

House Bill 2971

Sponsored by Representatives ZIKA, MEEK (at the request of Oregon Association of Realtors)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Directs Real Estate Board to adopt rules for administering laws that Real Estate Agency is charged with enforcing and administering.

A BILL FOR AN ACT

1
2 Relating to real estate; amending ORS 94.915, 100.260, 100.290, 696.020, 696.022, 696.026, 696.030,
3 696.174, 696.182, 696.184, 696.186, 696.205, 696.241, 696.245, 696.280, 696.301, 696.385, 696.425 and
4 696.845.

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

6 **SECTION 1.** ORS 696.385 is amended to read:

7 696.385. The Real Estate Agency shall have the power to[:]

8 *[(1) Adopt a seal by which it shall authenticate its proceedings.]*

9 *[(2) From time to time, circulate among the real estate licensees of Oregon any material that the*
10 *agency may deem helpful or educational or proper for the guidance and welfare of the real estate*
11 *licensees.]*

12 *[(3) Make and] enforce rules **of the Real Estate Board** as necessary to administer and enforce*
13 *the provisions of, and enforce and discharge the duties defined in, any law with the administration*
14 *or enforcement of which the agency is charged.*

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

17 *[(a) Submit a copy of the proposed rule to the Real Estate Board at least 10 days prior to publi-*
18 *cation of the notice of intended action required under ORS 183.335 for the rule.]*

19 *[(b) Consider any recommendations that the board, by majority vote, makes concerning the proposed*
20 *rule.]*

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

23 *[(5) Subsection (4) of this section does not apply to a temporary rule that is adopted, amended or*
24 *suspended pursuant to ORS 183.335 (5). However, the agency shall submit to the board a copy of any*
25 *proposed temporary rule as soon as practicable and, to the extent possible under the circumstances,*
26 *consider any recommendations that the board may make by majority vote regarding the temporary*
27 *rule.]*

28 **SECTION 2.** ORS 696.425 is amended to read:

29 696.425. (1) The Real Estate Board is authorized to inquire into the needs of the real estate
30 licensees of Oregon, the functions of the Real Estate Agency and the matter of the business policy
31 thereof, to confer with and advise the Governor as to how the agency may best serve the state and

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 the licensees, and to make recommendations and suggestions of policy to the agency as the board
2 may deem beneficial and proper for the welfare and progress of the licensees and of the public and
3 of the real estate business in Oregon.

4 (2) The board shall make recommendations to the agency about the manner and methods for
5 conducting examinations.

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

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

10 (5) **In accordance with applicable provisions of ORS chapter 183, the board shall adopt**
11 **rules that are necessary for the administration of laws that the agency is charged with en-**
12 **forcing and administering.**

13 (6) **The board may:**

14 (a) **Adopt a seal for the agency by which the agency shall authenticate its proceedings;**
15 **and**

16 (b) **From time to time, direct the agency to circulate among the real estate licensees of**
17 **Oregon any material that the board deems helpful, educational or proper for the guidance**
18 **and welfare of the licensees.**

19 **SECTION 3.** ORS 94.915 is amended to read:

20 94.915. (1) Records of the sale of timeshares in a timeshare plan shall be subject to inspection
21 by the Real Estate Commissioner.

22 (2) The Real Estate [*Agency*] **Board** shall adopt rules necessary to carry out ORS 94.803 and
23 94.807 to 94.945.

24 (3) The [*agency*] **board** may cooperate with agencies performing similar functions in other ju-
25 risdictions to develop uniform filing procedures, forms, disclosure standards and administrative
26 practices.

27 **SECTION 4.** ORS 100.260 is amended to read:

28 100.260. (1) The Condominium Information Report required under ORS 100.250 (1)(a) shall set
29 forth:

- 30 (a) The name of the association;
- 31 (b) The name of the condominium and the county in which the condominium is located;
- 32 (c) The mailing address, including the street and number, if any, and county of the association;
- 33 (d) The date the condominium declaration was recorded and the recording index numbers;
- 34 (e) The name and residence or business address, including the street and number, of the person
35 designated as agent to receive service of process in cases provided in ORS 100.550 (1) and any other
36 legal proceeding relating to the condominium or association; and
- 37 (f) The number and type of units as follows:
 - 38 No. _____ Living Units
 - 39 No. _____ Commercial/Office Units
 - 40 No. _____ Other (describe) _____
 - 41 _____

42 (2) The Annual Report required under ORS 100.250 (1)(b) shall set forth:

- 43 (a) The information required under subsection (1)(a), (b), (c) and (e) of this section;
- 44 (b) The names and addresses of the chairperson and secretary of the association; and
- 45 (c) If the designated agent is changed, a statement that the new agent has consented to the

1 appointment.

