contract and the parties to such contract dispute the disbursal of the funds.

(3) As soon as practicable after receiving a demand by one of the parties for the disbursal of funds in a clients' trust account, the sole practitioner or principal real estate broker must deliver written notice to all parties that a demand has been made for disbursal of the funds, and that such funds may be disbursed to the party who delivered the funds within 20 calendar days of the date of the demand.

(4) The written notice must include substantially the following information:

(a) A party has made a demand for disbursal of funds, and the sole practitioner or principal real estate broker may disburse such funds from the clients' trust account to the party who delivered the funds, unless:

(A) The parties enter into a written agreement regarding disbursal of the funds and deliver such agreement to the sole practitioner or principal real estate broker within 20 calendar days of the date of the demand for disbursal; or

(B) A party provides proof to the sole practitioner or principal real estate broker that the party has filed a legal claim to such funds within 20 calendar days of the date of the demand for disbursal;

(b) The sole practitioner or principal real estate broker has no legal authority to resolve questions of law or fact regarding disputed funds in a clients' trust account;

(c) The disbursal of the funds from the clients' trust account to the party who delivered the funds will end the responsibility of the sole practitioner or principal real estate broker to account for the funds but will not affect any right or claim a person may have to such funds; and

(d) Both parties may wish to seek legal advice on the matter.

(5) Regardless of whether a party disputes the disbursal of funds as outlined in this rule, if the parties have not entered into a written agreement regarding such disbursal, or if a party has failed to provide proof of filing a legal claim, the sole practitioner or principal real estate broker may disburse the disputed funds to the person who delivered the funds within 20 calendar days of the date of the demand for disbursal.

(6) Nothing in this rule prevents a sole practitioner or principal real estate broker from disbursing such funds pursuant to:

(a) The terms of the original contract between the parties;

(b) Any subsequent agreement between the parties regarding the disbursal of funds; or

(c) The requirements of law.

(7) Nothing in this rule prevents the broker from filing an action to interplead the disputed funds.

(8) Real estate licensees with property management clients' trust accounts must review and follow the requirements for handling client funds under the Residential Landlord and Tenant statutes in ORS Chapter 90. For any other non-real estate sales transaction disputes, the sole practitioner or principal real estate broker must review the terms of the written contract for handling disputed funds.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.241 & 696.396 696.810, 696.990 & 696.800 - 696.855

696.810, 696.990 & 696.800 - 696.855

Hist.: REA 4-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-29-06; REA 1-2006, f. 6-29-06, cert. ef. 6-30-06; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

**863-015-0188**

**Compensation Agreements**

Pursuant to ORS 696.582, only a sole practitioner or principal real estate broker may enter into a compensation agreement with a principal to a real estate transaction.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.290 & 696.582

Hist: REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

**863-015-0190**

**Competitive Market Analyses; Letter Opinions; Lending Collateral Analysis; Default Collateral Analysis**

(1) Real estate licensees may provide competitive market analyses and letter opinions in the normal course of their business when they are giving an opinion in pursuit of a listing, to assist a potential buyer in formulating an offer, or to provide a broker's price opinion, whether or not done for a fee.

(2) The term "value" as used in a competitive market analysis or letter opinion is the estimated worth of or price for a specific property and is not intended to mean or imply the "value" was arrived at by any method of appraisal.

(3) A competitive market analysis or letter opinion must be in writing and contain at least the following:

(a) A statement of purpose and intent;

(b) A brief property description;

(c) The basis for the value, including the applicable market data and/or capitalization computation;

(d) Any limiting conditions;

(e) A disclosure of any existing or contemplated interest of the licensee in the subject property;

(f) The licensee's signature and the date it was prepared;

(g) A disclaimer that, unless the licensee is also licensed by the Appraiser Certification and Licensure Board, the report is not intended to meet the requirements set out in the Uniform Standards of Appraisal Practice; and

(h) A disclaimer that the competitive market analysis or letter opinion is not intended as an appraisal and that if an appraisal is desired, the services of a competent professional licensed appraiser should be obtained.

(4) Real estate licensees can provide a "lending collateral analysis" or "default collateral analysis," if the analysis is used only for the internal purposes of a financial institution and, in the case of a "lending collateral analysis," that any loan transaction at issue is less than \$250,000.

(a) "Lending collateral analysis" means a real property market analysis where the purpose of the analysis is for use by a lending institution in support of a loan application.

(b) "Default collateral analysis" means a real property market analysis where the purpose of the analysis is for use by a lending institution in considering its actions with respect to a loan in default

(5) If a real estate broker completes a lending collateral analysis or default collateral analysis on a property in which the real estate

broker or principal real estate broker has either a current, active listing agreement or is representing the buyer or seller in a pending transaction, the real estate broker must disclose to the buyer and seller the real estate broker's relationships with the lending institution.

Stat. Auth.: ORS 183.335 & 696.385  
 Stats. Implemented: ORS 696.010(8) & (10)  
 Hist.: REA 4-1997, f. 11-24-97, cert. ef. 12-1-97; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0270; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

**863-015-0200**

**Agency Relationships**

(1) Unless the parties expressly agree to a different relationship not otherwise prohibited by law, the types of agency relationships a real estate licensee may establish in a real estate transaction are limited to the following:

(a) An agency relationship between a real estate licensee and the seller exclusively;

(b) An agency relationship between a real estate licensee and the buyer exclusively;

(c) A disclosed limited agency relationship where one or more real estate licensees associated with the same principal broker represents both the seller and the buyer in the same real estate transaction;

(d) A disclosed limited agency relationship where real estate licensees associated with the same principal broker are designated to represent, respectively, the buyer exclusively and the seller exclusively;

(e) A disclosed limited agency relationship where one or more real estate licensees associated with the same principal broker represent more than one buyer in the same real estate transaction.

(2) Unless the parties expressly agree to a different relationship not otherwise prohibited by law:

(a) A licensee representing a seller by written agreement or course of conduct establishes an agency relationship under sections (1)(a) or (d) above;

(b) A licensee representing a buyer by written agreement or course of conduct establishes an agency relationship under sections (1)(b) or (e) above;

(c) A licensee representing both a buyer and a seller or two or more buyers in the same real estate transaction is a disclosed limited agent of both the buyer and seller or all buyers under sections (1)(c) or (e) above,

(3) When an agency relationship is formed between a real estate licensee and a client under section (2) above, the following apply:

(a) The principal broker with whom the licensee is associated is the client's disclosed limited agent;

(b) In a real estate transaction in which different real estate licensees associated with the same principal broker establish agency relationships with different parties to the real estate transaction, the principal broker is the only disclosed limited agent of both parties; and

(c) In a real estate transaction in which one or more real estate licensees associated with the same principal broker establish agency relationships with more than one party to the real estate transaction, those licensees and the principal broker are the only disclosed limited agents of those parties.

(4) Except as provided in sections (2) and (3) above, licensees associated with the same real estate business are not agents of all clients of the real estate business.

(5) Payment, or promise of payment, of a real estate commission or other fee does not by itself create an agency relationship.

(6) A principal real estate broker acting as a disclosed limited agent under section (3) above must do each of the following:

(a) Supervise the licensees associated with the principal broker in fulfilling their duties and obligations to their respective clients;

(b) Avoid advocating on behalf of either the seller or the buyer; and

(c) Avoid disclosing or using, without permission, confidential information of any client with whom the principal broker has an agency relationship.

(7) Real estate licensees associated with a principal broker who is acting as a disclosed limited agent under section (3) above must do both of the following:

(a) Serve as the agent of only the party or parties in the transaction with whom the real estate licensee has established an agency relationship; and

(b) Fulfill the duties owed to the respective client as set forth in the ORS 696.815 and as agreed in a disclosed limited agency agreement entered into pursuant to OAR 863-015-0210.

(8) All real estate licensees associated with a principal broker who are acting as disclosed limited agents under section (2) above must refrain from disclosing or using any confidential information relating to the other party that has been acquired as a result of the licensee's association with the principal broker, unless authorized to do so by that party.

(9) Nothing in this rule prohibits licensees from disclosing or using factual, non-confidential information relating to all parties to a transaction in order to fulfill a licensee's duties to the client under ORS 696.815.

(10) If a principal real estate broker acting as a disclosed limited agent under section (3) above determines that confidential information of one principal to a transaction has become known to another client in the transaction as the result of a violation of this rule, the principal broker must promptly and fully disclose the violation to the affected client in writing.

(11) Affirmative duties under ORS 696.805 and 696.810, where appropriate, apply to the agents, principal, other principals, and the principals' agents. The duties do not, however, create fiduciary or other similar duties inconsistent with the actual legal relationship between an agent and other principals to a transaction or that principal's agents.

(12)(a) The Final Agency Acknowledgement of the agency relationships described in this rule and required by ORS 696.845 must be printed in substantially the following form:

**FINAL AGENCY ACKNOWLEDGEMENT**

Both Buyer and Seller acknowledge having received the Oregon Real Estate Agency Disclosure Pamphlet, and hereby acknowledge and consent to the following agency relationships in this transaction:

(1) \_\_\_\_\_ (Name of Selling Licensee) of \_\_\_\_\_ (Name of Real Estate Firm) is the agent of (check one)  The Buyer exclusively.  The Seller exclusively (Seller Agency)".  Both the Buyer and the Seller ("Disclosed Limited Agency").

(2) \_\_\_\_\_ (Name of Listing Licensee) of \_\_\_\_\_ (Name of Real Estate Firm) is the agent of (check one)  The Seller exclusively.  Both the Buyer and the Seller ("Disclosed Limited Agency").

(3) If both parties are each represented by one or more licensees in the same real estate firm, and the licensees are supervised by the same principal broker in that real estate firm, Buyer and Seller acknowledge that said principal broker shall become the disclosed limited agent for both Buyer and Seller as more fully explained in the disclosed Limited Agency Agreements that have been reviewed and signed by Buyer, Seller and Licensee(s).

Buyer shall sign this acknowledgment at the time of signing this Agreement before submission to Seller. Seller shall sign this acknowledgment at the time this Agreement is first submitted to Seller, even if this Agreement will be rejected or a counter offer will be made. Seller's signature to this Final Agency Acknowledgment shall not constitute acceptance of the Agreement or any terms therein.

**ACKNOWLEDGED**

Buyer: \_\_\_\_\_ Print \_\_\_\_\_ Dated: \_\_\_\_\_

Buyer: \_\_\_\_\_ Print \_\_\_\_\_ Dated: \_\_\_\_\_

Seller: \_\_\_\_\_ Print \_\_\_\_\_ Dated: \_\_\_\_\_

Seller: \_\_\_\_\_ Print \_\_\_\_\_ Dated: \_\_\_\_\_

(b) If incorporated as a part of a preprinted agreement, the Final Agency Acknowledgement required by subsection (a) shall appear at the top of the first page of the preprinted agreement, separate and apart from the sale agreement and shall be signed separately from the sale agreement. If the Final Agency Acknowledgement required by subsection (a) is not included within a preprinted agreement, the Final Agency Acknowledgement shall also include the property address or legal description of the subject property, a reference to the attached sale agreement, and shall include separate signature lines for buyers and sellers.

Stat. Auth.: ORS 696.385 & 183.335  
 Stats. Implemented: ORS 696.805, 696.810 & 696.815

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 4-2003(Temp), f. 12-18-03, cert. ef. 1-1-04 thur 6-29-04; REA 3-2004, f. 4-28-04 cert. cr. 5-3-04; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

**863-015-0205**

**Disclosed Limited Agency**

(1) Licensees must establish the agency relationships described in OAR 863-015-0200(1) only by written agreement. Such agreements must meet all the requirements of 863-015-0210.

(2) A disclosed limited agency relationship exists when a single licensee undertakes by written agreement or conduct to represent more than one party to a real estate transaction. For the purpose of this rule, two or more buyers are involved in the same real estate transaction when all have submitted offers on the same real property.

(3) Except as provided for in section (5), a disclosed limited agency relationship exists when two or more licensees supervised by the same principal broker undertake by written agreement or conduct to represent more than one party to a real estate transaction. Notwithstanding the other provisions of this rule, individual agents may be designated to represent the buyer exclusively or the seller exclusively as described in OAR 863-015-0200(1).

(4) The following conditions apply to the disclosed limited agency relationship described in OAR 863-015-0200(1):

(a) The principal broker with whom the licensee is associated must ensure that a licensee who represents one client will not have access to and will not obtain confidential information concerning another client involved in the same transaction;

(b) In situations where a real estate business has two or more principal brokers, each principal broker must be the disclosed limited agent of all clients in the transaction, unless each of the following conditions is met:

(A) The principal brokers have entered into a written agreement dividing control and supervision responsibilities. Principal brokers may comply with subsection (a) above by holding open records of real estate activity in different offices or by otherwise initiating procedures that secure open records so as to prevent licensees representing different parties to the same transaction from accessing or obtaining confidential information concerning another party to the transaction;

(B) The licensees designated to represent the seller exclusively and the buyer exclusively are associated with the same principal broker. If the principal broker has an existing agency relationship with one party to the transaction (either as a seller's agent or buyer's agent), the principal broker, pursuant to the requirements of OAR 863-015-0210, must act as the disclosed limited agent of both parties, and another licensee must be designated to represent the other party exclusively; and

(C) Each client to the transaction has signed a disclosed limited agency agreement that indicates which principal broker will act as the disclosed limited agent in the transaction.

(5) If principal brokers have entered into a written agreement dividing control and supervision responsibilities and have individually complied with subsection (4)(a) above by holding open records of real estate activity in different offices or by otherwise initiating procedures that secure open records in such a way as to prevent licensees representing different parties to the same transaction from accessing or obtaining confidential information concerning another principal in the transaction, then a transaction involving agents associated with different principal brokers is not a disclosed limited agency transaction.

Stat. Auth.:ORS 696.385 & 183.335  
 Stats. Implemented:ORS 696.805, 696.810 & 696.815  
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

**863-015-0210**

**Disclosed Limited Agency Agreement**

(1) Disclosed limited agency agreements required by ORS 696.815 must be in writing, signed and dated by the parties to be bound or by their duly appointed real estate agents.

(2) Each disclosed limited agency agreement must contain the following:

(a) The name under which the representation will take place, which must be the registered business name or, if none, the licensed name of the principal broker or sole practitioner;

(b) Identification of any existing listing or service agreement between the parties to the disclosed limited agency agreement;

(c) The name(s) of the licensee(s), including the principal real estate broker, who will represent the client; and

(d) A plain language description of the requirements of ORS 696.815;

(e) Full disclosure of the duties and responsibilities of an agent who represents more than one party to a real estate transaction. This requirement can be met by providing the client with a copy of the initial agency disclosure pamphlet required by ORS 696.820, discussing the portion of the pamphlet entitled "Duties and Responsibilities of an Agent Who Represents More than One Party to a Transaction" with the client, and incorporating the pamphlet into the disclosed limited agency agreement by reference; and

(f) Consent and agreement between the parties to the disclosed limited agency agreement regarding representation of the client in future transactions.

(3) Use of a disclosed limited agency agreement for sellers in substantially the following form is prima facie evidence of compliance with sections (1) and (2) of this rule:

Property Address \_\_\_\_\_  
 Addendum to Listing Agreement Dated \_\_\_\_\_  
 Real Estate Firm \_\_\_\_\_  
**DISCLOSED LIMITED AGENCY AGREEMENT FOR SELLER**  
 The Parties to this Disclosed Limited Agency Agreement are:  
 Listing Agent (print) \_\_\_\_\_  
 Listing Agent's Principal Broker (print) \_\_\_\_\_  
 Seller (print) \_\_\_\_\_  
 Seller (print) \_\_\_\_\_

The Parties to this Agreement understand that Oregon law allows a single real estate agent to act as a disclosed limited agent -- to represent both the seller and the buyer in the same real estate transaction, or multiple buyers who want to purchase the same property. It is also understood that when different agents associated with the same principal broker (the broker who directly supervises the other agents) establish agency relationships with the buyer and seller in a real estate transaction, the agents' principal broker shall be the only broker acting as a disclosed limited agent representing both seller and buyer. The other agents shall continue to represent only the party with whom they have an established agency relationship, unless all parties agree otherwise in writing.

In consideration of the above understanding, and the mutual promises and benefits exchanged here and in the Listing Agreement, the Parties now agree as follows:

1. Seller acknowledge they have received the initial agency disclosure pamphlet required by ORS 696.820 and have read and discussed with the Listing Agent that part of the pamphlet entitled "Duties and Responsibilities of an Agent Who Represents More than One Party to A Transaction." The initial agency disclosure pamphlet is hereby incorporated into this Disclosed Limited Agency Agreement by reference.

2. Seller, having discussed with the Listing Agent the duties and responsibilities of an agent who represents more than one party to a transaction, consent and agree as follows:

a. The Listing Agent and the Listing Agent's Principal Broker, in addition to representing Seller, may represent one or more buyers in a transaction involving the listed property;

b. In a transaction involving the listed property where the buyer is represented by an agent who works in the same real estate business as the Listing Agent and who is supervised by the Listing Agent's Principal Broker, the Principal Broker may represent both Seller and Buyer. In such a situation, the Listing Agent will continue to represent only the Seller and the other agent will represent only the Buyer, consistent with the applicable duties and responsibilities as set out in the initial agency disclosure pamphlet; and

c. In all other cases, the Listing Agent and the Listing Agent's Principal Broker shall represent Seller exclusively.

Seller signature \_\_\_\_\_  
 Date \_\_\_\_\_  
 Seller signature \_\_\_\_\_  
 Date \_\_\_\_\_  
 Listing Agent signature \_\_\_\_\_  
 Date \_\_\_\_\_  
 (On their own and on behalf of Principal Broker)  
 Broker initial and review date \_\_\_\_\_

(4) Use of a disclosed limited agency agreement for buyers in substantially the following form is prima facie evidence of compliance with sections (1) and (2) of this rule.