2 (3) The amendment required under ORS 100.250 (1)(c) shall set forth:

3 (a) The name of the association as shown on the current records of the Real Estate Agency;

4 (b) The name of the condominium and county in which the condominium is located;

5 (c) A statement of the information as changed; and

6 (d) If the current designated agent is to be changed, the name of the new designated agent and
7 residence or business address, including the street and number, and a statement that the new agent
8 has consented to the appointment.

9 (4) The filing by the Real Estate Agency of an amendment which changes the designated agent
10 shall terminate the existing designated agent on the effective date of the filing and establish the
11 newly appointed designated agent as that of the association.

12 (5) The reports and amendment described in this section and an application for termination de-
13 scribed in ORS 100.280 shall be made on forms prescribed and furnished by the Real Estate Agency
14 and must be accompanied by the correct filing fee and shall:

15 (a) Contain information current as of 30 days before delivery for filing;

16 (b) Be executed by the designated agent and until the turnover meeting by the declarant and
17 thereafter by the chairperson or secretary of the association;

18 (c) State beneath or opposite the signature the name of the person and the capacity in which
19 the person signs; and

20 (d) Contain any additional identifying information that the Real Estate [Agency] **Board** may re-
21 quire by rule.

22 **SECTION 5.** ORS 100.290 is amended to read:

23 100.290. The Real Estate [Agency] **Board** may adopt rules as are necessary or proper for the
24 administration of ORS 100.250 to 100.280.

25 **SECTION 6.** ORS 696.020 is amended to read:

26 696.020. (1) The Real Estate Agency may issue a real estate license only to an individual.

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

30 (3) Real estate brokers and principal real estate brokers are bound by and subject to the re-
31 quirements of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and 696.995
32 while:

33 (a) Engaging in professional real estate activity; or

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

36 (4) A real estate licensee is bound by and subject to the requirements of ORS 696.010 to 696.495,
37 696.600 to 696.785, 696.890, 696.990 and 696.995 while engaging in the management of rental real
38 estate.

39 (5) The [agency] **Real Estate Board** by rule may establish provisions for a nonlicensed individ-
40 ual whose license is inactive or suspended and who acts on the licensee's own behalf in the sale,
41 exchange, lease option or purchase of real estate or in the offer or negotiations for the sale, ex-
42 change, lease option or purchase of real estate.

43 **SECTION 7.** ORS 696.022 is amended to read:

44 696.022. (1) The Real Estate [Agency] **Board** shall establish by rule a system for licensing real
45 estate brokers, principal real estate brokers and licensed real estate property managers. The system

1 shall establish, at a minimum:

2 (a) The form and content of applications for licensing under each category of real estate pro-
3 fessional licensed by the **Real Estate** Agency;

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

5 (c) Schedules and procedures for issuing and renewing licenses, including limited licenses under
6 ORS 696.125; and

7 (d) The term of a license in each category.

8 (2)(a) A real estate broker may engage in professional real estate activity only if the broker is
9 associated with and supervised by a principal real estate broker. Except as provided in paragraph
10 (c) of this subsection, a real estate broker may not employ, engage or supervise the professional real
11 estate activity of another real estate licensee.

12 (b) For an applicant to qualify for a real estate broker's license, the Real Estate Commissioner
13 must receive:

14 (A) Certification by the applicant that the applicant has a high school diploma or a certificate
15 for passing an approved high school equivalency test such as the General Educational Development
16 (GED) test or the international equivalent, or other equivalent education acceptable to the com-
17 missioner;

18 (B) Proof that the applicant:

19 (i) Has successfully completed the basic real estate broker's educational courses required by the
20 [agency] **board** by rule; and

21 (ii) Has passed the real estate broker's examination required by the [agency] **board** by rule; and

22 (C) Certification that the applicant is at least 18 years of age.

23 (c) A real estate broker who has acquired three years of active experience as a real estate
24 broker may supervise for up to 90 days the professional real estate activity of another real estate
25 licensee due to unforeseen circumstances or the temporary absence of a sole principal real estate
26 broker, as provided by the [agency] **board** by rule.

27 (3)(a) A principal real estate broker may engage in professional real estate activity.

28 (b) A principal real estate broker may conduct professional real estate activity in conjunction
29 with other real estate brokers, principal real estate brokers or licensed real estate property man-
30 agers. A principal real estate broker may employ, engage or supervise the professional real estate
31 activity of another real estate licensee.

32 (c) For an applicant to qualify for a principal real estate broker's license, the commissioner must
33 receive:

34 (A) Certification by the applicant that the applicant has a high school diploma or a certificate
35 for passing an approved high school equivalency test such as the General Educational Development
36 (GED) test or the international equivalent, or other equivalent education acceptable to the com-
37 missioner;

38 (B) Proof that the applicant:

39 (i) Has three years of active licensed experience as a licensed real estate broker or a licensed
40 real estate salesperson in this state or another state;

41 (ii) Has passed the principal real estate broker's examination required by the [agency] **board** by
42 rule; and

43 (iii) Has successfully completed the brokerage administration and sales supervision course re-
44 quired by the [agency] **board** by rule; and

45 (C) Certification that the applicant is at least 18 years of age.

1 (4)(a) An individual who holds a real estate property manager license may engage only in the
 2 management of rental real estate under a property management agreement with the owner of the
 3 rental real estate.

4 (b) A licensed real estate property manager may employ, engage or supervise the professional
 5 real estate activity of another licensed real estate property manager.

6 (c) For an applicant to qualify for a real estate property manager's license, the commissioner
 7 must receive:

8 (A) Certification by the applicant that the applicant has a high school diploma or a certificate
 9 for passing an approved high school equivalency test such as the General Educational Development
 10 (GED) test or the international equivalent, or other equivalent education acceptable to the com-
 11 missioner;

12 (B) Proof that the applicant:

13 (i) Has successfully completed the basic real estate property manager's educational courses re-
 14 quired by the [agency] **board** by rule; and

15 (ii) Has passed the real estate property manager's license examination required by the [agency]
 16 **board** by rule; and

17 (C) Certification that the applicant is at least 18 years of age.

18 (5)(a) A license for a real estate broker, principal real estate broker or licensed real estate
 19 property manager may be granted only to an individual who is trustworthy and competent to con-
 20 duct professional real estate activity in a manner that protects the public interest. As a condition
 21 of licensing, the commissioner may require proof of competence and trustworthiness that the com-
 22 missioner deems necessary to protect the public interest.

23 (b) In implementing this subsection, the commissioner shall require fingerprints and criminal
 24 offender information of an applicant for initial licensing and may require fingerprints and criminal
 25 offender information of an applicant for license renewal. Fingerprints acquired under this sub-
 26 section may be used for the purpose of requesting a state or nationwide criminal records check
 27 under ORS 181A.195.

28 (6) An individual licensed to engage in professional real estate activity in another state or
 29 country may qualify for a principal real estate broker license, real estate broker license or real es-
 30 tate property manager license if the individual successfully completes the course of study for and
 31 passes the license examination corresponding to the license for which the individual applies, both
 32 as prescribed by [agency] **board** rule, and if the individual meets the other requirements for
 33 licensure in this chapter.

34 (7) In order to satisfy the educational requirements under subsections (2) to (4) and (6) of this
 35 section, a course must be approved by the commissioner. The commissioner shall determine the final
 36 examination score acceptable as evidence of successful completion for each required course.

37 (8) The [Real Estate] board may determine that an applicant for a principal real estate broker's
 38 license has experience related to professional real estate activity that is equivalent to the experi-
 39 ence required under subsection (3) of this section.

40 **SECTION 8.** ORS 696.026 is amended to read:

41 696.026. (1) The Real Estate [Agency] **Board** shall establish by rule systems for the registration
 42 and renewal of business names.

43 (2) The registration system must:

44 (a) Require the physical address associated with a registered business name to be the main office
 45 of a principal real estate broker or licensed real estate property manager;