Property Address \_\_\_\_\_

Addendum to Buyer Service Agreement Dated \_\_\_\_\_  
 Real Estate Firm \_\_\_\_\_  
**DISCLOSED LIMITED AGENCY AGREEMENT FOR BUYER**  
 The Parties to this Disclosed Limited Agency Agreement are:  
 Buyer's Agent (print) \_\_\_\_\_  
 Buyer's Agent's Principal Broker (print) \_\_\_\_\_  
 Buyer (print) \_\_\_\_\_  
 Buyer (print) \_\_\_\_\_

The Parties to this Agreement understand that Oregon law allows a single real estate agent to act as a disclosed limited agent — to represent both the seller and the buyer in the same real estate transaction, or multiple buyers who want to purchase the same property. It is also understood that when different agents associated with the same principal broker (the broker who directly supervises the other agents) establish agency relationships with the buyer and seller in a real estate transaction, the agents' principal broker shall be the only broker acting as a disclosed limited agent representing both seller and buyer. The other agents shall continue to represent only the party with whom they have an established agency relationship, unless all parties agree otherwise in writing.

In consideration of the above understanding, and the mutual promises and benefits exchanged here and, if applicable, in the Buyer Service Agreement, the Parties now agree as follows:

1. Buyer(s) acknowledge they have received the initial agency disclosure pamphlet required by ORS 696.820 and have read and discussed with the Buyer's Agent that part of the pamphlet entitled "Duties and Responsibilities of an Agent Who Represents More than One Party to A Transaction." The initial agency disclosure pamphlet is hereby incorporated into this Disclosed Limited Agency Agreement by reference.

2. Buyer(s), having discussed with Buyer's Agent the duties and responsibilities of an agent who represents more than one party to a transaction, consent and agree as follows:

a. Buyer's Agent and the Buyer's Agent's Principal Broker, in addition to representing Buyer, may represent the seller or another buyer in any transaction involving Buyer;

b. In a transaction where the seller is represented by an agent who works in the same real estate business as the Buyer's Agent and who is supervised by the Buyer's Agent's Principal Broker, the Principal Broker may represent both seller and Buyer. In such a situation, the Buyer's Agent will continue to represent only the Buyer and the other agent will represent only the Seller, consistent with the applicable duties and responsibilities set out in the initial agency disclosure pamphlet;

c. In all other cases, the Buyer's Agent and the Buyer's Agent's Principal Broker shall represent Buyer exclusively.

Buyer signature \_\_\_\_\_

Date \_\_\_\_\_

Buyer signature \_\_\_\_\_

Date \_\_\_\_\_

Buyer's Agent signature \_\_\_\_\_

Date \_\_\_\_\_

(On their own and on behalf of Principal Broker)

Broker initial and review date \_\_\_\_\_

Stat. Auth.: ORS 696.385 & 183.335

Stat. Implemented: ORS 696.805, 696.810 & 696.815

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

**863-015-0215**

**Initial Agency Disclosure Pamphlet**

(1) An agent must provide a copy of the Initial Agency Disclosure Pamphlet provided for in section (3) of this rule at first contact with each represented party to a real property transaction.

(2) An agent need not provide a copy of the Initial Agency Disclosure Pamphlet to a party who has, or may be reasonably assumed to have, already received a copy of the pamphlet from another agent.

(3) The Initial Agency Disclosure Pamphlet must be printed in substantially the following form: [Form not included. See ED. NOTE.]

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 696.385, 696.820 & 183.335

Stats. Implemented: ORS 696.805, 696.810 & 696.815

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

**863-015-0225** [Renumbered to **863-027-0010**]

**863-015-0230** [Renumbered to **863-027-0020**]

**Records Rules**

**863-015-0250**

**Professional Real Estate Activity Records**

(1) Complete and adequate records of professional real estate activity include complete, legible, and permanent copies of all documents required by law or voluntarily generated during a real estate transaction, including all offers received by or through brokers or principal brokers to the client, including, but not limited to, the following:

(a) A copy of any written agreement creating an agency relationship between a real estate broker or principal real estate broker and a client that must be signed by all parties to the agreement.

(b) A copy of any written acknowledgment of an agency relationship between a real estate broker or principal real estate broker and a client that must be signed by all parties to such acknowledgment.

(c) A copy of any written agreement for the listing, sale, purchase, rental, lease, lease option, or exchange of real property generated by a real estate broker or principal real estate broker while engaging in professional real estate activity that must be signed by all parties to such agreement.

(d) A copy of any receipt issued by a real estate broker or principal real estate broker to evidence acceptance of funds or documents.

(e) A copy of any vouchers or bills or obligations paid by the real estate broker or principal real estate broker for the account of a client or customer.

(f) A copy of any other document within the scope of the agency relationship provided to or received by a client through a real estate broker or principal real estate broker during the term of an agency relationship.

(g) All financial records as required in OAR 863-015-0255 and 863-015-0275.

(2) In any real estate transaction in which a principal real estate broker or a sole practitioner performed the closing, the principal real estate broker or sole practitioner must retain a copy of any closing statement showing a receipts, disbursements and adjustments, which must evidence the signature of the seller(s) and the buyer(s).

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.280

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

**863-015-0255**

**Clients' Trust Account Records Requirements and Document Transmittal Requirements**

(1) This rule applies to clients' trust fund accounts that hold funds from transactions involving the sale, purchase, lease option, or exchange of real property. The purpose of clients' trust accounts is to preserve clients' monies and keep them segregated from the broker's general and personal funds.

(2) Principal brokers and sole practitioners must retain and store the records described in this rule as required by OAR 863-015-0250 and 863-015-0260. However, where separate general business or clients' trust accounts or both are maintained at branch offices, the financial records described in this rule may be maintained and located either at the principal broker's or sole practitioner's main office or, if the principal real estate principal broker, sole practitioner, or branch office manager conducts the real estate business from that branch office, at that branch office.

(3) A real estate broker must transmit to the real estate broker's principal real estate broker within three banking days of receipt any money, checks, drafts, warrants, promissory notes, or other consideration and any documents received by the licensee in any professional real estate activity in which the licensee is engaged. Absent the buyer's written instructions to the contrary, the real estate broker must transmit all earnest monies to the principal real estate broker within three banking days of receipt.

(4) If a real estate broker, principal broker, or sole practitioner receives a check as earnest money in a transaction, he or she may hold the check undeposited until the offer is accepted or rejected, provided that the written sale agreement states that the real estate broker, principal broker, or sole practitioner is holding the check unde-

posited and further states where and when the check will be deposited upon acceptance of the offer.

(5) The real estate broker, principal broker, or sole practitioner must deposit a check held pursuant to section (4) into a clients' trust account established under ORS 696.241 or transmit the check to a neutral escrow depository located within this state before the close of the third banking day following acceptance of the offer or a subsequent counter offer. The principal broker or sole practitioner must track the earnest money deposit from the buyer to the principal broker or sole practitioner and to the escrow depository.

(6) All other funds, whether in the form of money, checks, drafts, or warrants belonging to others and accepted by any real estate broker, principal broker, or sole practitioner while engaged in professional real estate activity, must be deposited before the close of business of the fifth banking day following the date the real estate broker, principal broker, or sole practitioner receives the funds into a neutral escrow depository located within this state or into a clients' trust account established under ORS 696.241. The principal broker or sole practitioner must retain a copy of each executed agreement required under 696.241 and OAR 863-015-0265 for interest-bearing clients' trust accounts.

(7) For all funds received under sections (3) and (4) of this rule, the principal broker, and sole practitioner must comply with the following requirements:

- (a) Account for all funds received;
- (b) Maintain a copy of any check received; and
- (c) Maintain a dated, acknowledged receipt for any check returned to the offeror.

(8) Every deposit made under ORS 696.241, must be made with deposit slips identifying each offer or transaction by a written notation of the file reference assigned to the offer or transaction.

(9) Principal brokers and sole practitioners must maintain a complete ledger account and record all funds received in their professional real estate activity. This ledger account must show:

- (a) From whom the funds were received;
- (b) The date the funds were received;
- (c) The date the funds were deposited;
- (d) Where the funds were deposited; and
- (e) When the transaction has been completed or the offer has failed, the final disposition of the funds.

(10) If a real estate licensee is a principal in an offer or transaction, all earnest money or other deposits must be handled as provided in OAR 863-015-0145.

(11) Checks used to disburse funds from a clients' trust account must be pre-numbered, issued from one numbering sequence, and bear the words "Clients' Trust Account" upon the face thereof. Principal brokers and sole practitioners must account for all checks, including voided checks, as a part of the records they maintain.

(12) Principal brokers and sole practitioners must record and track the transfer of promissory notes and other forms of consideration by a ledger account or by other means including, but not limited to, written proof of transmittal or receipt retained in their offer or transaction file.

(13) If a principal broker or sole practitioner accepts a credit card payment as funds in a real estate transaction:

(a) The face amount of the credit card payment, without reducing the face amount by any merchant's discount and processing fee charged to the principal broker or sole practitioner, is the amount he or she must maintain, use, and refund as necessary; or

(b) The face amount of the credit card payment, reduced by any merchant's discount and processing fee, may be maintained and used by the principal broker or sole practitioner when he or she has a separate written agreement signed by the credit card user authorizing this reduction. The face amount, including any merchant's discount and processing fees paid by the credit card user, must be refunded to the credit card user when a refund is necessary;

(c) The principal broker or sole practitioner may not benefit from any of the merchant's discounts or processing fees generated by the use of a credit card;

(d) A principal broker's or sole practitioner's clients' trust account may not be charged or debited for any merchant's discount or processing fees for use of the credit card in such transaction.

(14) All funds deposited into a clients' trust account established under ORS 696.241 and not disbursed or transferred to a neutral escrow depository pursuant to the sale agreement may only be disbursed:

(a) To individuals, as directed by order of court of competent jurisdiction;

(b) To individuals, as directed in writing by one or more principals; or

(c) To the court, upon filing by the principal broker or sole practitioner of an interpleader action for disputed earnest money funds.

(15) A principal broker or sole practitioner may not use any form of debit card on clients' trust accounts.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.221, 696.241, 696.280 & 696.301(10)

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

**863-015-0260**

**Records Retention**

(1) Principal real estate brokers and sole practitioners must maintain and store complete and accurate records of professional real estate activity, including any items generated through e-mail or other electronic means, pursuant to ORS 696.280 and as follows:

(a) Records of professional real estate activity may be stored at the principal broker's main office, and records of professional real estate activity originating at a branch office may be maintained and stored at either that branch office or at the principal broker's main office.

(b) A principal real estate broker or sole practitioner may store records of professional real estate activity in a single location other than his or her office, main office, or branch office, in which the records are readily available for inspection, if the principal real estate broker or sole practitioner first:

(A) Notifies the commissioner in writing of the intended removal of such records, includes the address of the new location for such records, and

(B) Authorizes the commissioner in writing to inspect such records at the new location. Such authorization must include the name of any necessary contact and the means of gaining access to the records for an inspection. The principal real estate broker or sole practitioner must notify the commissioner of any change in the contact or means of access within ten days after such change occurs.

(2) A principal real estate broker or sole practitioner must maintain at the broker's office a means of viewing copies of documents or records. A principal real estate broker or sole practitioner must provide, at his or her expense, a paper copy of any document or record the Agency requests.

(3) A principal real estate broker or sole practitioner may use electronic image storage media to retain and store copies of all listings, deposit receipts, canceled checks, clients' trust account records, and other documents executed by him or her or obtained by him or her in connection with any professional real estate activity transaction under the following conditions:

(a) The electronic image storage must be nonerasable "write once, read many" ("WORM") that does not allow changes to the stored document or record;

(b) The stored document or record is made or preserved as part of and in the regular course of business;

(c) The original record from which the stored document or record was copied was made or prepared by the principal broker, sole practitioner, or their employees at or near the time of the act, condition, or event reflected in the record;

(d) The custodian of the record is able to identify the stored document or record, the mode of its preparation, and the mode of storing it on the electronic image storage;

(e) The electronic image storage media contains a reliable indexing system that provides ready access to a desired document or record, appropriate quality control of the storage process to ensure

the quality of imaged documents or records, and date-ordered arrangement of stored documents or records to ensure a consistent and logical flow of paperwork to preclude unnecessary search time; and

(f) At least once each month, the broker backs up any data that is stored in the computerized system necessary to produce the records. The back up data must be retained for no less than 60 days and must be made available to the commissioner or to the commissioner's authorized representatives on demand.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.280

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

### 863-015-0265

#### Interest-Bearing Accounts

(1) The written approval necessary to establish a federally insured interest-bearing clients' trust account must specify to whom and under what circumstances the interest earnings from the account will accrue and be paid.

(2) In a transaction subject to ORS 696.241(5), the broker's interest in or receipt of any of the trust funds or interest earnings in the account is not a violation of 696.241(9).

(3) In a transaction subject to ORS 696.241(5), money belonging to others may not be invested in any type of account or security or certificate of deposit that has a fixed term for maturity or imposes any fee or penalty for withdrawal before maturity unless the written consent of all parties to the transaction has been secured. An arrangement may be made with a depository to deposit a sufficient amount of the broker's funds to maintain such account, and such arrangement is not a violation of 696.241(9).

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.241(5) & 696.301(10)

Hist.: REC 3-1978, f. 6-18-78, ef. 7-1-78; REC 1-1981, f. 10-30-81, ef. 11-1-81; REC 5-1984, f. 6-18-84, ef. 7-1-84; REA 3-1987, f. 12-3-87, ef. 1-1-88; REA 3-1989, f. 12-13-89, cert. ef. 2-1-90; REA 2-1991, f. 11-5-91, cert. ef. 1-1-92; REA 4-1997, f. 11-24-97, cert. ef. 12-1-97; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0026; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

### 863-015-0275

#### Clients' Trust Account Reconciliation and Records

A principal real estate broker or sole practitioner must reconcile each clients' trust account at least once each month. The reconciliation must comply with all of the following conditions:

(1) The reconciliation must have three components:

(a) The bank statement balance, adjusted for outstanding checks and other reconciling bank items;

(b) The balance of the receipts and disbursements journal or check book register as of the bank statement closing date; and

(c) The sum of all the balances of the individual trust account ledgers as of the bank statement closing date.

(2) The balances of each component of the reconciliation must be equal to and reconciled with each other. If any adjustment is needed, the adjustment must be clearly identified and explained.

(3) The principal broker or sole practitioner must verify, sign, and date the reconciliation when completed.

(4) Outstanding checks must be listed by check number, issue date, payee, and amount.

(5) The principal broker or sole practitioner must preserve and file in logical sequence the reconciliation worksheet, bank statements, and all supporting documentation, including but not limited to, copies of the receipts and disbursements journal or check book register and a listing of each individual clients' trust fund account with a balance as of the reconciliation date. If these records are computerized, they must be printed out for filing with the reconciliation.

(6) All reconciling items must be identified and cleared promptly.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.280

Hist.: REA 3-1989, f. 12-13-89, cert. ef. 2-1-90; REA 1-1992, f. 1-13-92, cert. ef. 2-1-92; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0245; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

## DIVISION 24

### REAL ESTATE PROPERTY MANAGER LICENSING

#### 863-024-0000

##### Application and Purpose

(1) This division sets forth the requirements and process for licensing real estate property managers, as that term is defined in ORS 696.010.

(2) The purpose of this division is to specify the requirements for obtaining a real estate property manager license.

Stat. Auth.: ORS 696.385

Stat. Implemented:

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09

#### 863-024-0003

##### Definitions

As used in this division, unless the context requires otherwise, the following definitions apply to this division:

(1) "Agency" is defined in ORS 696.010.

(2) "Board" means the Real Estate Board established pursuant to ORS 696.405.

(3) "Branch office" is defined in ORS 696.010.

(4) "Commissioner" is defined in ORS 696.010.

(5) "Licensed Name" means the name of a real estate licensee as it appears on the current, valid real estate license issued to the licensee pursuant to ORS 696.020.

(6) "Management of rental real estate" is defined in ORS 696.010.

(7) "Principal broker" means "principal real estate broker," as defined in ORS 696.010.

(8) "Property manager" means "real estate property manager," as defined in ORS 696.010.

(9) "Real estate activity," "professional real estate activity," and "real estate business" mean "professional real estate activity" as defined in ORS 696.010, which includes managing rental real estate.

(10) "Real estate broker" is defined in ORS 696.010.

(11) "Real estate licensee" and "licensee" mean a "real estate licensee" as defined in ORS 696.010.

(12) "Registered business name" is defined in ORS 696.010.

(13) "Sole Practitioner" is defined in ORS 696.010. A sole practitioner engages in professional real estate activity under the individual's licensed name or under a registered business name.

Stat. Auth.: ORS 696.385

Stat. Implemented: ORS 696.010 & 696.020

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09

#### 863-024-0005

##### Education

(1) The required courses of study for a property manager's license must be designed pursuant to the Guidelines for Oregon Private Real Estate Schools and Instructional Guidelines and approved by the commissioner.

(2) The commissioner may at any time reevaluate an approved course or instructor. If the commissioner finds there is basis for consideration of revocation of the approved course or the instructor, the commissioner shall give notice by ordinary mail to the coordinator of that provider or instructor of a hearing on the possible revocation of an approved course at least 20 days prior to the hearing.

(3) The commissioner may deny or revoke approval of a program, course, activity, or instructor, but that decision may be appealed to the commissioner within 20 days of the date of mailing the notice of denial or revocation and is subject to the contested case hearing provisions of the Oregon Administrative Procedures Act, ORS Chapter 183.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09

#### 863-024-0010

##### License Application Form and Content

(1) Applicants for a property manager's license must submit a license application in writing on an Agency-approved form with all information provided by the applicant and verified by the applicant.

(2) The license application must contain:

(a) The applicant's legal name, mailing address, and phone number;

(b) If the applicant is to be associated with a principal real estate broker, the name of the principal real estate broker who will supervise the applicant's professional real estate activity;

(c) The place or places, including the street and number, city, and county where the business will be conducted; and

(d) If the applicant will be associated with a principal real estate broker, the principal broker's authorization for the applicant to use the principal broker's registered business name.