- 1 (b) Require the registered business name to be:
- 2 (A) The corporate name, professional corporate name, business corporate name, cooperative
3 name, limited partnership name, business trust name, reserved name, registered corporate name or
4 assumed business name of active record with the Office of the Secretary of State; or
- 5 (B) The name under which the principal real estate broker or licensed real estate property
6 manager license was issued;
- 7 (c) Allow a principal real estate broker or licensed real estate property manager to register one
8 or more branch offices under the registered business name of the main office; and
- 9 (d) Require the name of the principal real estate broker or licensed real estate property manager
10 who is responsible for:
- 11 (A) Maintaining the registration of the business name;
- 12 (B) Registering any branch offices of the registered business name;
- 13 (C) Registering any additional business names, as described in subsection (14) of this section;
- 14 (D) Maintaining the information described in ORS 696.245 for each clients' trust account opened,
15 closed or transferred by a principal real estate broker or licensed real estate property manager who
16 conducts professional real estate activity under the registered business name;
- 17 (E) Renewing the registration of the business name;
- 18 (F) Changing the registered business name, including the associated branch offices;
- 19 (G) Maintaining the business address of the main office and any associated branch offices of the
20 registered business name as required by ORS 696.200; and
- 21 (H) Inactivating or reactivating the registration of the business name and associated branch
22 offices.
- 23 (3) The renewal system must establish:
- 24 (a) The form and content of the renewal application;
- 25 (b) The schedule for annual renewals of registered business names, including the date of the
26 registered business name expiration; and
- 27 (c) The procedures for renewing a registered business name.
- 28 (4) Failure to renew a registered business name and pay any required fees by the expiration date
29 of the registration will result in:
- 30 (a) The expiration of the registered business name;
- 31 (b) The inactivation of all associated licensees; and
- 32 (c) The inactivation of all associated branch offices.
- 33 (5) The Real Estate Commissioner may by rule provide an opportunity for the late renewal of
34 an expired registered business name.
- 35 (6) Only a principal real estate broker or licensed real estate property manager may register a
36 business name or register a branch office under the registered business name of the main office.
- 37 (7) Only a principal real estate broker or licensed real estate property manager may control and
38 supervise the professional real estate activity conducted under the registered business name.
- 39 (8) A business name registered under this section has no license standing.
- 40 (9) All professional real estate activity conducted by the principal real estate broker, licensed
41 real estate property manager or real estate licensees associated with a principal real estate broker
42 or licensed real estate property manager must be conducted under an active registered business
43 name.
- 44 (10) A principal real estate broker or licensed real estate property manager who registers a
45 business name need not be an owner or officer of any entity lawfully entitled to use or have an

1 ownership interest in the registered business name. However, only a principal real estate broker or
 2 licensed real estate property manager may control and supervise the professional real estate activity
 3 conducted under the registered business name.

4 (11) A real estate broker associated with a principal real estate broker may have an ownership
 5 interest in any business through which the principal real estate broker conducts professional real
 6 estate activity, but may not control or supervise the professional real estate activity of any other
 7 real estate licensee.

8 (12) A licensed real estate property manager associated with a principal real estate broker may
 9 have an ownership interest in any business through which the principal real estate broker conducts
 10 professional real estate activity, but may not control or supervise the professional real estate ac-
 11 tivity of a real estate broker or principal real estate broker.

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

16 (14)(a) A principal real estate broker or licensed real estate property manager who registers a
 17 business name may register additional business names for business organizations that are affiliated
 18 with the registered business name, or business organizations that are subsidiaries of the business
 19 with the registered name.

20 (b) A principal real estate broker or licensed real estate property manager may conduct pro-
 21 fessional real estate activity under two or more registered business names only if the business or-
 22 ganizations are affiliated with, or subsidiaries of, the business with the registered name.

23 (15) The [agency] **board** shall establish by rule procedures to allow a real estate broker or
 24 principal real estate broker who becomes associated with a different registered business name to
 25 continue to engage in professional real estate activity on transactions that began while the real
 26 estate broker or principal real estate broker was associated with the original registered business
 27 name.

28 **SECTION 9.** ORS 696.030 is amended to read:

29 696.030. ORS 696.010 to 696.375, 696.392, 696.395 to 696.430, 696.490, 696.600 to 696.785, 696.990
 30 and 696.995 do not apply to:

31 (1)(a) A nonlicensed individual who is a full-time employee of an owner of real estate and whose
 32 real estate activity:

33 (A) Involves only the real estate of the employer; and

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

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

37 (b) For the purpose of this subsection, "owner of real estate" means:

38 (A) A person who has a sole ownership interest in the real estate; or

39 (B) More than one person, each of whom has an ownership interest in the real estate, if the
 40 ownership interest is by survivorship, tenancy in common or tenancy by the entirety.

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

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

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

4 (c) The nonlicensed individual does not use the power of attorney as a device to engage in
5 professional real estate activity without obtaining the necessary real estate license.