(3) Every license application must be accompanied by the license fee authorized by ORS 696.270. At all periods of the year, the fee for all licenses issued is as authorized by 696.270. That is, the Agency does not pro-rate license fees.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09

### 863-024-0015

#### Background Check Application and Fingerprint Card

(1) Applicants for a property manager license must submit to a background check, except applicants who are currently licensed as a real estate broker, sole practitioner, or principal real estate broker or who are eligible for renewal of such licenses. The background check includes a criminal background check as provided in OAR chapter 863, division 005. The applicant must apply for the background check in writing on an Agency-approved form with all information provided by the applicant and verified by the applicant.

(2) The background check application must include, but is not limited to, the following information:

(a) The applicant's legal name, residence address, and telephone number;

(b) The applicant's date and place of birth;

(c) The applicant's Social Security Number;

(d) Whether the applicant:

(A) Has ever been convicted of or is under arrest, investigation, or indictment for a felony or misdemeanor;

(B) Has ever been refused a real estate license or any other occupational or professional license in any other state or country;

(C) Has ever had a real estate or any other occupational or professional license revoked or suspended; or

(D) Has ever been fined or reprimanded as such a licensee; and

(e) Any other information the commissioner considers necessary to evaluate the applicant's trustworthiness and competency to engage in the management of rental real estate in a manner that protects the public interest.

(3) As part of any application submitted under section (2) of this rule, the applicant must submit one completed fingerprint card on the form prescribed by the Oregon State Police and FBI and an additional fee sufficient to recover the costs of processing the applicant's fingerprint information and securing any criminal offender information pertaining to the applicant.

(4) The Agency must receive the background check application, fingerprint card, and processing fee before it will issue a license.

(5) As provided in ORS 181.540, all fingerprint cards, photographs, records, reports, and criminal offender information obtained or compiled by the Agency are confidential and exempt from public inspection. The commissioner will keep such information segregated from other information on the applicant or licensee and maintain such information in a secure place.

(6) If the Agency determines that additional information is necessary in order to process the application, the Agency may request such information in writing, and the applicant must provide the requested information in order to complete the application. If the applicant fails to provide the requested information, the Agency may determine that the application is incomplete, which will result in termination of the application.

(7) An applicant who has otherwise qualified for licensing may not be considered for any real estate license until the background check process and review has been completed, including but not limited to the Agency's receipt of criminal offender information from

the Oregon State Police, other regulatory or law enforcement agencies, and the FBI. If an individual who has had a successfully completed background check process and review does not successfully complete the remaining portions of the entire licensing application process within twelve months from the date of the successfully completed background check process and review, the successfully completed background check process and review is no longer valid.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09

### 863-024-0020

#### Examinations

(1) In addition to any other licensing eligibility requirements, a property manager license applicant must apply for and pass a property manager examination that includes subject matter determined by the Board.

(2) An applicant may apply for an examination whether or not the Agency has finished processing the applicant's fingerprint card and background check or has received documentation on the applicant's licensing educational courses. However, the Agency will not consider an applicant for a license until the Agency has completed such processing and review.

(3) An applicant must apply for an examination by submitting to the Agency:

(a) An Agency-approved license examination application form; and

(b) An examination application fee authorized by ORS 696.270.

(4) If an applicant for a property manager license examination passes the examination but is not issued a license within one year from the date of the examination:

(a) The applicant is no longer qualified for the license on the basis of the examination; and

(b) The applicant must reapply for the examination as required by this rule.

(5) If a property manager's license has not been active for two or more consecutive years, before applying to reactivate such license under OAR 863-024-0065, the licensee must apply for and pass a reactivation examination. To apply for the reactivation examination, the licensee must submit to the Agency:

(a) An Agency-approved license reactivation examination application form; and

(b) The examination application fee authorized by ORS 696.270.

(6) Examination fees are not refundable if an applicant:

(a) Fails to appear for a scheduled examination;

(b) Fails to cancel or reschedule an examination appointment at least two business days before the appointment; or

(c) Fails to pass an examination.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020, 696.022 & 696.425

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09

### 863-024-0030

#### License Issue, Term, Form, and Inspection

(1) The Agency will issue a property manager's license to an applicant after determining that the applicant meets the license requirements contained in ORS 696.022 and 696.790 and receiving:

(a) The license application form required by OAR 863-024-0010; and

(b) The fees authorized by ORS 696.270.

(2) A licensee may engage in property management from the date the license is issued until the license expires, becomes inactive, or is revoked, surrendered, or suspended.

(3) A licensee may hold only one of the following Oregon real estate licenses at any time:

(a) Real estate broker;

(b) Principal real estate broker;

(c) Sole practitioner; or

(d) Property manager.

(4) The license expiration date is the last day of the month of a licensee's birth month.

(5) The license term is not more than 24 months plus the number of days between the date the license is issued or renewed and the last day of the month of the licensee's birth month.

(6) The licensee will include the following information:

- (a) The licensee's legal name;
- (b) The license number, effective date, and expiration date;
- (c) The name under which the licensee conducts real estate business or the registered business name;
- (d) The licensee's business address;
- (e) The seal of the Real Estate Agency; and
- (f) Any other information the Agency deems appropriate.

(7) Each license must be available for inspection in the licensee's principal place of business. If a licensee is associated with a principal real estate broker, the principal broker must make the license available for inspection in the licensee's principal place of business, which is:

- (a) The principal broker's principal place of business; or
- (b) A branch office.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020, 696.022 & 696.270

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09

### 863-024-0045

#### Property Manager Licensing Requirements

(1) To be eligible for a real estate property manager's license, an individual must:

(a) Submit a complete license application and background check application as required by OAR 863-024-0010 and 863-024-0015;

(b) Pass the licensing examination prescribed by the Agency under OAR 863-024-0020;

(c) Pay the licensing fees authorized by ORS 696.270; and

(d) Submit a certificate of completion for the course of study for real estate property manager licensing as prescribed by the Agency.

(2) A real estate property manager may only engage in the management of rental real estate. The licensee may not offer to, negotiate, attempt to, or engage in the sale, purchase, lease-option, appraisal, or exchange of real estate for another individual for compensation. The licensee may not charge, pay, receive, or accept a referral fee, finder's fee, or compensation from or share in a commission paid to a real estate broker for any activity involving the sale, purchase, lease-option, appraisal, or exchange of real estate. However, the licensee may charge, pay, receive, or accept a referral fee or finder's fee from or to a real estate broker or another real estate property manager for finding or referring an owner, renter, or lessee in real estate property management activity.

(3) A real estate property manager is responsible for all property management activity conducted under the property manager's license and for the actions of the property manager's nonlicensed property management employees. A licensed property manager may not authorize an unlicensed individual to supervise that property manager's licensed activity in the manager's absence. Except as provided for in OAR 863-024-0085, a property manager may not authorize another real estate licensee to supervise that property manager's licensed activity in the property manager's absence.

(4) A real estate property manager may be associated with a principal real estate broker to engage in property management activity on behalf of the principal real estate broker and under the supervision of that principal real estate broker. However, a property manager may not act in the broker's absence under OAR 863-024-0085.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2005(Temp), f. 6-9-05, cert. ef. 7-1-05 thru 12-26-05; Administrative correction 1-20-06; Renumbered from 863-015-0045, REA 7-2008, f. 12-15-08, cert. ef. 1-1-09

### 863-024-0050

#### License Renewal

(1) A property manager's license expires if a licensee fails to renew the license on or before the license expiration date. A licensee

may not engage in any professional real estate activity after a license expires.

(2) The Agency will renew an active or inactive property manager license to an active property manager license status for the term prescribed in OAR 863-024-0030 when the Agency has received the following:

(a) The renewal fee authorized by ORS 696.270; and

(b) An Agency-approved renewal application form requesting active license status that includes certification that the licensee has met the real estate continuing education renewal requirements for active license status under OAR 863-024-0055.

(3) The Agency will renew an active or inactive real estate license to an inactive real estate license status for the term prescribed in OAR 863-024-0030, and the license will remain on inactive status, when the Agency has received the following:

(a) The renewal fee authorized by ORS 696.270; and

(b) An Agency-approved renewal application form requesting inactive status.

(4) The Agency will renew an expired property manager license to an active or inactive license status under the following conditions:

(a) The licensee applies for a license renewal on a agency-approved renewal application form requesting active or inactive license status within one year of the date the license expired;

(b) The Agency has received both the renewal fee and a late fee authorized by ORS 696.270; and

(c) If the licensee renews to an active status, the Agency has received an Agency-approved renewal application form that includes certification that the licensee met the real estate continuing education requirements under OAR 863-024-0055.

(5) When the Agency renews an expired license, the renewed license is effective as of the renewal date. The renewal is not retroactive, and the expired license retains the status of expired until the renewal date.

(6) A license that is renewed under this rule expires two years from the date of the original expiration date.

(7) A real estate license that has expired for more than one year is lapsed, as defined in ORS 696.010.

(8) A license may not be renewed if it is lapsed, surrendered, suspended, or revoked. Except as provided in OAR 863-024-0075, the former licensee must reapply and meet all the licensing qualifications required of new license applicants.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020, 696.022 & 696.270

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09

### 863-024-0055

#### Continuing Education

(1) To renew an active license, a licensee must certify that the licensee has completed at least 30 clock-hours of real estate oriented continuing education during the preceding two license years.

(a) A licensee must complete 15 clock-hours of continuing education in one or more of the following required topics:

- (A) Trust Accounts;
- (B) Misrepresentation;
- (C) Anti-Trust;
- (D) Rule and Law Update;
- (E) Property Management;
- (F) Commercial Brokerage and Leasing;
- (G) Real Estate Taxation: Federal, State, and Local;
- (H) Agency;
- (I) Fair Housing;
- (J) Contracts;
- (K) Property Evaluation;
- (L) Brokerage Management;
- (M) Land;
- (N) Business Ethics; or
- (O) Compliance Review.

(b) A licensee must complete the remaining 15 clock-hours in any combination of the above course topics or in other elective real estate oriented continuing education courses.

(c) Courses related to personal skills, such as time management, and routine meetings and luncheons are not considered real estate oriented continuing education courses and do not qualify as such.

(d) Courses must be a minimum of one clock-hour in length. A clock-hour is measured in sixty-minute increments, excluding meal or rest breaks.

(e) Credit will not be given for repeating a continuing education course with the same content during a two-year renewal period.

(2) Licensees must complete a standard Certificate of Attendance developed by the Agency for each course completed by a licensee. "Certifying licensee" means a property manager or, if property manager is associated with a principal real estate broker, the principal real estate broker, who certifies on an Agency-approved form that a licensee completed the continuing education requirements.

(3) In completing the standard Certificate of Attendance, the certifying licensee must decide:

(a) Whether a continuing education course meets the continuing education requirements; and

(b) Whether to classify the course as a required topic or an elective topic.

(4) A certifying licensee may approve continuing education courses completed outside of Oregon. However, for courses completed outside of Oregon, the number of approved credit hours must reflect the clock-hours of course content related to the practice of real estate in Oregon. Credit hours will not be approved for courses with content specific to another state or jurisdiction.

(5) The certifying licensee must retain the Certificate of Attendance in its records as prescribed in ORS 696.280. The certifying licensee must produce a copy of the Certificate of Attendance if the associated licensee or the Agency so requests.

(6) Property managers must:

(a) Self-certify that they have completed their continuing education requirements;

(b) Retain their Certificate of Attendance as prescribed in ORS 696.280; and

(c) Produce a copy of the Certificate of Attendance if the Agency so requests.

(7) Providing false information on an Agency license renewal form or Certificate of Attendance or falsely certifying such information is a violation of ORS 696.301.

(8) In certifying a continuing education course, the certifying licensee must consider the totality of the information provided and the class content and may consider additional criteria including, but not limited to:

(a) Evidence of the instructor's qualifications to teach the course;

(b) Whether the course content is current and accurate, the learning objectives for the course, and whether the course content fulfills the learning objectives;

(c) Whether the course includes ways of measuring learning outcome, such as a final examination; and

(d) Whether students get to evaluate the course and instructor.

(9) Certifying licensees may approve continuing education courses completed through alternative delivery methods. "Alternative delivery" means presentation of continuing education material in a method other than classroom lecture, including but not limited to correspondence, and electronic means such as satellite broadcast, videotape, computer disc, and Internet.

(a) In addition to the certification criteria in section (8) of this rule, in determining whether to certify an alternative delivery method course, the certifying licensee may consider:

(A) Whether the course offers operational or electronic security measures;

(B) The students' ability to interact with an instructor or access other resources to support their learning;

(C) Whether the learning environment and technical requirements are explained to students in advance of the course; and

(D) Whether the course includes a proctored final examination.

(b) In determining the number of credit hours to approve for an alternative delivery course, the certifying licensee may consider:

(A) The number of questions in the examination, with a minimum standard of 10 questions per hour of credit;

(B) The number of pages for Internet, Computer-Based Training, CD-ROM, and book courses, with a minimum standard of 10 pages per hour of credit; and

(C) The clock hours elapsed for videocassette, audiotape, or teleconference courses.

(10) Continuing education course sponsors may:

(a) State in their advertising that the licensee's principal broker must approve the continuing education requirements, e.g., course content, topics, and hours; and

(b) Complete the following information on a Certificate of Attendance:

(A) Real estate licensee's name;

(B) Continuing education course title and date of completion;

(C) Instructor's name and location of course; and

(D) Method of course delivery and whether a final examination was administered.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 696.301 & 696.280

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09

### 863-024-0060

#### Limited Licenses

If the commissioner issues a limited license to an individual under ORS 696.130, the licensee must apply in writing for an unrestricted license after the period of limitation.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020, 696.022 & 696.130

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09

### 863-024-0061

#### Affiliated and Subsidiary Organizations

(1) Affiliated organizations are two or more organizations whose controlling ownership interests are owned by the same licensee, licensees, entity, or entities.

(2) A subsidiary organization is one in which the majority of the voting stock or controlling ownership interest is owned by another organization.

(3) Affiliated or subsidiary business organizations engaging in the management of rental real estate may use the same property manager or principal broker, provided that the individual registering the business name submits proof satisfactory to the commissioner that the property manager or principal real estate broker actually manages and controls each affiliated and subsidiary organization.

(4) As used in this rule, controlling ownership interest means owning 51 percent or more.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09

### 863-024-0062

#### Mailing Address, Address Change, Service of Notice

(1) Each property manager licensee must maintain on file with the Agency a current mailing address and notify the Agency within 10 calendar days of a change of address.

(2) A forwarding address is effective as a "current mailing address" when the Agency receives notice of the forwarding address by the United States Postal Service.

(3) Agency notice by mail, whether registered, certified, or regular, to the real estate licensee's current mailing address on file with the Agency constitutes service.

(4) This rule applies regardless of license status.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09

### 863-024-0063

#### Property Manager License Transfers, Principal Brokers' Responsibilities, Authority to Use Registered Business Name

(1) As used in this rule:

(a) "Authorized licensee" means a licensee who has authority over the use of a registered business name;

(b) "License transfer form" means a completed and signed Agency-approved form that does one of the following:

(A) Transfers a property manager license to a receiving principal broker in order to become associated with the receiving principal broker, or

(B) Authorizes a property manager to use a registered business name to conduct management of rental real estate.

(c) "Sending principal broker" means the principal real estate broker with whom an active property manager license is associated before the license transfer;

(d) "Receiving principal broker" means the principal real estate broker with whom an active property manager license will be associated after the license transfer.

(2) The property manager licensee must provide the following information on a license transfer form:

(a) The name, mailing address, and license number of the property manager licensee who is transferring the license or documenting the authorized use of a registered business name;

(b) The current status of the license, whether active or inactive;

(c) If the property manager is associated with a sending principal broker, certification that the property manager provided written notice of the transfer to the sending principal broker, and that such notice was provided before the date the transfer form is submitted to the Agency, including:

(A) The date of personal service of such notice; or

(B) The date a certified letter was delivered by the post office to the sending principal broker's address;

(d) If the form is used to authorize the use of a different registered business name, certification that the property manager licensee provided written notice of such change to the authorized licensee for the current registered business name, and that such notice was provided before the date the license transfer form is submitted to the Agency, including:

(A) The date of personal service of such notice; or

(B) The date a certified letter was delivered to the authorized licensee's address;

(e) If applicable, the receiving principal broker's registered business name, street address, and registered business name identification number;

(f) If applicable, the street address, registered business name identification number, and the registered business name under which the property manager licensee will be authorized to conduct management of rental real estate; and

(g) The receiving broker's or authorized licensee's name, license number, telephone number, date, and signature.

(3) The Agency will transfer the license of an active property manager associated with a sending principal broker to a receiving principal broker when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

(4) The Agency will transfer the license of a property manager to a receiving principal broker when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

(5) The Agency will transfer the license of an inactive property manager licensee, who has been inactive for a period of 30 days or less, to a receiving principal broker when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

(6) A principal real estate broker with whom a property manager licensee is associated remains responsible for the licensee's management of rental real estate until the Agency receives one of the following:

(a) The licensee's property manager license;

(b) An Agency-approved form submitted by the principal real estate broker terminating the relationship with the licensee under OAR 863-024-0065; or

(c) A license transfer form and fee.

(7) If a principal real estate broker with whom a property manager is associated voluntarily gives the license to the property manager named in the license, the principal real estate broker remains responsible for the licensee's subsequent management of rental real estate until the Agency receives one of the following:

(a) The licensee's property manager license;

(b) An Agency-approved form submitted by the principal real estate broker terminating the relationship with the licensee under OAR 863-024-0065;

(c) An Agency-approved form submitted by the licensee terminating the relationship with the principal real estate broker under OAR 863-024-0065; or

(d) A license transfer form and fee.

(8) The Agency will document the registered business name under which a property manager licensee is authorized to conduct management of rental real estate when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09

### 863-024-0065

#### Inactive License, Change License Status to Active, License Reactivation

(1) A property manager licensee whose license is on inactive status may not engage in management of rental real estate.

(2) The commissioner may reprimand, suspend, revoke, or impose a civil penalty against an inactive licensee under ORS 696.301.

(3) The Agency will change an active property manager license to inactive license status when the Agency actually receives the following:

(a) The license; or

(b) A request by the licensee submitted on an Agency-approved form to change the license status to inactive.

(4) An inactive property manager licensee may renew such license under OAR 863-024-0050.

(5) For a period of 30 days after a property manager license becomes inactive, a property manager may change such license status from inactive to active under OAR 863-024-0063.

(6) If a property manager license has not been on active status for two or more consecutive years, before applying for reactivation of such license:

(a) The licensee must submit to the Agency:

(A) An application for licensing reactivation examination and

(B) The examination fee authorized by ORS 696.270; and

(b) The licensee must pass the reactivation examination.

(7) After the 30-day period in section (5) of this rule, and subject to the examination requirements in section (6) of this rule, a property manager may change the license status from inactive to active only by submitting to the Agency:

(a) An application for license reactivation; and

(b) Payment of the reactivation fee authorized by ORS 696.270.

(8) Subject to the examination requirements in section (6) of this rule, if an inactive licensee renews a license and maintains inactive status, the licensee may, within 60 days of the date of renewal, change the license status to active by submitting to the Agency:

(a) An Agency-approved application for license reactivation that includes certification that the licensee met the real estate continuing education renewal requirements under OAR 863-024-0055; and

(b) Payment of the active renewal fee authorized by ORS 696.270, less the amount of the inactive renewal fee already paid by the licensee.

(9) The change of license status, transfer of license, or the reactivation of a license under of this rule, are effective when the Agency actually receives all required forms and fees.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09

### 863-024-0070

#### License Surrender

(1) A property manager may surrender the licensee's license to the commissioner on an Agency-approved form. Upon surrender, the license is terminated, and the licensee's rights under the surrendered license are terminated. The Commissioner retains continuing jurisdiction to investigate the management of rental real estate conducted under the license and to take disciplinary action against the former licensee under ORS Chapter 696 and its implementing rules.

(2) A surrendered license may not be renewed. The former licensee must reapply and meet all the licensing qualifications required of new license applicants.

Stat. Auth.: ORS 696.385  
 Stats. Implemented: ORS 696.020 & ORS 696.022  
 Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09

**863-024-0075**

**Reissuing Suspended License**

(1) The Agency may reissue an unexpired property management license that has been suspended by order of the Commissioner if the licensee asks that it be reissued and pays the required fee within 30 days after the close of the suspension period.

(2) If the licensee fails to act within 30 days, the license becomes inactive and may be reactivated only pursuant to OAR 863-024-0065.

(3) If the license expires before the request for reissuance, the Agency will renew the license within the 30-day period only pursuant to OAR 863-024-0050.

(4) A license reissued under this rule is effective for licensing purposes when the Agency receives all required forms and fees.

(5) If the license has had a status other than active for two or more consecutive years, the licensee must comply with the reactivation requirements of OAR 863-024-0065.

Stat. Auth.: ORS 696.385  
 Stats. Implemented: ORS 696.020 & 696.022  
 Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09

**863-024-0076**

**Signature Requirements**

(1) Subject to ORS 84.001 to 84.061, the Agency may, but is not required to, accept any electronic or facsimile signature created, generated, sent, communicated, received, or stored regarding licensing documents including, but not limited to, background check applications, examination applications, license applications, license change forms, and license surrender forms.

(2) The Agency may require an individual to submit an original signature on any document.

Stat. Auth.: ORS 696.385  
 Stats. Implemented: ORS 696.020 & 696.022  
 Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09

**863-024-0085**

**Authorization to Control Property Manager's Business**

(1) A property manager may authorize another property manager to control and supervise his or her property management activity during the property manager's absence for a period not to exceed 90 days. Both licensees have joint responsibility for all property management activity conducted during the authorizing property manager's absence.

(2) A copy of the written authorization, signed by the authorizing property manager and the licensee accepting control and supervision responsibility under section (1), must be filed with the Agency before the effective date of such authorization. The Agency may allow a later filing for good cause shown.

Stat. Auth.: ORS 696.385  
 Stats. Implemented: ORS 696.026  
 Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09

**863-024-0095**

**Business Name Registration**

(1) Before conducting business in a name other than the licensee's legal name, the property manager must register the business name with the Agency. For the purposes of this rule, "business name" means an assumed name or the name of a business entity, such as a corporation, partnership, limited liability company, or other business entity recognized by law. A licensee must maintain the registered business name with the Oregon Secretary of State's Corporation Division.

(2) To use or register a business name, the licensee must provide the Commissioner with all of the following:

(a) The business name in which the licensee wishes to conduct business; or

(b) Written authority by which the licensee is authorized to use the business name; and

(c) A copy of the registration filed with the Oregon Secretary of State Business Registry.

(3) Business names registered with the Agency do not expire and need not be renewed by the licensee. Any change in the business name registered with the Agency will be treated as the registration of a new business name, and the change in business name must be registered with the Agency together with the fee authorized by ORS 696.270.

(4) If a licensee wishes to transfer the right to use a business name that is registered with the Agency, the licensee acquiring the right to use the name must file a change of business name registration with the Agency together with the fee authorized by ORS 696.270. A licensee must notify the Agency in writing if the licensee terminates its use of a business name.

(5) A business name registration becomes void when the Agency receives notice of termination of the use of a business name. A business name registration becomes void when no licensees are affiliated with the registered business name. A business name registration may be reactivated within one year from the voiding of a registration, unless a new user has registered the business name, without paying the fee set forth in ORS 696.270.

(6) No real estate property manager may engage in professional real estate activities under more than one registered business name. An exception to this requirement is that a real estate property manager may engage in the management of rental real estate under more than one registered business name if the business entity is an affiliated or subsidiary organization as described in OAR 863-024-0061.

Stat. Auth.: ORS 696.385  
 Stats. Implemented: ORS 696.026  
 Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09

**863-024-0100**

**Branch Office Registration**

(1) Before engaging in the management of rental real estate from a branch office, a property manager must provide to the commissioner on an Agency-approved form the branch office street and mailing addresses and the fee authorized by ORS 696.270.

(2) For the purposes of ORS 696.270, a branch office registration does not require renewal.

Stat. Auth.: ORS 696.385  
 Stats. Implemented: ORS 696.026 & 696.200  
 Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09

**DIVISION 25**

**PROPERTY MANAGEMENT**

**863-025-0005**

**Application and Purpose**

(1) OAR 863-025-0010 to 863-025-0080 apply to the activities of a real estate property manager in the management of rental real estate.

(2) The purposes of OAR 863-025-0010 to 863-025-0080 are:

(a) To specify requirements for the management of rental real estate as defined in ORS 696.010(9);

(b) To protect owners and tenants of rental real estate; and

(c) To make the real estate property manager responsible for establishing a system of recordkeeping that:

(A) Provides the Agency with access to the records of the real estate property manager; and

(B) Complies with OAR 863-025-0010 to 863-025-0080 and ORS Chapter 696.

(3) The goal of the Agency is to encourage real estate property managers to comply with the applicable statutes and rules through education and, if necessary, through the use of progressive discipline as defined in ORS 696.396.

(4) Section (3) of this rule does not limit the Agency's authority to reprimand, suspend or revoke a real estate property manager license under ORS 696.301 or assess civil penalties under ORS 696.990.

Stat. Auth.: ORS 183.335 & 696.385  
 Stats. Implemented: ORS 696.361  
 Hist.: REA 3-1987, f. 12-3-87, ef. 1-1-88; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0207; REA 2-2006(Temp), f. 9-11-06, cert. ef. 9-15-06 thru 3-12-07; REA 1-2007, f. & cert. ef. 3-12-07; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

**863-025-0010**

**Definitions**

In addition to the definitions used in ORS 696.010 and 863-015-0120, as used in OAR 863-025-0015 to 863-025-0080, unless the context requires otherwise:

(1) "Audit trail" means a documented history of a financial transaction by which the transaction can be traced to its source.

(2) "Bank account" means an account in this state established by a property manager for receiving, holding and disbursing trust funds in a bank as defined in ORS 696.010(3).

(3) "Banking day" means each day a bank is required to be open for the normal conduct of its business but does not include Saturday, Sunday, or any legal holiday under ORS 187.010.

(4) "Compliance review" means an Agency review of a property manager's records and procedures for the purpose of educating the property manager on statutes and rules.

(5) "Clients' Trust Account" means a federally insured bank account labeled as "Clients' Trust Account" on all bank records and checks that is established and maintained by a property manager, acting on behalf of an owner under a property management agreement, for depositing, holding and disbursing funds received by the property manager on behalf of an owner, including application fees and application screening fees.

(6) "Cure noncompliance" means a property manager's acts that resolve the property manager's failure to comply with statutory and rule requirements.

(7) "Employee" means a non-licensed individual employed by a property manager for wages or a salary.

(8) "Identifying code" means a unique series of letters and/or numbers assigned by a property manager to a property management agreement at the time the agreement is signed by the parties and used on all transactions and records to reference the agreement. A property manager may use a supplemental unique series of letters and/or numbers on transactions and records if the property manager establishes a clear audit trail to a specific property management agreement and to the original identifying code.

(9) "Investigation" means an Agency-initiated investigation of a property manager that may result in administrative actions against the licensee.

(10) "Mail-in audit" means an Agency audit of a clients' trust account based on information and documents prepared by a property manager and mailed to the Agency.

(11) "Owner" means a person or persons who own rental real estate that is managed by a property manager.

(12) "Property manager" means a real estate licensee authorized to engage in management of rental real estate as defined in ORS 696.010(12).

(13) "Records" and "property management records" mean a complete and adequate documentation of the management of rental real estate.

(14) "Security Deposit" means a conditionally refundable payment or deposit of money, however designated, the primary function of which is to secure the performance of a rental or lease agreement or any part of a rental or lease agreement.

(15) "Security Deposits Account" means a federally insured clients' trust account labeled as "Clients' Trust Account — Security Deposits" on all bank records and checks that is established and maintained by a property manager, acting in a fiduciary capacity on behalf of an owner under a property management agreement, for depositing, holding and disbursing security deposit funds.

(16) "Sufficient funds" or "sufficient credit balance" means an amount of funds on an owner's ledger or a tenant's ledger that is equal to or greater than the amount of a planned disbursement from a clients' trust account or a security deposits account but which must not include any security deposits in a security deposits trust account that are required to be held pending the termination of a rental agree-

ment. Only funds belonging to the owner or tenant on whose behalf the disbursement is planned may be considered in determining if there are sufficient funds or a sufficient credit balance.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.361

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2007, f. & cert. ef. 3-12-07; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

**863-025-0015**

**Written Policies and Delegation of Authority**

(1) Each property manager must develop, maintain and follow written policies for persons and activities under this rule.

(2) Each policy must state the effective date of the policy.

(3) Policies must specify the duties, responsibilities, supervision and authority, including any authority to handle funds in a clients' trust account or security deposits account, for the following persons:

(a) A licensed property manager employed by the property manager, including any authority to negotiate tenant rental and lease agreements;

(b) An active real estate licensee engaged in the management of rental real estate under the supervision and control of a principal broker, including any authority to sign property management agreements under OAR 863-025-0020(6) and tenant rental and lease agreements under 863-025-0045(2); and

(c) An employee of the property manager, including any authority to:

(A) Negotiate tenant rental or lease agreements under OAR 863-025-0045(2);

(B) Check applicant or tenant references, including credit references;

(C) Physically maintain the real estate of an owner;

(D) Conduct tenant relations;

(E) Collect rent and other payments;

(F) Supervise premise managers; or

(G) Discuss financial matters relating to management of the real estate with the owner; and

(d) Contractors.

(5) Policies must include provisions that specify the production and maintenance of all reports, records and documents required under this division.

(6) The following delegations of the property manager's authority must be in writing, dated and signed by the property manager, and kept with written policies:

(a) Negotiate and sign property management agreements under OAR 863-025-0020(6);

(b) Review and approve reconciliations and receive and disburse funds under OAR 863-025-0025(23); and

(c) Review, approve and accept tenant rental and lease agreements under OAR 863-025-0045(2).

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.361

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 1-2007, f. & cert. ef. 3-12-07; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

**863-025-0020**

**Property Management Agreements**

(1) A property manager must not engage in the management of rental real estate without a written, unexpired property management agreement between the owner and the property manager.

(2) A property management agreement must include, but is not limited to:

(a) The address or legal description of the owner's rental real estate;

(b) The duties and responsibilities of the property manager and the owner;

(c) The authority and powers given by the owner to the property manager;

(d) The term of the agreement and the method for termination;

(e) The terms and conditions of the agreement;

(f) The management fees, application fees, screening fees, rebates, discounts, overrides and any other form of compensation to

be received by the property manager for management of rental real estate including when such compensation is earned and when it will be paid;

(g) A description of the monthly statements of accounting the property manager will provide to the owner;

(h) The disposition of the property manager's records of the management of the owner's rental real estate after termination of the agreement;

(i) Disclosure of the use of employees or a business in which the property manager has a pecuniary interest at the time of the execution of the property management agreement, that will provide services for the owner's property;

(j) A statement that the property manager will disclose to the owner, in writing, the property manager's planned use of any employees or a business in which the property manager has a pecuniary interest to provide services for the owner's property, if such employees or business were not disclosed in the property management agreement pursuant to section (2)(i) of this rule;

(k) An identifying code;

(l) Signatures of the property manager, or a person authorized in section (6) of this rule, and the owner; and

(m) The date of the agreement.

(3) If the property manager and owner agree to any of the following terms, the terms must be included in the property management agreement:

(a) Payment of a referral fee, rent credit or other compensation to a tenant as allowed under ORS 696.290(2);

(b) Placement of trust funds received by a property manager in a federally insured interest-bearing clients' trust account or security deposits account as allowed under ORS 696.241(5) or (6), including provisions specifying to whom the interest earnings inure as follows:

(A) If the interest earnings inure to the benefit of the owner, when such interest earnings will be disbursed;

(B) If the interest earnings inure to the benefit of the property manager, that such interest will be disbursed to the property manager within ten calendar days from the date of the bank statement on which such interest is first shown as required in OAR 863-0025-0025(8) and

(c) Specific pass-through charges that will be paid by the owner.

(4) Any amendment or addendum to the property management agreement must be in writing and include the identifying code, the date of the amendment, the signature of the property manager and the signatures of all owners who signed the initial property management agreement.

(5) Only a principal real estate broker or real estate broker may enter into an agreement, which must be separate from the property management agreement, authorizing the real estate broker to represent an owner in the purchase, sale, lease-option or exchange of the rental real estate that must include:

(a) The scope of the professional real estate activity;

(b) The term of the agreement;

(c) The compensation to be paid by the owner to the broker;

(d) Signatures of the real estate broker and the owner; and

(e) The date of the separate agreement.

(6) Only a property manager may negotiate and sign a property management agreement, except that a principal real estate broker engaging in the management of rental real estate may delegate such authority under OAR 863-025-0015(6) to a real estate licensee who is under the supervision and control of the principal real estate broker.

(7) The property manager must promptly deliver a legible copy of the fully executed property management agreement, and any addenda or amendments, to the owner.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.361 & 696.280

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 1-2007, f. & cert. ef. 3-12-07; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

**863-025-0025  
Clients' Trust Account and Security Deposits Account  
Requirements**

(1) All clients' trust accounts and security deposits trust accounts must be federally insured bank accounts.

(2) A property manager must open and maintain at least one clients' trust account as defined in OAR 863-025-0010.

(3) Only the following funds may be held in a clients' trust account:

(a) Funds received by the property manager on behalf of an owner; and

(b) Interest earned, but only if the account is a federally insured interest-bearing account and the property management agreement complies with OAR 863-025-0020(3).

(4) Except as provided in section (7) of this rule, a property manager who receives security deposits on behalf of an owner must open and maintain a security deposits account, as defined in OAR 863-025-0010, that is separate from the property manager's clients' trust account.

(5) Except as provided in section (7) of this rule and OAR 863-025-0030, a property manager who receives a security deposit on behalf of an owner must deposit the security deposit into the property manager's security deposits account within five banking days after receipt.

(6) Only the following funds may be held in a security deposits account:

(a) Security deposits as defined in OAR 863-0025-0010; and

(b) Interest earned, but only if the account is a federally insured interest-bearing account and the property management agreement complies with OAR 863-025-0020(3) and the tenant has provided the property manager with written approval required in 863-0035-0025(24).

(7) When a property management agreement and a corresponding lease or rental agreement provide that the security deposit will be transferred to and held by the owner, the security deposit funds must be deposited in the clients' trust account and disbursed to the owner in the month in which they are received.

(8) If interest earned in a clients' trust account under section (3)(b) of this rule or in a security deposits account under section (6)(b) of this rule inures to the benefit of the property manager, such interest must be disbursed to the property manager within ten calendar days from the date of the bank statement on which such interest first appears.

(9) A property manager may not allow an owner to be an authorized signer on a clients' trust account or security deposit account and may not allow an owner to deposit, hold or disburse funds in a clients' trust account or security deposit account.

(10) A property manager must be an authorized signer on each client's trust account and each security deposits account and is solely responsible for the receipts and disbursements on each bank account.

(11) A property manager must maintain and account for all checks used for a clients' trust account or security deposits account including, but not limited to, voided checks. All such checks must:

(a) Include the account number;

(b) Be pre-numbered or, if checks are computer-generated, must be numbered consecutively;

(c) If the account is a clients' trust account, include the words "clients' trust account," but may include additional identifying language; and

(d) If the account is a security deposits account, include the words "clients' trust account — security deposits," but may include additional identifying language.

(12) A property manager must not disburse funds from a clients' trust account or security deposits account unless there are sufficient funds, as defined in OAR 863-025-0010, in the ledger account against which the disbursement is made.