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

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

13 (5) A nonlicensed individual who acts in the nonlicensed individual's official capacity as a re-
14 ceiver, a conservator, a trustee in bankruptcy, a personal representative or a trustee, or a regular
15 salaried employee of the trustee, acting under a trust agreement, deed of trust or will.

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

18 (7) A nonlicensed individual who is a regular full-time employee of a single corporation, part-
19 nership, association, limited liability company or nonlicensed individual owner of real property act-
20 ing for the corporation, partnership, association, limited liability company or nonlicensed individual
21 owner in the rental or management of the real property, but not in the sale, exchange, lease option
22 or purchase of the real property.

23 (8) A nonlicensed individual who is a registered professional engineer or architect rendering
24 services in performance of duties as a professional engineer or architect.

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

31 (a) Negotiating rental or lease agreements;

32 (b) Checking tenant and credit references;

33 (c) Physically maintaining the real estate;

34 (d) Conducting tenant relations;

35 (e) Collecting the rent;

36 (f) Supervising the premises' managers;

37 (g) Discussing financial matters relating to the management of the real estate with the owner;
38 and

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

40 (10) A nonlicensed individual who sells or leases cemetery lots, parcels or units while engaged
41 in the disposition of human bodies under ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730,
42 97.810 to 97.920 and 97.990 or an employee of the nonlicensed individual performing similar activ-
43 ities.

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

1 (12) A nonlicensed individual who analyzes or provides advice regarding permissible land use
2 alternatives, environmental impact, building and use permit procedures, development alternatives
3 or demographic market studies or who performs development management, or a regular full-time
4 employee of the nonlicensed individual performing similar activities. This exclusion does not apply
5 to marketing, procuring prospects, leasing or the handling of transactional negotiations for transfer
6 of an interest in real estate.

7 (13) A nonlicensed individual who is a hotelkeeper or innkeeper as defined by ORS 699.005 ar-
8 ranging the rental of transient lodging at a hotel or inn in the course of business as a hotelkeeper
9 or innkeeper.

10 (14) A nonlicensed individual who is a travel agent arranging the rental of transient lodging at
11 a hotel or inn as defined in ORS 699.005 in the course of business as a travel agent for compen-
12 sation. For the purpose of this subsection, "travel agent" means a person, and employees of the
13 person, regularly representing and selling travel services to the public directly or through other
14 travel agents.

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

20 (16) A nonlicensed individual who is a hotel representative arranging the rental of transient
21 lodging at a hotel or inn as defined in ORS 699.005 in the course of business as a hotel represen-
22 tative. For the purpose of this subsection, "hotel representative" means a person that provides res-
23 ervations or sale services to independent hotels, airlines, steamship companies and government
24 tourist agencies.

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

27 (18) A nonlicensed individual who is a general partner for a domestic or foreign limited part-
28 nership duly registered and operating within this state under ORS chapter 70 engaging in the sale
29 of limited partnership interests and the acquisition, sale, exchange, lease, transfer or management
30 of the real estate of the limited partnership.

31 (19) A nonlicensed individual who is a membership camping contract broker or salesperson
32 registered with the Real Estate Agency selling membership camping contracts.

33 (20) A nonlicensed individual who is a professional forester or farm manager engaging in prop-
34 erty management activity on forestland or farmland when the activity is incidental to the nonreal
35 estate duties involving overall management of forest or farm resources.

36 (21) A nonlicensed individual who is a registered investment adviser under the Investment Ad-
37 visers Act of 1940, 15 U.S.C. 80b-1 et seq., rendering real estate investment services for the office
38 of the State Treasurer or the Oregon Investment Council.

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

43 (23) A nonlicensed individual who gives an opinion in an administrative or judicial proceeding
44 regarding the value of real estate for taxation or representing a taxpayer under ORS 305.230 or
45 309.100.

1 (24) A nonlicensed individual acting as a paid fiduciary whose real estate activity is limited to
 2 negotiating a contract to obtain the services of a real estate licensee.

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

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

10 (27) A nonlicensed individual who is a member of a domestic or foreign limited liability company
 11 duly registered and operating within this state under ORS chapter 63 and who is engaging in the
 12 acquisition, sale, exchange, lease, transfer or management of the real estate of the limited liability
 13 company if:

14 (a) The limited liability company is member-managed; or

15 (b) The limited liability company is manager-managed, and the nonlicensed individual is a man-
 16 ager.

17 (28) A nonlicensed individual who is a partner in a partnership as defined in ORS 67.005 and
 18 who is engaging in the acquisition, sale, exchange, lease, transfer or management of the real estate
 19 of the partnership.

20 (29) A nonlicensed individual who is an officer or director of a domestic or foreign corporation
 21 duly registered and operating within this state under ORS chapter 60 and who is engaging in the
 22 acquisition, sale, exchange, lease, transfer or management of the real estate of the corporation.

23 **SECTION 10.** ORS 696.174, as amended by section 1, chapter 92, Oregon Laws 2018, is amended
 24 to read:

25 696.174. (1) To renew an active license or to reactivate a license for the first time since the li-
 26 cense was renewed to an inactive status, a real estate licensee must complete 30 hours of real estate
 27 continuing education courses that are eligible for credit under ORS 696.182 during the two years
 28 preceding the renewal or reactivation. The 30 hours must include:

29 (a) At least three hours in a course on recent changes in real estate rule and law approved by
 30 the Real Estate Board; and

31 (b)(A) If the real estate broker is renewing an active license for the first time or reactivating
 32 a license for the first time since renewing the license to an inactive status, an advanced course in
 33 real estate practices approved by the [*Real Estate Agency*] **board by rule**;

34 (B) If a licensed real estate property manager is renewing an active license for the first time
 35 or reactivating a license for the first time since renewing the license to an inactive status, an ad-
 36 vanced course in property management practices approved by the [*agency*] **board by rule**; or

37 (C) If a principal real estate broker is renewing an active license for the first time or reactivating
 38 a license for the first time since renewing the license to an inactive status, an advanced
 39 course in brokerage practices approved by the [*agency*] **board by rule**.

40 (2) The [*agency*] **board**, in consultation with real estate professionals and educators, shall de-
 41 velop **by rule** a reporting format to ensure that a real estate licensee has completed the number of
 42 hours required by subsection (1) of this section. The reporting format must include:

43 (a) The date, name and length of time of each course attended;

44 (b) The name of the real estate continuing education provider that offered the course;

45 (c) The name of the instructor who taught the course; and

1 (d) Any other information that the [agency] **board** requires by rule.

2 (3) **The board may adopt rules authorizing** the agency [may] **to** waive any portion of the re-
 3 quirements of this section for a real estate licensee who submits satisfactory evidence that poor
 4 health or other circumstances beyond the real estate licensee’s control prevented the real estate
 5 licensee from attending part or all of the continuing education courses required by subsection (1)
 6 of this section.

7 **SECTION 11.** ORS 696.182 is amended to read:

8 696.182. (1) The Real Estate [Agency] **Board**, with advice from real estate professionals and ed-
 9 ucators, shall establish by rule a system for certification and renewal of real estate continuing ed-
 10 ucation providers.

11 (2) The [agency] **board** shall include in the rules that an applicant for certification under this
 12 section must be:

13 (a) A main office or branch office, with a registered business name as provided under ORS
 14 696.026, of a licensed real estate property manager or principal real estate broker;

15 (b) A licensed title or escrow company conducting business in this state;

16 (c) A real estate trade association or a trade association in a related field;

17 (d) A real estate multiple listing service;

18 (e) An attorney who is an active member of the Oregon State Bar;

19 (f) A law firm, in which at least one of the attorneys associated with the law firm is an active
 20 member of the Oregon State Bar;

21 (g) A private career school licensed by the Higher Education Coordinating Commission and ap-
 22 proved by the [agency] **board by rule** to provide the basic real estate broker’s or property manager’s
 23 educational courses required under ORS 696.022;

24 (h) An accredited community college, an accredited public university listed in ORS 352.002 or
 25 a private and independent institution of higher education as defined in ORS 350.635;

26 (i) A distance learning provider as provided by rule of the [agency] **board**; or

27 (j) Another provider approved by the [Real Estate] board.

28 (3) The Real Estate Agency may provide continuing education without being certified under this
 29 section.

30 (4) The [agency] **board**, in consultation with real estate professionals and educators, shall pro-
 31 vide by rule:

32 (a) A broad list of course topics that are eligible for continuing education credit required by
 33 ORS 696.174; and

34 (b) Learning objectives for each course topic.

35 (5) The list of course topics developed by the [agency] **board** under subsection (4) of this section
 36 must allow for changes in the real estate profession.

37 (6) The minimum length of each course is one hour. A continuing education provider or course
 38 instructor may allow a break of no more than 10 minutes for each hour of instruction.