(13) A property manager may only transfer funds from an owners' ledger account to one or more different owners' ledger accounts if:

(a) Each of the affected owners authorizing the transfer have signed and dated an agreement authorizing such transfer that is separate from any property management agreements;

(b) At the time of the transfer, the property manager enters the transfer information on each affected owners' ledger account, including but not limited to the amount of the transfer, date of the transfer and the source or destination of the transferred funds, as appropriate; and

(c) The property manager gives each owner a separate monthly accounting on the transfer or includes the accounting of the transfer activity in the regular monthly report to the owner.

(14) A property manager may only transfer funds between two or more owner's ledger accounts maintained for the same owner if:

(a) The owner has given the property manager prior written approval in the property management agreement or in an addendum to the agreement; and

(b) At the time of the transfer, the property manager enters the transfer information in each of the owner's affected ledger accounts including, but not limited to, the amount of the transfer, date of the transfer and the source or destination of the transferred funds, as appropriate.

(15) A property manager must disburse earned management fees from the client's trust account at least once each month unless a different schedule of disbursement is specified in the property management agreement, and may only disburse such fees if sufficient funds are available.

(16) The monthly cycle for a clients' trust account or security deposits account may begin and end on a stipulated date every month, if the date is consistent from month to month.

(17) A property manager may not disburse funds from a clients' trust account or security deposits account based upon a wire or electronic funds transfer deposited into the account, until the deposit has been verified by the property manager. The property manager must arrange with the account depository and other entities for written verification of when funds are received or disbursed by wire or electronic transfer.

(18) Upon request by the commissioner or an authorized representative of the commissioner, a property manager must demonstrate that a sufficient credit balance, as defined in OAR 863-025-0010, existed in a ledger account at the time of a disbursement is made from a clients' trust account or security deposits account by producing financial records showing that such disbursement did not involve the use of any other owner's or tenant's trust funds.

(19) A property manager may not utilize any form of debit card issued by financial institutions on a client trust account or security deposits account.

(20) A property manager must reconcile each clients' trust account within 30 calendar days of the date of the bank statement pursuant to the requirements contained in this section.

(a) The reconciliation must have three components that are contained in a single reconciliation document:

(A) The bank statement balance, adjusted for outstanding checks and other reconciling bank items;

(B) The balance of the record of receipts and disbursements or the check register as of the date of the bank statement; and

(C) The sum of all positive owners' ledgers as of the date of the bank statement.

(b) The balances of each component in section (20)(a) of this rule must be equal to and reconciled with each other. If any adjustment is needed, the adjustment must be clearly identified and explained on the reconciliation document.

(c) Outstanding checks must be listed by check number, issue date, payee and amount;

(d) Within 30 calendar days from the date of the bank statement, the property manager must:

(A) Complete the reconciliation document; and

(B) Sign and date the reconciliation document, attesting to the accuracy and completeness of the reconciliation; and

(e) The property manager must preserve and file in logical sequence the reconciliation document, bank statement, and all supporting documentation including, but not limited to, copies of the record of receipts and disbursements or check register and a listing of each owner's ledger balance as of the date of the bank statement.

(21) A property manager must reconcile each security deposits account within 30 calendar days of the bank statement date pursuant to the requirements contained in this section.

(a) The reconciliation must have three components that are contained in a single reconciliation document:

(A) The bank statement balance, adjusted for outstanding checks and other reconciling bank items;

(B) The balance in the records of receipts and disbursements or the check register as of the date of the bank statement;

(C) The sum of all positive balances of individual security deposits and fees held in the security deposits account.

(b) The balances of each component in section (21)(a) of this rule must be equal to and reconciled with each other. If any adjustment is needed, the adjustment must be clearly identified and explained on the reconciliation document;

(c) Outstanding checks must be listed by check number, issue date, payee and amount;

(d) Within 30 calendar days of the date of the bank statement, the property manager must:

(A) Complete the reconciliation document; and

(B) Sign and date the reconciliation document, attesting to the accuracy and completeness of the reconciliation; and

(e) The property manager must preserve and file in logical sequence the reconciliation document, bank statement, and all supporting documentation including, but not limited to, copies of the record of receipts and disbursements or check register and a listing of all balances of individual security deposits and fees as of the date of the bank statement.

(22) A property manager must take corrective action to resolve all adjustments made in a reconciliation prior to the next reconciliation or document the good faith efforts the property manager has taken to resolve the adjustment.

(23) A property manager may delegate the property manager's authority to review and approve reconciliations and to receive and disburse funds for a clients' trust account or security deposits account to another person if the property manager complies with the provisions of OAR 863-025-0015; however, the property manager remains solely responsible for all funds and transactions.

(24) A property manager may place security deposits received by the property manager in a federally insured interest-bearing security deposits account if:

(a) The property management agreement includes a provision for such an account under OAR 863-025-0020(3);

(b) The tenant or tenants whose security deposits are deposited into such account have provided written approval for such an account; and

(c) The provisions in the property management agreement and the written approval of the tenant specify to whom and under what circumstances the interest earnings will accrue and be disbursed.

(25) The property manager's interest in or disbursement to the property manager of interest earnings from a clients' trust account or security deposits account is not a commingling of trust funds with a licensee's personal funds.

(26) A property manager must record the transfer of any funds from a clients' trust account or security deposits account by a check, by written proof of transmittal or receipt retained in the property manager's records. The property manager must record the transfer of other documents by written proof of transmittal or receipt retained in the property manager's records. A property manager may transfer funds electronically via the Internet or Automated Clearing House (ACH) software from a client's trust account to a bank account maintained by the owner and a property manager may make payments electronically to a vendor's account for expenses relating to the owner's property. If the software program used for the transfer does not automatically update the owner's ledger, the property manager must manually record the transfer in the owner's ledger. At the time the transfer is made, the property manager must print and preserve a hard copy of the electronic record of the transfer.

(27) A property manager may use a bank lockbox process in which the bank collects payments from tenants, creates an electronic record of the transaction, and deposits the payments into the appro-

appropriate clients' trust account by following the written instructions of the property manager only if the lockbox process is authorized in a property management agreement and:

(a) The property manager is responsible for determining that the lockbox process and lockbox software program provide controls adequate to ensure the security of the funds and to provide an accurate accounting for them;

(b) For the purposes of this rule, the bank is considered an agent of the property manager; and

(c) The software program for the lockbox process must permit monthly reconciliations of the accounts into which the deposits are made and printing of daily deposit records for the period of time required for retention of other records.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.241, 696.280 & 696.361

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2006(Temp), f. 9-11-06, cert. ef. 9-15-06 thru 3-12-07; REA 1-2007, f. & cert. ef. 3-12-07; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

**863-025-0030**

**Tenant Security Deposits**

(1) Except as provided in section (3) of this rule, all tenants' security deposits received by a property manager must be deposited and maintained in a security deposits account until:

(a) The property manager forwards the tenant's security deposit to the owner of the property according to the terms of the tenant's rental or lease agreement and the property management agreement;

(b) The property manager disburses the tenant's security deposit for purposes authorized by the tenant's rental or lease agreement and the property management agreement;

(c) The property manager refunds a deposit to the tenant according to the terms of the tenant's rental or lease agreement and the property management agreement; or

(d) The property management agreement is terminated and the property manager transfers the tenant's security deposit to the owner unless the owner directs the property manager, in writing, to transfer the security deposits and fees to another property manager, escrow agent or person.

(2) If a property manager receives a security deposit as part of a larger check containing funds other than security deposits, the property manager may deposit the check into a clients' trust account of the property manager; however, the portion of the funds constituting security deposits must be deposited into the security deposits account within three banking days after deposit of the check into the clients' trust account.

(3) When a property manager establishes a clients' trust account for a single property and the property management agreement and the corresponding lease or rental agreement provide that the security deposit will be transferred to and held by the owner, the security deposit must be deposited in the clients' trust account and disbursed to the owner in the month in which they are received.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.241, 696.280 & 696.361

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 1-2007, f. & cert. ef. 3-12-07; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

**863-025-0035**

**Records; Required Records; Maintenance; Production**

(1) The property manager's records of the management of rental real estate are "complete and adequate" as required under ORS 696.280 if the records contain, at least, the following:

(a) A legible copy of each executed property management agreement and any executed addenda or amendments to that agreement;

(b) Client trust account and security deposit account records required by OAR 863-025-0000 to 863-025-0080 and ORS Chapter 696;

(c) An owner's ledger for each property management agreement;

(d) A record of receipts and disbursements or check register maintained for each clients' trust account or security deposits account;

(e) A legible copy of each tenant agreement;

(f) A tenant's ledger for each tenant;

(g) A record of all cash receipts;

(h) All paid bills and receipts required under OAR 863-025-0040(8);

(i) A record of electronic bank transactions required under OAR 863-025-0040(9);

(j) Records of the reconciliation of each clients' trust account and security deposits account, including the reconciliation document;

(k) All cancelled checks or bank-supplied images of cancelled checks as provided under ORS 696.243(1) with the bank statements to which the checks pertain; and

(1) A record of all deposits for each clients' trust account and security deposits account.

(2) A property manager must produce records required under section (1) of this rule for inspection by the Agency as follows:

(a) When the Agency makes a request for production of property management records, the property manager must provide such records within no less than five banking days; and

(b) If the Agency has reasonable grounds to believe that funds of an owner or tenant may be missing or misappropriated or that the property manager is engaging in fraudulent activity, any records demanded or requested by the Agency must be produced immediately; and

(c) Failure to produce such records within the timelines stated in subsection (a) or (b) of this section is a violation of ORS 696.301.

(3) If a property manager uses a computerized system for creating, maintaining and producing required records and reports:

(a) The property manager must back up any data that is stored in the computerized system at least once every month; and

(b) Posting of owner ledgers, record of receipts and disbursements, tenant ledgers and manipulation of information and documents must be maintained in a format that will readily enable tracing and reconciliation.

(4) A property manager must maintain all records required under section (1) of this rule for a period of six years following the date on which such agreement or document is superseded, terminated, has expired or otherwise ceased to be used in the management of rental real estate.

(5) Subject to section (6) of this rule, a property manager may maintain records required under section (1) of this rule within this state at a location other than the property manager's licensed business location, or outside this state, but within the United States, if the property manager notifies the Commissioner in writing of each new location of records at least five banking days prior to establishing a new location. Notice to the Commissioner must include at least:

(a) The name, business address and telephone number of the property manager;

(b) A statement that the property manager intends to establish a new location for records;

(c) The complete address of the new location;

(d) The means of gaining access to the records at the new location and the name, address and telephone number of all contact persons who will provide access to the records during regular business hours;

(e) If the property manager has sole custody, control and access to the records, written, signed and dated authorization by the property manager for the Commissioner to freely access and inspect all records at the new location;

(f) If the property manager authorized a third party authority over custody, control or access to records, joint authorization from the property manager and such third party for the Commissioner to freely access and inspect all records at the new location; and

(g) The signature of the property manager attesting to the accuracy of the information and the date the notice is signed.

(6) If a property manager stores records at a location other than the property manager's licensed business location, the property man-

ager must maintain an inventory of such records and information necessary to retrieve specific records.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.280 & 696.361

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2006(Temp), f. 9-11-06, cert. ef. 9-15-06 thru 3-12-07; REA 1-2007, f. & cert. ef. 3-12-07; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

**863-025-0040**

**Record of Receipts and Disbursements**

(1) Except as provided in section (4) of this rule, a property manager must prepare and maintain a chronological record of receipts and disbursements or a check register for each client's trust account and each security deposits account in which the manager must record each receipt of funds and each disbursement of funds.

(2) A record of receipts and disbursements or a check register must contain at least the following information:

(a) For each receipt of funds:

(A) The date the funds were received, unless the date is recorded in a separate document as provided in section (3) of this rule;

(B) The amount of the funds received;

(C) The purpose of the funds and identity of the person who tendered the funds; and

(D) The date the funds were deposited.

(b) For each disbursement of funds:

(A) The date the funds were disbursed;

(B) The amount of funds disbursed;

(C) The check number and payee of the disbursement; and

(D) The purpose of the disbursement.

(c) If there is more than one property in a clients' trust account, each entry for a receipt, deposit or disbursement must be identified with the applicable identifying code;

(d) If the trust account is an interest-bearing account, the amount of interest earned and the date the interest was credited to the account; and

(e) The account balance after each entry.

(3) The property manager may record the date funds were received as required in section (2)(a)(A) of this rule in a record that is separate from the record of receipts and disbursement or check register if the property manager establishes an audit trail that shows when the funds were received and deposited.

(4) If a property manager maintains a separate client's trust account for a single owner pursuant to property management agreement, the property manager must maintain at least one of the following:

(a) A record of receipts and disbursements;

(b) A check register; or

(c) An owner's ledger as defined under OAR 863-025-0055.

(5) Upon any activity, the property manager must record each receipt, deposit or disbursement as required in this rule and record each deposit or disbursement on the corresponding owner's ledger as required in OAR 853-025-0055 and/or tenant's ledger as required in 863-025-0050.

(6) A property manager may aggregate individual deposits or individual disbursements and record the aggregated total in the record of receipts and disbursements or check register only if the property manager:

(a) Aggregates the deposits or disbursements on a daily basis;

(b) Maintains a separate report that details the individual deposits or disbursements, which states the information for each deposit and disbursement as required in section (2) of this rule; and

(c) Preserves and maintains the detailed report as a required record.

(7) A record of receipts and disbursements or check register for a clients' trust account may show a negative balance during the course of a day only if the record of receipts and disbursements or check register shows a positive balance at the close of the day.

(8) A property manager must retain all paid bills and receipts explaining the amount of and purpose for the receipt or disbursement entered in the record of receipts and disbursements.

(9) A property manager may engage in electronic banking transactions, including the use of the Internet or by telephone, if a record of the transaction, sufficient to establish an audit trail, is created and maintained by:

(a) Printing a copy of the Internet transaction that includes the date, time, and nature of the transaction;

(b) Making a written notation of the telephone transaction including the date, time, and nature of the transaction; or

(c) Creating an electronic document that readily relates to the transaction containing the information in (a) or (b) of this section.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.280 & 696.361

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2006(Temp), f. 9-11-06, cert. ef. 9-15-06 thru 3-12-07; REA 1-2007, f. & cert. ef. 3-12-07; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

**863-025-0045**

**Tenant Agreements**

(1) Residential Property. The property manager must file and maintain legible copies of all tenant rental or lease agreements for the time period required under OAR 863-025-0035. Each tenant rental or lease agreement prepared by a property manager for residential real estate must contain, in addition to and not in lieu of any applicable requirements of the Residential Landlord and Tenant Act, the following:

(a) The licensed name and business address of the property manager and the name and address of the tenant. If a real estate licensee executes the rental or lease agreement on behalf of the licensee's principal real estate broker, the name of the real estate licensee acting for the principal real estate broker in executing the agreement;

(b) The mailing address or unit number of property being rented or leased, the amount and payment conditions of the rental or lease, and the rental or lease term; and

(c) The amount of and the reason for all funds paid by the tenant to the property manager including, but not limited to, funds for rent, conditionally refundable security deposits, and any fees or other charges.

(2) Residential and Non-Residential Property. The property manager must file and maintain legible copies of all tenant's rental or lease agreements for the time period required under OAR 863-025-0035. A property manager must review each tenant rental or lease agreement generated by the property manager; however, a property manager may authorize in writing another individual who is licensed to or employed by the property manager to review and approve and accept tenant rental and lease agreements on behalf of the property manager. In case of such authorization, the property manager remains responsible for each tenant rental and lease agreement approved or accepted by such real estate licensee or employee. The property manager must produce the written authorization at the request of the Commissioner or the Commissioner's authorized representative.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.280 & 696.361

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2006(Temp), f. 9-11-06, cert. ef. 9-15-06 thru 3-12-07; REA 1-2007, f. & cert. ef. 3-12-07; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

**863-025-0050**

**Tenant Ledger**

(1) Except as provided in section (3) of this rule, a property manager must prepare and maintain at least one tenant's ledger for each tenant or individual from whom the property manager has received any funds under a property management agreement, whether or not the tenant has executed a written rental or lease agreement at the time of the payment of funds to the property manager.

(2) A property manager must use the balances of tenant security deposits in individual tenant's ledgers in the monthly reconciliation of the security deposits account as required in OAR 863-025-0025.

(3) A property manager must prepare and maintain a separate record of the receipt of funds from prospective tenants who are not tenants at the time of paying the funds to the property manager, who

do not pay the funds for a particular rental unit and who do not become tenants after such payment

(4) A tenant's ledger must contain at least the following information:

- (a) The name of the tenant;
- (b) The legal description of the property, the mailing address of the property and the unit number, or a unique series of letters and/or numbers that establishes an audit trail to the tenant agreement;
- (c) The identifying code;
- (d) For each deposit of funds:
  - (A) The amount of funds received;
  - (B) The purpose of the funds and identity of the person who tendered the funds; and
- (C) The check number, cash receipt number or a unique series of letters and/or numbers that established an audit trail to the receipt of funds; and
  - (D) The date the funds were deposited;
  - (e) For each disbursement of funds:
    - (A) The date the funds were disbursed;
    - (B) The amount of funds disbursed;
  - (C) The check number or bank-generated electronic tracking number;
  - (D) The payee of the disbursement;
  - (E) The purpose of the disbursement; and
  - (f) The balance after each recorded entry.

(5) If a property manager receives a check from a tenant or prospective tenant for rent, tenant's security deposits or fees and the tenancy fails for any reason within three banking days following receipt of the check, the property manager may return the check to the tenant or prospective tenant without first depositing and processing the check through the property manager's client trust account. The property manager must retain a photocopy of the check and a dated receipt for the check in the required records of property management activity. The property manager must record the amount of the check, the dates of receipt and return of the check on the ledger required under section (3) of this rule.

Stat. Auth.: ORS 183.335 & 696.385  
 Stats. Implemented: ORS 696.280 & 696.361  
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 1-2007, f. & cert. ef. 3-12-07; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

**863-025-0055  
 Owner Ledger**

(1) A property manager must prepare and maintain at least one separate owner's ledger for each property management agreement, for all monies received and disbursed.

(2) If a property manager maintains a separate client's trust account for a single owner pursuant to property management agreement, the property manager may maintain either a record of receipts and disbursements or check register in lieu of an owner's ledger.

(3) All owner ledgers must contain at least the following information:

- (a) The owner's name and identifying code;
- (b) For each deposit of funds:
  - (A) The amount of funds received;
  - (B) The purpose of the funds and identity of the person who tendered the funds;
- (C) The check number, cash receipt number or a unique series of letters and/or numbers that established an audit trail to the receipt of funds; and
  - (D) The date the funds were deposited;
  - (c) For each disbursement of funds:
    - (A) The date the funds were disbursed;
    - (B) The amount of funds disbursed;
  - (C) The check number or bank-generated electronic tracking number;
  - (D) The payee of the disbursement;
  - (E) The purpose of the disbursement; and
  - (d) The balance after each recorded entry.

(4) A property manager must report in writing to each owner any change in the owner's ledger. A monthly report, showing all

receipts and disbursements for the account of the owner during the prior monthly period, is sufficient under this section. A copy of each such report must be preserved and filed in the property manager's records. If an annual report contains information not required to be provided by the property manager under these rules, the property manager must set forth such information separately.

(5) A property manager must retain all paid bills and receipts explaining the amount of and purpose for the receipt or disbursement entered in the owner's ledger.

Stat. Auth.: ORS 183.335 & 696.385  
 Stats. Implemented: ORS 696.280 & 696.361  
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 1-2007, f. & cert. ef. 3-12-07; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

**863-025-0060  
 Cash Receipts**

(1) A property manager must prepare a legible written receipt for any cash funds received under a property management agreement.

(2) If a property management agreement states that the property manager is responsible for collecting cash from machines located on the owner's property including, but not limited to, vending and laundry machine, the property manager must prepare and maintain cash receipts as provided in this rule.

(3) Cash receipts must be consecutively pre-numbered, be printed in at least duplicate form and must contain:

- (a) The date of receipt of the cash funds;
- (b) The amount of the funds;
- (c) The reason for payment or collection of the funds received;
- (d) The identifying code of the owner on whose behalf the cash funds were received;
- (e) The tenant's name or, in the case of collection of cash as provided in section (2) of this rule, the machine(s) the cash was collected from;
- (f) The payee of the funds; and
- (g) The name and signature of the individual who actually received the cash and prepared the receipt.

(4) A copy of the receipt must be maintained in the property manager's records.

Stat. Auth.: ORS 696.385  
 Stats. Implemented: ORS 696.280 & 696.361  
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2007, f. & cert. ef. 3-12-07; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

**863-025-0065  
 Deposits and Funds Received**

(1) All funds, whether in the form of money, checks, or money orders belonging to others and accepted by any property manager while engaged in property management activity, must be deposited prior to the close of business of the fifth banking day following the date of the receipt of the funds into a clients' trust account or security deposits account as defined in OAR 863-025-0010 and established by the property manager under ORS 696.241. The property manager must account for all funds received.

(2) Any person employed by the property manager must promptly transmit to the property manager any money, checks, money orders, or other consideration and any documents received while engaged in property management activity.

(3) A property manager may not deposit any funds received on behalf of an owner in the property manager's personal account or commingle any such funds received with personal funds of the property manager.

(4) Except for funds received pursuant to OAR 863-025-0050(3) and 863-025-0025(16), every deposit made under ORS 696.241, must be made with deposit slips identifying each entry by a written notation of the owner's identifying code assigned to the property management agreement.

(5) A property manager must maintain a complete record of all funds or other consideration received in the property manager's property management activity. This record must show from whom the funds or other consideration was received, the date of the receipt, the place and date of deposit, and, the final disposition of the funds or other consideration.

Stat. Auth.: ORS 183.335 & 696.385  
 Stats. Implemented: ORS 696.280 & 696.361  
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2007, f. & cert. ef. 3-12-07; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

**863-025-0070**

**Termination, Transfer of Property Management**

(1) If a property management agreement is terminated, the property manager must terminate property management activity pursuant to the terms of the property management agreement and this rule.

(2) Not later than 60 days after the effective date of the termination, the property manager must:

(a) Disburse all obligated funds to the party or parties entitled to the funds; and

(b) Provide the owner with the following:

(A) A final accounting of the owner's ledger account;

(B) All funds belonging to the owner as shown on the owner's ledger, unless the owner directs the property manager, in writing, to transfer the funds to another property manager, escrow agent or person;

(C) An accounting of all security deposits and fees held for tenants;

(D) All tenant security deposits and fees held for tenants, unless the owner directs the property manager, in writing, to transfer the security deposits and fees to another property manager, escrow agent or person;

(E) Copies of all current tenant rental or lease agreements, unless the owner waives such requirement in writing or directs the property manager, in writing, to provide such documents to another property manager, escrow agent or person; and

(F) A notice the property manager may destroy the required records of the property management activity performed after six years.

(3) No later than the next calendar day after the effective date of the termination, a property manager must notify each tenant for whom the property manager holds a security deposit that:

(a) The security deposit and all fees held for the tenant will be transferred to the owner or, if applicable, to another property manager, escrow agent or person; and

(b) The name and address of the owner, other property manager, escrow agent or person to whom these deposits will be transferred;

(4) A property manager may not expend any tenant security deposits for payment of any expenses or fees not otherwise allowed by the tenant's rental or lease agreement.

(5) If a tenant's termination of tenancy occurs simultaneously with or prior to the effective date of termination of the property management agreement, a property manager must complete any final accounting, inspection or other procedures within the time required by:

(a) The tenant rental or lease agreement;

(b) The Residential Landlord Tenant Act; and

(c) The property management agreement, unless the owner otherwise directs in writing.

(6) A property manager must transfer and assign by written agreement any interest of the property manager in a rental or lease agreement to the owner or to a new property manager.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.280 & 696.361

Hist.: REA 3-1987, f. 12-3-87, ef. 1-1-88; REA 3-1989, f. 12-13-89, cert. ef. 2-1-90; REA 2-1991, f. 11-5-91, cert. ef. 1-1-92; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0225; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 1-2007, f. & cert. ef. 3-12-07; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

**863-025-0080**

**Compliance Reviews and Mail-in Audits**

(1) The Agency will provide a property manager with written notice at least five business days before conducting a compliance review.

(2) A compliance review is completed when the Agency delivers a written notice of completion to the property manager.

(3) Except as provided in section (4) of this rule, if the Agency determines that a property manager is not in compliance with ORS

696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, or OAR chapter 863 after the Agency completes a compliance review, the Agency will allow the property manager at least 30 days from the date the compliance review is completed to cure the noncompliance without sanction.

(4) Upon completion of a compliance review, if the Agency has reasonable grounds to believe that the funds of an owner or tenant may be missing, funds may have been misappropriated, or that the property manager's records are in such a condition that the property manager is placing owners' and/or tenants' money at risk the Agency may immediately initiate an investigation without providing a property manager with an opportunity to cure noncompliance.

(5) The Agency will provide a property manager with written notice of a mail-in audit at least 30 days before required information and documentation must be provided to the Agency.

(6) After the Agency reviews the information and documents provided in a mail-in audit, the Agency will take one of the following actions:

(a) If the information and documents are in compliance with statutes and rules, the Agency will provide written notice to the property manager confirming compliance only as to the information and documents provided;

(b) If the information and documents indicate that the property manager may be subject to additional documentation and procedural requirements that were not part of the mail-in audit, the Agency will provide written notice to the property manager detailing the Agency's expectations for compliance on those matters;

(c) If the information and documents demonstrate that the property manager is not in compliance with ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, or OAR chapter 863, the Agency will provide written notice to the property manager that includes:

(A) The property manager must cure all noncompliance issues and provide information and documentation to the Agency that the noncompliance has been cured within 30 days of the date of the notice; and

(B) If all noncompliance issues are not cured within 30 days, the Agency may impose sanctions on the property manager or may initiate an investigation and not allow additional time for the property manager to cure the noncompliance.

(d) If the Agency has reasonable grounds to believe that the funds of an owner or tenant may be missing, funds may have been misappropriated, or that the property manager's records are in such a condition that the property manager is placing owners' and/or tenants' money at risk, the Agency may immediately initiate an investigation without providing a property manager with an opportunity to cure noncompliance.

(7) If a property manager does not respond to a mail-in audit within the time period required in the notice, the Agency may initiate an investigation.

(8) The Agency may conduct a mail-in audit of a property manager:

(a) As part of a regular, routine and random selection of property manager clients' trust accounts for mail-in audits;

(b) When the Agency has determine, after a compliance review, that the property manager was not in compliance and provided the property manager with an opportunity to cure the non-compliance; and

(c) After an investigation has been initiated.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.280 & 696.361

Hist.: REA 2-2006(Temp), f. 9-11-06, cert. ef. 9-15-06 thru 3-12-07; REA 1-2007, f. & cert. ef. 3-12-07; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

**DIVISION 27**

**INVESTIGATIONS AND DISCIPLINE**

**863-027-0000**

**Applicability and Purpose**

This division applies to licensed real estate brokers and property managers. It describes the methods and procedures the Agency

will use to investigate complaints and the process the Agency will follow when taking disciplinary action.

Stat. Auth.: ORS 696.385  
 Stat. Implemented: ORS 696.396  
 Hist.: REA 9-2008, f. 12-15-08, cert. ef. 1-1-09

**863-027-0005**

**Definitions**

As used in this division, unless the context requires otherwise, the following definitions apply:

- (1) "Agency" is defined in ORS 696.010.
  - (2) "Commissioner" is defined in ORS 696.010.
- Stat. Auth.: ORS 696.385  
 Stat. Implemented: ORS 696.010  
 Hist.: REA 9-2008, f. 12-15-08, cert. ef. 1-1-09

**863-027-0010**

**Investigation of Licensees: Procedures and Reporting**

(1) The agency shall use the methods and procedures in this rule to investigate complaints that allege grounds for discipline under ORS 696.301.

(a) The commissioner or an agency manager shall review the complaint to determine whether there are reasonable grounds to believe that a violation of ORS 696.007 to 696.995, or any rule promulgated thereunder, may have occurred that constitutes grounds for discipline under 696.301. Reasonable grounds means a reasonable belief in facts or circumstances which, if true, would in law constitute a violation of 696.007 to 696.995 or its implementing rules.

(b) If the commissioner or an agency manager determines there are reasonable grounds to believe a violation may have occurred, the agency will initiate an investigation. The individual assigned to investigate the complaint shall gather all relevant facts in an objective, impartial and unbiased manner. The investigative report must contain all facts discovered during the investigation, including facts which may be exculpatory or mitigating.

(c) The individual assigned to investigate the complaint will promptly notify the commissioner or an agency manager if a licensee fails or refuses to cooperate in an investigation.

(d) An investigative interview may be electronically recorded if the person to be interviewed consents to the recording and states such consent on the recording.

(e) The individual assigned to investigate the complaint may not communicate with a licensee or a member of the public about the findings of the investigation, whether a violation may have occurred based on the facts, or whether the agency will initiate administrative action against a licensee.

(f) Individuals assigned to investigate complaints shall not solicit complaints against any licensee.

(g) The scope of an investigation shall be limited to the conduct or transaction(s) that formed the basis initiating the investigation. However, if there are reasonable grounds to believe that additional violations may have occurred that would result in reprimand, suspension, revocation or license denial, the commissioner or an agency manager may expand the scope of the investigation or authorize additional investigations.

(2) The investigation report shall be written in an objective manner and may not contain any conclusions about whether a violation has occurred or any recommendation regarding discipline.

(3) An agency manager will review the investigation report and file and determine whether the evidence supports charging a person under investigation with a violation of ORS 696.007 to 696.995, or any rule promulgated thereunder. The agency shall not assert, propose to stipulate to, or issue a contested case notice alleging a violation of said statutes and rules without reasonable grounds as defined in section (1)(a) of this rule.

Stat. Auth.: ORS 696.385  
 Stats. Implemented: ORS 696.396  
 Hist.: REA 4-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-29-06; REA 1-2006, f. 6-29-06, cert. ef. 6-30-06; Renumbered from 863-015-0225, REA 9-2008, f. 12-15-08, cert. ef. 1-1-09

**863-027-0020**

**Progressive Discipline of Licensees**

(1) The goal of progressive discipline is to correct a licensee's inappropriate behavior, deter the licensee from repeating the conduct, and educate the licensee to improve compliance with applicable statutes and rules. Progressive discipline means the process the agency follows, which may include using increasingly severe steps or measures against a licensee when a licensee fails to correct inappropriate behavior or exhibits subsequent instances of inappropriate behavior.

(2) The commissioner will evaluate all relevant factors to determine whether to issue a non-disciplinary educational letter of advice or to discipline a licensee through reprimand, suspension or revocation under ORS 696.301, including but not limited to:

- (a) The nature of the violation;
- (b) The harm caused, if any;
- (c) Whether the conduct was inadvertent or intentional;
- (d) The licensee's experience and education;
- (e) Whether the licensee's conduct is substantially similar to conduct or an act for which the licensee was disciplined previously;
- (f) Any mitigating or aggravating circumstances;
- (g) The licensee's cooperation with the investigation;
- (h) Any agency hearing orders addressing similar circumstances; and
- (i) The licensee's volume of transactions.

(3) An agency manager may issue a non-disciplinary educational letter of advice to a licensee which includes, but is not limited to, the following statements:

- (a) The commissioner has determined not to pursue disciplinary action against the licensee; and
- (b) The letter is the result of an investigation and closes the investigation; and
- (c) The letter is not disciplinary in nature and will not appear in the agency's disciplinary records; and
- (d) The purpose of the letter is to educate the licensee; and
- (e) The letter will be expunged from the agency's records six years from the date of issuance.

(4) A reprimand is the maximum disciplinary action the commissioner may issue against a licensee if the licensee has committed an act or conduct that constitutes grounds for discipline under ORS 696.301 and such act or conduct does not:

- (a) Result in significant damage or injury;
- (b) Exhibit incompetence in the performance of professional real estate activity;
- (c) Exhibit dishonesty or fraudulent conduct; or
- (d) Repeat conduct or an act that is substantially similar to conduct or an act for which the real estate licensee was disciplined previously.

(5) The commissioner may impose suspension or revocation only if the licensee has committed an act that constitutes grounds for discipline under ORS 696.301 and such act also meets the requirements of 696.396(2)(c).

Stat. Auth.: ORS 696.385  
 Stats. Implemented: ORS 696.301 & 696.396  
 Hist.: REA 4-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-29-06; REA 1-2006, f. 6-29-06, cert. ef. 6-30-06; Renumbered from 863-015-0230, REA 9-2008, f. 12-15-08, cert. ef. 1-1-09

**DIVISION 30**

**OREGON SUBDIVISION CONTROL LAW**

**Timeshare Plans**

**863-030-0050**

**Definitions**

As used in OAR 863-030-0050 to 863-030-0080, unless the context requires otherwise:

- (1) "Commissioner" means the Real Estate Commissioner.
- (2) "Agency" means the Real Estate Agency.
- (3) "Accommodation," "assessment," "common expenses," "developer," "facility," "managing entity," "negotiate," "purchaser,"

“owner,” “seller,” “timeshare,” “timeshare agreement,” “timeshare period” and “timeshare plan” have the meaning given those terms in ORS 94.803.

Stat. Auth.: ORS 92, 94 & 696  
 Stats. Implemented: ORS 94.803  
 Hist.: REC 2-1982, f. 5-3-82, ef. 5-15-82; REC 1-1983(Temp), f. & ef. 8-3-83;  
 REC 1-1984, f. 1-26-84, ef. 2-1-84; REA 5-1987, f. 12-3-87, ef. 1-1-88

**863-030-0060**

**Filing with Commissioner**

In addition to and at the time of filing the information required by ORS 94.823, the developer of a timeshare plan or the developer's agent shall submit to the commissioner the following:

(1) For a timeshare plan having timeshare property comprising only part of the accommodations in a hotel, motel or similar commercial lodging business and where the accommodations that are not part of the timeshare plan are used for transient accommodations concurrently with the operation of the timeshare plan, a copy of any contract for the following:

(a) Arrangements for the temporary use for transient accommodations of timeshare property and the temporary use of accommodations regularly used for transient accommodations as timeshare property; and

(b) The apportionment of the operating costs of the commercial lodging business that jointly benefit transient accommodations and the timeshare plan, including the apportionment method.

(2) For timeshare plans where the use or occupancy of timeshare property is on a first reserved, first served basis rather than by preassignment of a specific timeshare period to a specific purchaser and where timeshare property not timely reserved for use or occupancy by purchasers may be rented to members of the public:

(a) A description of the criteria used to determine whether a timeshare property has been timely reserved;

(b) Any rules of the timeshare plan or managing entity for the rental of timeshare property to the public;

(c) The method of cost apportionment for purchaser and public use or occupancy of timeshare property; and

(d) The disposition of all revenues received from public use of timeshare property.

Stat. Auth.: ORS 92, 94 & 696  
 Stats. Implemented: ORS 94.823  
 Hist.: REC 2-1982, f. 5-3-82, ef. 5-15-82; REC 1-1983(Temp), f. & ef. 8-3-83;  
 REC 1-1984, f. 1-26-84, ef. 2-1-84; REA 2-2003, f. 6-30-03, cert. ef. 7-1-03

**863-030-0065**

**Presales of Timeshare Plans**

In cases where timeshare sales agreements are executed before the timeshare property is ready and available for use by the purchaser for the timeshare period bargained for in accordance with the timeshare instrument, the developer shall comply with ORS 94.873 to 94.905 in making such sales.

Stat. Auth.: ORS 92, 94 & 696  
 Stats. Implemented: ORS 94.823, 94.873 & 94.878  
 Hist.: REC 2-1982, f. 5-3-82, ef. 5-15-83; REC 1-1983(Temp), f. & ef. 8-3-83;  
 REC 1-1984, f. 1-26-84, ef. 2-1-84; REA 2-2003, f. 6-30-03, cert. ef. 7-1-03

**863-030-0075**

**Exchange Programs**

(1) A seller or developer who offers an exchange program to a purchaser in conjunction with a timeshare plan shall be responsible for the delivery of the exchange program information, if the offer is made in conjunction with and at the time of the purchase of a timeshare interest. An exchange company offering an exchange program directly to purchasers on its own behalf shall be responsible for the delivery of the exchange program information. The accuracy of the exchange program information is the responsibility of the exchange company and not the buyer or developer. The exchange program information provided to a purchaser shall include the written information required under subsection (2) of ORS 94.826, and the following: The names and addresses of all the officers and directors of the exchange company.