39 **SECTION 12.** ORS 696.184 is amended to read:

40 696.184. (1) A real estate continuing education provider shall:

41 (a) Ensure that the courses offered by the continuing education provider meet the learning ob-
 42 jectives adopted under ORS 696.182 (4)(b);

43 (b) Ensure that instructors who teach a real estate continuing education course meet the re-
 44 quirements set forth in ORS 696.186; and

45 (c) Keep records of each course offered, for at least three years, in a manner and form pre-

1 scribed by the Real Estate [Agency] **Board** by rule.

2 (2) Records maintained under this section must be open at all times for inspection by the Real
 3 Estate Commissioner or the commissioner's authorized representatives. Upon request by the com-
 4 missioner, a real estate continuing education provider must produce records within 15 business days
 5 after the date of the request.

6 (3) The [agency] **board** may require by rule a real estate continuing education provider to submit
 7 a record maintained under this section to the **Real Estate** Agency electronically.

8 (4) The [agency] **board** may prescribe by rule terms and conditions under which a real estate
 9 continuing education provider may maintain records outside this state.

10 **SECTION 13.** ORS 696.186 is amended to read:

11 696.186. (1) A person must have one of the following qualifications to teach a real estate con-
 12 tinuing education course that is eligible for credit required under ORS 696.174:

13 (a) A bachelor's degree and two years of experience working in a field related to the topic of
 14 the course;

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

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

18 (d) A designation by a professional real estate organization as determined by rule of the Real
 19 Estate [Agency] **Board** and two years of college-level coursework;

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

21 (f) Certification or approval in good standing as a real estate instructor for the same or a sim-
 22 ilar course topic in any other state or jurisdiction.

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

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

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

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

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

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

36 (4) The [agency] **board**, with the advice of real estate professionals and educators, shall pre-
 37 scribe by rule the content of the form described in subsection (3) of this section.

38 **SECTION 14.** ORS 696.205 is amended to read:

39 696.205. (1) If a real estate licensee who is the sole principal real estate broker or sole licensed
 40 real estate property manager of a registered business name dies or becomes incapacitated, the Real
 41 Estate Commissioner may issue a temporary license to the executor, administrator or personal rep-
 42 resentative of the estate of the deceased real estate licensee or to the court-appointed fiduciary of
 43 the incapacitated real estate licensee, or to some other individual designated by the commissioner.
 44 The commissioner shall determine whether the temporary licensee may continue to conduct the
 45 professional real estate activity of the real estate licensee or may wind up the affairs of the real

1 estate licensee. The term of a temporary license issued under this section may not exceed one year
2 from the date of issuance unless the commissioner, in the discretion of the commissioner, extends
3 the term of the temporary license based on sufficient cause provided by the temporary licensee to
4 the commissioner.

5 (2) The Real Estate [Agency] **Board** may adopt administrative rules to administer this section
6 or to authorize an individual to conduct or wind up the professional real estate activity on behalf
7 of the deceased or incapacitated principal real estate broker or licensed real estate property man-
8 ager.

9 **SECTION 15.** ORS 696.241 is amended to read:

10 696.241. (1) As used in this section, "trust funds" means money belonging to others that is re-
11 ceived or handled by a licensed real estate property manager or principal real estate broker in the
12 course of conducting professional real estate activity and in the real estate licensee's fiduciary ca-
13 pacity.

14 (2) A licensed real estate property manager, or a principal real estate broker who engages in
15 the management of rental real estate, shall open and maintain in this state one or more separate
16 federally insured bank accounts that are designated clients' trust accounts under ORS 696.245. A
17 principal real estate broker who engages in the management of rental real estate or a licensed real
18 estate property manager shall deposit in a clients' trust account all trust funds received or handled
19 by the principal real estate broker, licensed real estate property manager or real estate licensees
20 subject to the supervision of the principal real estate broker.

21 (3)(a) A principal real estate broker who receives or handles trust funds and does not deposit
22 the trust funds in a licensed neutral escrow depository as described in paragraph (b) of this sub-
23 section shall open and maintain in this state one or more separate federally insured bank accounts
24 that are designated clients' trust accounts under ORS 696.245. Pursuant to written agreement of all
25 parties to a real estate transaction having an interest in the trust funds, the principal real estate
26 broker shall immediately place the trust funds in a clients' trust account.

27 (b) A principal real estate broker may deposit trust funds in a licensed neutral escrow deposi-
28 tory in this state.