(a) Whether the purchaser's contract with the exchange program is separate and distinct from the purchaser's contract with the developer of the timeshare plan;

(b) A complete description of all limitations, restrictions or priorities employed in the operation of the exchange program, including but not limited to, limitations on exchanges based on season, unit size or levels of occupancy; and, if the limitations, restrictions, or priorities are not applied uniformly by the exchange program, a complete description of the manner of their application;

(c) Whether exchanges are arranged on a space available basis and whether the exchange company guarantees fulfillment of specific requests for exchanges;

(d) Whether the fees for participation in the exchange program may be altered and the method for alteration;

(e) The names and locations of all accommodations and facilities included in the timeshare plans participating in the exchange program;

(f) The number of timeshare accommodations in each timeshare plan which are available for occupancy and which qualify for participation in the exchange program.

(g) The number of currently enrolled purchasers and owners at each timeshare plan participating in the exchange program.

(h) The disposition made by the exchange company of timeshare periods deposited with the exchange program by purchasers and owners enrolled in the exchange program.

(2) The seller of a timeshare plan shall use and represent only the most current information on file with the commissioner under this rule when offering a timeshare plan, including an exchange program, to purchasers. It is sufficient for the developer and the exchange company referred to in this rule to rely upon the most current directory or other publication prepared and distributed by the exchange company, which includes the information referred to in this rule.

Stat. Auth.: ORS 92, 94 & 696  
 Stats. Implemented: ORS 94.826  
 Hist.: REC 2-1982, f. 5-3-82, ef. 5-15-82; REC 1-1983(Temp), f. & ef. 8-3-83;  
 REC 1-1984, f. 1-26-84, ef. 2-1-84; REA 2-2003, f. 6-30-03, cert. ef. 7-1-03

**863-030-0080**

**Promotional Programs**

In conjunction with the filing required by OAR 863-030-0060, the developer shall maintain and store an outline of any promotional program prepared by the developer for the sale of the timeshare plan, for a period of two years following the date of the initial use of the promotional program or a statement that no such program has been prepared. "Promotional program" includes, but is not limited to, the methods of marketing to be employed, including but not limited to sweepstakes, lodging certificates, gifts, awards, premiums, discounts, drawings or contests.

Stat. Auth.: ORS 92, 94 & 696  
 Stats. Implemented: ORS 94.823, 94.940 & 94.945  
 Hist.: REC 2-1982, f. 5-3-82, ef. 5-15-82; REC 1-1983(Temp), f. & ef. 8-3-83;  
 REC 1-1984, f. 1-26-84, ef. 2-1-84; REA 5-1987, f. 12-3-87, ef. 1-1-88; REA 2-2003, f. 6-30-03, cert. ef. 7-1-03

**DIVISION 40**

**MEMBERSHIP CAMPING CONTRACT RULES**

**863-040-0010**

**Application for Membership Camping Contract Registration**

In addition to and at the time of filing the information required by ORS 94.959, a membership camping operator shall file the following information and documentation with an application for the registration of a membership camping contract:

(1) The name, address and telephone number of each onsite manager of any campground located in Oregon.

(2) A current title report for the real property of any campground in Oregon along with a copy of all encumbrances listed on the report. If the operator is not in fee title to the real property, a copy of any documentation on which a right to use the property is claimed by the operator.

(3) Full and complete disclosure of any local requirements for the creation, siting and operation of campgrounds and verification from the local jurisdiction that the membership camping operator has complied with the requirements.

Stat. Auth.: ORS 94 & 696

Stats. Implemented: ORS 94.959  
 Hist.: REA 6-1987, f. 12-3-87, ef. 1-1-88; REA 2-2003, f. 6-30-03, cert. ef. 7-1-03

**863-040-0040**  
**Membership Camping Contract Salesperson Registration and Renewal**

(1) The renewed registration will be issued for one year from the date of renewal. If a renewal application is not filed with the commissioner within one year from the expiration of a registration, renewal of the registration will no longer be possible and the former registrant must meet the requirements of a new registration under ORS 94.980.

(2) As part of the application for registration as a MCC salesperson submitted under ORS 94.980, the applicant shall submit two completed fingerprint cards on a form prescribed by the Commissioner and an additional fee sufficient to recover the costs of the processing of the applicant's fingerprint information and securing any criminal offender information pertaining to the applicant.

(3) At the request of a prospective applicant for registration as a MCC salesperson under ORS 94.980, Agency staff designated by the Commissioner may perform the fingerprinting process for such applicant during regular office hours of the Agency at the office of the Agency upon payment to the Agency by such applicant of a separate and additional fee of \$10.

Stat. Auth.: ORS 94, 181, 183.335, 293 & 696.385  
 Stats. Implemented: ORS 94.980  
 Hist.: REA 6-1987, f. 12-3-87, ef. 1-1-88; REA 3-1989, f. 12-13-89, cert. ef. 2-1-90; REA 2-1992, f. 2-28-92, cert. ef. 4-1-92; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97; REA 4-1997, f. 11-24-97, cert. ef. 12-1-97; REA 2-2003, f. 6-30-03, cert. ef. 7-1-03

**DIVISION 50**

**RULES AND REGULATIONS**  
**ESCROWS AND ESCROW AGENTS**

**General Rules**

**863-050-0000**

**Definitions**

As used in OAR chapter 863, division 50, unless the context requires otherwise, the following definitions apply:

(1) "Agency" means the Oregon Real Estate Agency.

(2) "Bank" has the meaning given that term in ORS 706.008. As used in ORS 696.578, "a bank authorized to do business within this state" means a banking business, as that term is defined in 706.005, that has either a bank charter or a certificate of authority issued by the Oregon Department of Consumer and Business Services pursuant to Chapters 706 to 716.

(3) "Banking Day" means each day a bank is required to be open for the normal conduct of its business but does not include Saturday, Sunday, or any legal holiday under ORS 187.010.

(4) "Bank services" are any monetary benefits received directly or indirectly from an escrow agent's bank as services to the escrow agent in consideration for the escrow agent's depositing and maintaining its clients' trust funds in such bank.

(5) "Closed Escrow" means that all property titles have been transferred and all monies and documents have been disbursed or distributed in accordance with the instructions of the principals to the escrow transaction.

(6) "Escrow" is defined in ORS 696.505.

(7) "Escrow Activity" means any activity subject to regulation under ORS 696.505 to 696.590.

(8) "Escrow Agent" is defined in ORS 696.505.

(9) "Escrow Number" means a unique identifying number assigned to each escrow in logical sequence.

(10) "Escrow Trust Account" means a bank account established pursuant to ORS 696.578.

(11) "Holdback escrow" means a separate escrow, derived from a closing escrow, wherein funds are held after closing for the purpose of paying obligations related to the closing or to the financing of real or personal property therein after the closing has occurred.

(12) "Net worth," as used in ORS 696.535, means is the remaining balance after subtracting total liabilities from total assets.

(13) "One-sided escrow" as used in ORS 696.581 means an escrow that is opened by, or on behalf of, one party to a written, proposed agreement between two or more parties, for the purpose of depositing any written instrument, money, evidence of title to real or personal property, or other thing of value into the escrow account before execution of the agreement by the other party(s).

(14) "Owner" means an individual who has more than five percent ownership interest in the escrow agent.

(15) "Principal" is defined in ORS 696.505 and

(a) In a collection escrow, means the seller or buyer, lender or borrower, vendor or vendee.

(b) In a holdback escrow, means those parties directing the holdback.

(c) In a one sided escrow, means the depositing party.

(16) "Required Records" means all records required by OAR 863-050-0000 to 863-050-0150 and the Oregon Escrow Law, ORS 696.505 to 696.590.

(17) "Subservicer" is defined in ORS 696.505.

Stat. Auth.: ORS 183.335, 696.385, 696.541(1), 696.578(3)&(4) & 696.581(6)  
 Stats. Implemented: ORS 105.475 & 696.581  
 Hist.: REA 5-2003, f. 12-24-03, cert. ef. 1-1-04; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

**863-050-0015**

**Documents or Property Held in Escrow**

Except as otherwise provided in ORS 696.581, an escrow agent must use documents or other property deposited in escrow only in accordance with the dated written instructions of the principals to the escrow transactions or pursuant to court order.

Stat. Auth.: ORS 183.335, 696.385, 696.541(1), 696.578(3)&(4) & 696.581(6)  
 Stats. Implemented: ORS 105.475 & 696.581  
 Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 2-1981, f. 10-30-81, ef. 11-1-81; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92; REA 1-1993, f. 12-1-93, cert. ef. 1-1-94; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

**863-050-0020**

**Disclosure of Interest**

(1) An escrow agent must act as a disinterested, neutral third party with regard to any of the principals to an escrow transaction.

(2) An escrow agent must provide the disclosure required by this rule if the escrow agent, its owners, officers, management staff in the office of the escrow agent handling the escrow transaction, or the escrow officer handling the escrow transaction knows of any interest or relationship described in section (5) of this rule.

(3) An escrow agent must disclose to the principals in an escrow transaction, in a separate written notice:

(a) The specific interest the agent or the agent's employees have in the transaction described in section (5) of this rule; and

(b) The statement described in section (6) of this rule.

(4) An escrow agent must deliver the notice required by this rule to the principals:

(a) When the escrow agent accepts the escrow and before any of the principals becomes liable for any costs or signs any written escrow instruction; or

(b) If the interest is discovered after any of the principals becomes liable for costs or signs written escrow instructions, upon discovery of the interest.

(5) An escrow agent must disclose any interest that the agent or the agent's employees have in the escrow transaction, other than as escrow agent, title insurer, or title insurance agent. Such interests include but are not limited to the following:

(a) A family relationship by blood, domestic partnership, or marriage with the escrow officer or such other staff member who may be assigned responsibility for the administration of the escrow agent's transaction file, with respect to any principal in the transaction, real estate licensee, lender, mortgage or loan broker, builder, or subdivider with an interest in the transaction;

(b) Any pecuniary business interest in the transaction other than as escrow agent, title insurer, or title insurance agent; and

(c) Any financial interest of the escrow agent, escrow officer or such other staff member assigned responsibility for the administra-

tion of the escrow agent's file when that interest is more than five percent ownership interest in:

- (A) A principal in the transaction; or
  - (B) A real estate licensee, lender, mortgage or loan broker, developer, builder or subdivider interest in the transaction.
- (6) An escrow agent must include the following statement in a disclosure made under this rule:

"We call this interest to your attention in order to be open and fair with you. In our opinion this interest will not prevent us from being a fair and impartial escrow agent in this transaction. Nevertheless, you may request that this transaction be closed by some other licensed escrow agent if you so desire."

(7) An escrow agent making any disclosure required by this rule must take a written receipt for the disclosure statement or document the disclosure and its delivery to a principal. The escrow agent must maintain such receipts or documentation as a required record.

(8) For the purposes of this rule, if an escrow agent gives any services, property, or anything of value as a marketing tool to induce the recipient to bring or refer escrow business to the escrow agent, such giving is not a pecuniary business interest or financial interest for which disclosure must be made under this rule.

(9) The receipt by an escrow agent of bank services and interest earned on clients' trust funds under ORS 696.578(2) are not subject to the disclosure requirements of this rule.

Stat. Auth.: ORS 183.335, 696.385, 696.541(1), 696.578(3)&(4) & 696.581(6)  
 Stats. Implemented: ORS 696.535(1)(e) & 696.581  
 Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 2-1990, f. 4-18-90, cert. ef. 7-1-90; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04; REA 4-2004, f. 4-28-04 cert. ef. 5-3-04; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

**863-050-0025**

**Closing Statement**

(1) When an escrow closes, an escrow agent must prepare, sign, and date a closing statement of each principal's escrow account that includes the following:

- (a) The funds received and disbursed on the principal's behalf for the principal's benefit; and
- (b) Third party expenses paid by the escrow agent in connection with the escrow transaction, which must be clearly designated and separate from the escrow agent's own fees.

(2) If payments or credits are made outside of escrow, the escrow agent may show such payments or credits on the closing statement if they are designated as payments or credits outside of escrow and are set forth separately from payments or credits made by or to the escrow agent.

(3) The escrow agent must deliver a copy of the signed and dated closing statement of the applicable escrow account to:

- (a) Each principal to the escrow or the principal's designee;
- (b) A real estate broker who represents a principal to the transaction, upon the broker's request, but only the closing statement for the principal that the broker represents; and
- (c) A seller who has financed some or the entire sales price, a copy of the buyer/borrower statement, at the seller's request.

Stat. Auth.: ORS 696  
 Stats. Implemented: ORS 696.535(1)(g) & 696.535(3)  
 Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 2-1981, f. 10-30-81, ef. 11-1-81; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 2-1997, f. 6-18-97, cert. ef. 7-1-97; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

**863-050-0030**

**Bank Charges**

An escrow agent may not authorize or allow a bank to remove funds from its account established under ORS 696.578 for payment of bank service charges, overdraft charges, printed check charges, collection charges, or bank fees or bank service charges of any kind. Such charges must be paid from the escrow agent's own funds.

Stat. Auth.: ORS 696  
 Stats. Implemented: ORS 696.541 & 696.578  
 Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REA 2-1997, f. 6-18-97, cert. ef. 7-1-97; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

**863-050-0033**

**Notice of Judgments**

(1) Except as otherwise provided by section (4) of this rule, an escrow agent must notify the Commissioner in writing of any of the following:

(a) A judgment entered against the escrow agent in any civil action involving the alleged misconduct of the escrow agent in an escrow transaction or of any owner, officer, employee, or director of the escrow agent in an escrow transaction handled through the escrow agent;

(b) A conviction in any criminal proceeding involving the misconduct of the escrow agent in an escrow transaction or of any owner, officer, employee, or director of the escrow agent in an escrow transaction handled through the escrow agent; or

(c) A decision adverse to the escrow agent resulting from court-ordered binding arbitration involving the alleged misconduct of the escrow agent in an escrow transaction or of any owner, officer, employee, or director of the escrow agent in an escrow transaction handled through the escrow agent.

(2) The notice required by section (1) of this rule must contain a brief description of the escrow transaction involved and the names of the principals. If a civil action or court-ordered binding arbitration, the notice must include a copy of the judgment entered or arbitrator's decision. If a criminal proceeding, the notice must include the criminal charge for which the escrow agent, officer, employee, or director was convicted and the sentence imposed.

(3) The notice required by sections (1) and (2) of this rule must be made within ten banking days after the judgment is entered, the arbitrator's decision is issued, or the sentencing date. The escrow agent must provide notice under this section even if the judgment or conviction is appealed. If the judgment or conviction is appealed, the escrow agent must report each subsequent decision of an appellate court within ten banking days after the date the appellate order is entered.

(4) A judgment of the Small Claims Department of any Circuit Court or Justice's Court is exempt from the notice requirements. However, if the judgment is appealed, each subsequent decision of any appellate court must be reported under this rule.

Stat. Auth.: ORS 696  
 Stats. Implemented: ORS 696.511 & 696.535(1)(b)  
 Hist.: REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 2-1997, f. 6-18-97, cert. ef. 7-1-97; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

**863-050-0035**

**Letters of Credit**

(1) For a certified, annually renewable letter of credit to be satisfactory to the Commissioner under ORS 696.527 in lieu of a surety bond or deposit, the letter of credit must:

- (a) Be executed by a bank;
- (b) Name the State of Oregon Real Estate Agency as beneficiary;
- (c) Make no reference to any other conditional agreement, document, or entity;

(d) Be annually renewable, without amendment, for successive one-year periods from the stated expiration or any future expiration date until such time as notice is given in accordance with this section;

(e) Provide for no less than sixty (60) calendar days notice to the Agency as beneficiary of any election not to renew the letter of credit; and

(f) Be payable by sight draft or upon presentation at an office of the bank by an authorized representative of the beneficiary accompanied by a signed statement certifying that "The attached order from the Commissioner of the Oregon Real Estate Agency represents that the escrow agent is in violation of ORS 696.505-696.590."

(3) The Commissioner may require that a Letter of Credit include additional terms and conditions.

Stat. Auth.: ORS 183.335 & 696.385  
 Stats. Implemented: ORS 696.527  
 Hist.: REA 2-2004(Temp), f. & cert. ef. 1-15-04 thru 6-25-04; REA 4-2004, f. 4-28-04 cert. ef. 5-3-04; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

## Accounting Rules

**863-050-0050****Accounting Controls; Record Inspection**

(1) An escrow agent must establish and maintain the escrow business records described in this rule as required records.

(a) Individual ledgers must be established to record the accounting for each escrow.

(A) The ledgers must be identified by the escrow number and the names of the principals.

(B) Entries must record each receipt and disbursement of escrow funds and must be posted in date order on, or as of, the date they occur.

(C) Entries must show the amount of the entry, the date of the entry, the receipt number, and the check number or wire identification number and must identify from or to whom funds were received or disbursed.

(D) Each ledger must show and record a running balance of funds held in the individual escrow, on a daily basis, as entries occur.

(E) If an escrow agent uses more than one escrow trust bank account, each ledger must identify the account in which its escrow funds are deposited.

(b) A journal or register must be established for each escrow trust bank account and must record all receipts and disbursements of escrow funds.

(A) Entries must be posted in date order and record a running book balance for total escrow liability of the agent in each escrow trust account, on a daily basis.

(B) If entries are posted in batch totals, backup documentation adequate to identify the individual items in the batch and verify the total must be maintained.

(2) An escrow agent must reconcile each escrow trust account within 30 days of the bank statement date pursuant to the requirements contained in this section.

(a) The reconciliation must have three components, which must be contained in a single reconciliation document:

(A) The bank statement balance, adjusted for outstanding checks and other reconciling bank items;

(B) The balance of the receipts and disbursements journal or check book register as of the bank statement closing date; and

(C) The sum of all the balances of the individual escrow ledgers as of the bank statement closing date.

(b) The balances of each component of the reconciliation must be equal to and reconciled with each other. If any adjustment is needed, the adjustment must be clearly identified and explained on the reconciliation document;

(c) The escrow agent or an authorized officer in direct control of the agent's escrow operations must date and sign the reconciliation document upon completion, attesting to the accuracy and completeness of the reconciliation;

(d) Outstanding checks must be listed by check number, issue date, payee, and amount; and

(e) The escrow agent must preserve and file in logical sequence the reconciliation document, bank statement, and all supporting documentation including, but not limited to, copies of the receipts and disbursements journal or check book register and a listing of each individual escrow ledger with a balance as of the bank statement closing date.

(3) An escrow agent must take corrective action to resolve all adjustments in a reconciliation before the next reconciliation or document the good faith efforts the escrow agent has taken to resolve the adjustment.

(4) In addition to the maintenance and production requirements contained in ORS 696.534, an escrow agent must comply with the following requirements:

(a) An escrow agent using the computer services of another firm must file a continuing authorization with the Commissioner and the other firm authorizing the Commissioner to examine or audit the escrow agent's records maintained at the other firm's place of business.

(b) If an escrow agent uses a computerized system for producing and maintaining the records and accounts required in the escrow

agent's licensed activity, the computerized system must have the following capabilities:

(A) Be capable of printing out any document used in the required accounting and record keeping process that would otherwise be generated or maintained by hand, such as receipt and check registers, receipt, and disbursement journals;

(B) Be capable of backing up its stored data. At least once each month, the escrow agent must back up any data that is stored in the computerized system that was not printed out and preserved under subsection (a) of this section within the last month. The back up data must be made available to the Commissioner or to the Commissioner's authorized representatives upon demand;

(C) The reconciliations and all required supporting data must be capable of being printed out at the time of reconciliation and preserved as required records of the licensed escrow activity.

Stat. Auth.: ORS 181, 183, 293 & 696

Stats. Implemented: ORS 696.535(2), 696.541(2) & 696.578

Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 2-1981, f. 10-30-81, ef. 11-1-81; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 3-1989, f. 12-13-89, cert. ef. 2-1-90; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

**863-050-0052****Disbursal of Disputed Real Estate Broker Compensation**

If there is a dispute among or between real estate brokers who are sole practitioners or principal real estate brokers regarding who is entitled to the moneys or other property agreed to as compensation in a written compensation agreement, and the escrow agent is holding such moneys or other property pursuant to ORS 696.582(1)(a), the escrow agent must hold the moneys or other property until the escrow agent receives a written agreement between the brokers or a final order from a court directing the escrow agent to disburse the moneys or other property.

Stat. Auth.: ORS 696.385, ORS 696.541

Stats. Implemented: ORS 696.582

Hist.: REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

**863-050-0055****Accounting Practices**

(1) An escrow agent may not draw, execute, or date a check on an individual escrow account ledger or escrow trust account before the account has sufficient monies to pay the check. An escrow agent may not withdraw or transfer money from any individual escrow account or escrow trust unless such account has sufficient monies for such payment or transfer.

(2) An escrow agent may not withdraw escrow fees from a closing escrow account until:

(a) The escrow is cancelled; or

(b) The escrow is closed with the exception of customary post-closing procedures as contained in the escrow instructions of the principals to the escrow transaction.

(3) An escrow agent may deposit only the funds received as part of an escrow transaction or as trustee of a trust deed under ORS 86.705 to 86.795 in an account established under 696.578.

(4) All funds deposited in an escrow trust account established under ORS 696.578 may be withdrawn, paid out, or transferred to other accounts as specified in the written escrow instructions of the principals to the escrow transaction directed to the escrow agent or pursuant to order of a court of competent jurisdiction.

(5) An escrow agent must provide the Commissioner upon the Commissioner's request with a continuing authorization to certify the actual balance in any escrow trust account the escrow agent has established under ORS 696.578. The escrow agent must file the authorization in the depository in which the escrow trust account is maintained and file a copy of the authorization with the Commissioner.

(6) Upon request by the Commissioner or an authorized representative, an escrow agent must demonstrate that an individual escrow account contained sufficient funds before any disbursement by producing documentation and financial records showing that:

(a) The trust funds deposited into an escrow trust account on behalf of a principal and credited to the individual account were collected and available for disbursement; and

(b) The disbursement of these funds did not involve the use of any other principal's trust funds.

Stat. Auth.: ORS 696.385 & 696.541  
 Stats. Implemented: ORS 696.535(2) & 696.578  
 Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 1-1988, f. 5-31-88, cert. ef. 7-1-88; REA 2-1990, f. 4-18-90, cert. ef. 7-1-90; REA 2-1997, f. 6-18-97, cert. ef. 7-1-97; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

**863-050-0060**

**Interest-Bearing Accounts**

(1) If an escrow agent deposits and maintains the trust funds in an interest-bearing escrow trust account pursuant to ORS 696.578(2) and (3), the written escrow instructions from all principals having an interest in the funds must include:

- (a) The names of all principals;
- (b) Written approval of all principals to the escrow transaction;
- (c) The escrow number;
- (d) To whose account the interest earnings will accrue;
- (e) How and when the interest will be disbursed; and
- (f) Any limitations that may be imposed on withdrawing trust funds deposited in the interest-bearing escrow trust account.

(2) The escrow agent may deposit funds to the interest-bearing escrow trust account before receiving the written instructions required by this rule, but the escrow agent may not disburse any funds from the escrow account until the escrow agent has received the written instructions.

(3) An escrow agent must account separately for the funds deposited and the disposition of interest earned, if any, in each escrow transaction and treat disposition of interest earned as a disbursement in the closing of the escrow transaction.

(4) An escrow agent may maintain one or more separate federally insured interest-bearing accounts for each escrow transaction subject to this rule.

Stat. Auth.: ORS 183.335, 696.385, 696.541(1), 696.578(3) & (4) & 696.581(6)  
 Stats. Implemented: ORS 696.578  
 Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 2-1981, f. 10-30-81, ef. 11-1-81; REC 7-1984, f. 9-4-84, ef. 10-1-84; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

**863-050-0065**

**Disclosure of Bank Services and Refunds**

(1) An escrow agent may retain bank services, but only with approval in the written closing instructions of the principals. If an escrow agent retains bank services, the agent must disclose to the principals in a transaction the nature of the benefit the agent receives and retains. The disclosure must contain a good faith estimate of the amount of the benefit received as it applies to the individual escrow.

(2) If an escrow agent disburses funds and those funds are returned or refunded to escrow, the escrow agent must:

- (a) Account for and handle such moneys as any other funds deposited in escrow;
- (b) Adjust the ledger for the escrow transaction to reflect the refund or return;
- (c) Disburse the refunded or returned funds in accordance with the appropriate principals' dated written escrow instructions, and
- (d) Provide an explanation of the refund or return to the appropriate principals.

(3) The requirements contained in section (2) of this rule do not apply to de minimus amounts of fund if those amounts and the disposition of such funds are defined in the escrow instructions.

Stat. Auth.: ORS 183.335, 696.385, 696.541(1), 696.578(3) & (4) & 696.581(6)  
 Stats. Implemented: ORS 696.578(3)  
 Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 2-1990, f. 4-18-90, cert. ef. 7-1-90; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

**863-050-0066**

**Deposits**

An escrow agent must deposit all checks or cash received in escrow into the agent's escrow trust account established under ORS 696.578 no later than the close of business of the banking day the day after the agent receives the checks or cash. This requirement does not

apply to checks received from a lender who requires that the checks not be deposited until an escrow is ready to close.

Stat. Auth.: ORS 696  
 Stats. Implemented: ORS 696.505 & 696.578  
 Hist.: REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

**Records Rules**

**863-050-0100**

**Records**

(1) An escrow agent must keep at least the following records:

- (a) Copies of all receipt records, including voided receipts;
- (b) All cancelled checks or bank-supplied images provided pursuant to ORS 696.243, which must be filed with all numbered check forms accounted for, including voided checks;
- (c) All vouchers and check stubs, including voided vouchers and check stubs;
- (d) Copies of all transfer forms used in making transfers of funds between escrow accounts;
- (e) An escrow log, with entries entered in logical sequence based on the escrow number assigned, containing an entry for each escrow that includes the escrow number, the date of opening, and the names of the principals;
- (f) Copies of the escrow closing statements required by OAR 863-050-0025;
- (g) The books and other records required by OAR 863-050-0050; and
- (h) Any other required records, as that term is defined in OAR 863-050-0000.

(2) An escrow agent may use electronic image storage media to retain and store copies of deposit receipts, canceled checks, and other documents executed or obtained by the agent in connection with any escrow activity and transaction, provided the agent satisfies the following requirements:

- (a) The electronic image storage must be non-erasable "write once, read many" ("WORM") that does not allow changes to the stored document or record;
- (b) The stored document or record was made or preserved as part of and in the regular course of business;
- (c) The original record from which the stored document or record was copied was made or prepared by the escrow agent or escrow agent employees at or near the time of the act, condition, or event reflected in the record;
- (d) The custodian of the record is able to identify the stored document or record, the mode of its preparation, and the mode of storing it on the electronic image storage; and
- (e) The electronic image storage media contains a reliable indexing system that provides ready access to a desired document or record, appropriate quality control of the storage process to ensure the quality of imaged documents or records, and date-ordered arrangement of stored documents or records to assure a consistent and logical flow of paperwork to preclude unnecessary search time.

(3) For any lost or missing checks, an escrow agent must maintain a signed, dated statement explaining why the check is missing.

(4) Except as provided in this rule, an escrow agent may not receive trust funds without issuing a receipt and my not disburse trust funds without issuing a check. An escrow agent must issue an appropriate receipt as soon as practicable after receiving cash in a collection escrow or receiving cash or checks in a closing escrow.

(5) An escrow agent must send an annual written statement to a principal in a collection escrow to show all receipts and disbursements in the collection escrow during the year covered in the report.

(6) For wire and electronic transfers, the following requirements apply:

- (a) An escrow agent may not disburse funds from an individual escrow account based upon a wire or electronic transfer deposited into the escrow trust account until the escrow agent has verified the deposit;
- (b) An escrow agent must arrange with the escrow depository and other entities for an immediate follow-up hard copy credit memo

or a hard copy debit memo when funds are received or disbursed by wire or electronic transfer;

(c) An escrow agent must post the receipt of funds by wire or electronic in the same manner as other receipts and include a traceable identifying name or number supplied by the escrow depository receiving the funds or by the transferring entity; and

(d) The escrow agent disbursing funds by wire or electronic transfer must retain in the individual escrow transaction file a copy of the written authorization from the principals to use wire or electronic transfer for disbursement of funds.

(7) Check forms used by an escrow agent must be pre-numbered with consecutive numbers. If a computer fills in or generates checks and any check copies, all check stock and check copies must be consecutively pre-numbered. If a computer generates checks using unnumbered check stock, the computer must continually and consecutively number the checks as generated. The account number must appear in the magnetic coding on the bank check face to identify the account number for reading by the bank's computerized accounting system.

(8) An escrow agent must produce the records required under this rule for inspection by the Agency as follows:

(a) When the Agency makes a request for production of escrow records, the escrow agent must provide such records within no less than five banking days; and

(b) If the Agency informs an escrow agent that the Agency has reasonable grounds to believe that escrow funds may be missing or misappropriated or that the escrow agent has engaged in fraudulent activity, the escrow agent must produce any records demanded or requested by the Agency immediately.

Stat. Auth.: ORS 183.335, 696.385 & 696.541

Stats. Implemented: ORS 696.534, 696.578 & 696.581

Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 2-1990, f. 4-18-90, cert. ef. 7-1-90; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92; REA 2-1997, f. 6-18-97, cert. ef. 7-1-97; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

**863-050-0105**

**Record Location**

An escrow agent must notify the Commissioner of any relocation of the records at least 15 days before the relocation. The notice must include the street address of the new location of the agent's required records. If the new location is not the licensed main office or a licensed branch office of the escrow agent, the escrow agent must provide the Commissioner, in writing, with the information and contact persons necessary to have access to the records during regular business hours.

Stat. Auth.: ORS 183.335, 696.385 & 696.541

Stats. Implemented: ORS 696.534

Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 3-1989, f. 12-13-89, cert. ef. 2-1-90; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

**863-050-0115**

**Records Retention**

(1) In addition to and not in lieu of the requirements of ORS 192.825 to 192.855 (The Electronic Signature Act), the requirements of OAR 863-050-0005 through 863-050-0150 and the Oregon Escrow Law apply to all records, including any electronically generated items.

(2) An escrow agent must maintain at the escrow agent's office a means of viewing copies of documents or records stored pursuant to this section. An escrow agent must provide, at the escrow agent's expense, a paper copy of any document or record requested by the Agency.

Stat. Auth.: ORS 696.541

Stats. Implemented: 2003 OL Ch. 427, Sec. 3

Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04; REA 4-2004, f. 4-28-04 cert. ef. 5-3-04; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

**Audit Rules**

**863-050-0150**

**Annual Report; Financial Statements; Audit or Examination Expenses**

(1) The escrow agent must pay to the Agency the reasonable expenses of an audit or examination as authorized by ORS 696.541.

(2) An escrow agent must submit to the Commissioner by March 31 of each year an Annual Report for the previous calendar year consisting of the following:

(a) A schedule of the amount of trust funds received and disbursed each month on collection escrows and the amount of trust funds received and disbursed each month on closing escrows. The schedule must include the beginning balance and the ending balance of each such account and be prepared based upon the individual escrow ledgers for such accounts;

(b) A list of closing escrows that have been open for more than twelve months as of December 31 of the previous year, showing the escrow number, date opened, names of principals, the escrow ledger balance, and a statement of the reason the escrow has remained open for more than one year;

(c) The amount of clients' trust funds received and disbursed each month by the escrow agent while acting as a trustee under a trust deed pursuant to ORS 86.705 to 86.795. The schedule must include the beginning balance and the ending balance for each account. The schedule must be prepared from the outstanding individual escrow ledgers for such accounts;

(d) An executed general authorization to inspect all clients' trust accounts set up as required by ORS 696.578(1) on a form approved by the Commissioner;

(e) A list of outstanding checks as of December 31 of the previous year, listed by check number, issue date, payee, and amount, for all escrow trust accounts; and

(f) Any other information the Commissioner may request from the escrow agent as necessary in administering the provisions of ORS 696.505 and 696.585.

(3) An escrow agent must submit to the Commissioner, not later than 150 days after the end of the agent's tax or accounting year, a set of the agent's financial statements as follows:

(a) The financial statements must be prepared in accordance with generally accepted accounting principals by a certified public accountant or other qualified person approved by the Commissioner.

(b) The person preparing the financial statements must provide a statement of the type of the presentation made and include all appropriate notes to the financial statement.

(c) The financial statements must include the following:

(A) A balance sheet as of the agent's year end,

(B) Statement of profit and loss,

(C) Statement of cash flows,

(D) Statement of retained earnings, and

(E) Any other changes in capital accounts for the year then ended.

(d) As part of the report submitted under this rule, the escrow agent must authorize the Commissioner or the Commissioner's authorized representative to examine and verify any asset or liability shown on the balance sheet. The authorization must be in writing and submitted to the Commissioner with the report.

(4) The Commissioner may require an escrow agent to submit to the Commissioner an independent audit by a certified public accountant or a public accountant, conducted at the escrow agent's expense. The Commissioner may specify the nature and scope of the independent audit. If an escrow agent submits a required independent audit to the Commissioner or the Commissioner's authorized representative, this does not preclude any subsequent audit within the same year.

(5) The Commissioner may grant an extension of time, to be determined by the Commissioner, for filing reports submitted under sections (2) or (3) of this rule if the agent so requests in writing and provides sufficient reason why the agent cannot file the reports by the specified date.

(6) The reports required by this rule must be signed by the owner or appropriate corporate officer of the escrow agent attesting to the accuracy of the information contained in the report.

Stat. Auth.: ORS 183.335, 696.385, 696.541(1), 696.578(3)&(4) & 696.581(6)

Stats. Implemented: ORS 696.534

Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 34, f. 2-8-73, ef. 3-1-73; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 2-1981, f. 10-30-81, ef. 11-1-81; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 2-1990, f. 4-18-90, cert. ef. 7-1-90; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92; REA 2-1997, f. 6-18-97, cert. ef. 7-1-97; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

**863-050-0240**

**Fingerprint Requirements for Escrow Licensing**

As part of any application submitted under ORS 696.511, the applicant must submit two completed fingerprint cards on a form prescribed by the Commissioner and an additional fee sufficient to recover the costs of processing the applicant's fingerprint information and securing any criminal offender information pertaining to the applicant.

Stat. Auth.: ORS 183.335, 696.385 & 696.541

Stats. Implemented: ORS 696.511

Hist.: REA 2-1997, f. 6-18-97, cert. ef. 7-1-97; REA 4-1997, f. 11-24-97, cert. ef. 12-1-97; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

**DIVISION 60**

**CONDOMINIUM SALES**

**863-060-0015**

**Condominium Onsite Inspection Expenses**

Within a reasonable time after completion of the examination of a condominium under ORS 100.710 for which a developer has advanced a deposit, the commissioner shall account to the developer for the commissioner's onsite inspection expenses. If the expenses incurred by the commissioner exceed the funds deposited by the developer, the commissioner shall bill the developer for the balance.

Stat. Auth.: ORS 91, 94, 100 & 696

Stats. Implemented: ORS 100.700

Hist.: REC 50(Temp), f. & ef. 11-3-77; REC 51, f. & ef. 12-20-77; REC 3-1984, f. 6-18-84, ef. 7-1-84; REA 7-1987, f. 12-3-87, ef. 1-1-88; REA 1-1990, f. & cert. ef. 4-18-90