29 (4) A principal real estate broker or licensed real estate property manager who opens a clients'
30 trust account under subsection (2) or (3) of this section, or to whom ownership of a clients' trust
31 account is transferred, is liable for all deposits and disbursements made using the clients' trust ac-
32 count until the principal real estate broker or licensed real estate property manager closes the ac-
33 count or transfers ownership of the account.

34 (5) A principal real estate broker or licensed real estate property manager may not commingle
35 any other funds with the trust funds held in a clients' trust account, except for:

36 (a) Earned interest on a clients' trust account as provided in subsections (7) and (8) of this
37 section; and

38 (b) Earned compensation as provided in subsection (9) of this section.

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

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

1 ORS 696.245, but only with the prior written approval of all parties who have an interest in the trust
 2 funds. The earnings of the interest-bearing account inure to the benefit of the licensed real estate
 3 property manager or principal real estate broker only if expressly approved in writing by all parties
 4 who have an interest in the trust funds before deposit of the trust funds.

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

12 (9) In connection with a real estate sales, purchase or exchange transaction, a principal real
 13 estate broker is not entitled to any part of any interest earnings on trust funds deposited under
 14 subsection (7) of this section or to any part of the earnest money or other money paid to the prin-
 15 cipal real estate broker as part or all of the principal real estate broker's compensation until the
 16 transaction has been completed or terminated. The principal real estate broker and the seller shall
 17 negotiate and agree in writing to the disposition of forfeited earnest money at the time of execution
 18 by the seller of any listing agreement or earnest money agreement. An agreement about the dispo-
 19 sition of forfeited earnest money must be initialed by the seller or immediately precede the seller's
 20 signature.

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

23 (11) The Real Estate [Agency] **Board** by rule shall establish an optional procedure by which a
 24 principal real estate broker may elect to disburse disputed funds held in relation to the sale, ex-
 25 change or purchase of real estate from a clients' trust account to the person who delivered the funds
 26 to the principal real estate broker. The procedure must allow disbursal not more than 20 days after
 27 a request is made for the disbursal. A disbursal pursuant to the procedure does not affect the claim
 28 of any other person to the funds.

29 (12) The [agency] **board** may provide by rule for other records to be maintained and for the
 30 manner in which trust funds are deposited, held and disbursed. The rules adopted under this sub-
 31 section may include requirements for interest or compensation held in a clients' trust account pur-
 32 suant to subsection (5) of this section to be disbursed from the clients' trust account to a licensed
 33 real estate property manager or principal real estate broker.

34 (13) A real estate licensee who, for the purpose of transmitting a check, receives the check from
 35 a buyer or tenant that is payable to a property owner or seller is exempt from the deposit require-
 36 ments of subsections (2) and (3) of this section. The [agency] **board** may determine by rule the re-
 37 cords that must be maintained for checks received as described in this subsection and the manner
 38 in which the checks must be transmitted.

39 **SECTION 16.** ORS 696.245 is amended to read:

40 696.245. (1) Each licensed real estate property manager and principal real estate broker, at the
 41 time a clients' trust account is opened as required under ORS 696.241, shall provide the bank in
 42 which the account is opened with a notice, acknowledged by the real estate licensee and the bank,
 43 in substantially the following form:

44 _____

1 NOTICE OF CLIENTS' TRUST ACCOUNT AND AUTHORIZATION TO EXAMINE

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

To: _____ (name of bank)

Under the Oregon Real Estate License Law, I, _____ (licensed name), am a licensed real estate property manager or licensed principal real estate broker for _____ (registered business name under ORS 696.026).

Under ORS 696.241, I am required to maintain in Oregon a clients' trust account for the purpose of holding funds belonging to others received in the course of conducting professional real estate activity.

An account numbered _____ in the name of _____ is hereby designated as a clients' trust account and the account is maintained with you as a depository for money belonging to persons other than myself and in my fiduciary capacity as a licensed real estate property manager or licensed principal real estate broker established by client agreements in separate documents.

I hereby authorize you to furnish information requested by the Real Estate Commissioner and/or authorized representative concerning the account listed above as required by ORS 696.245.

Dated: _____ (insert date)

(signature of real estate licensee)

ACKNOWLEDGMENT OF RECEIPT

I, _____, a duly authorized representative of _____ (bank), do hereby acknowledge receipt of the above NOTICE OF CLIENTS' TRUST ACCOUNT AND AUTHORIZATION TO EXAMINE on _____ (date).

(signature)

(title)

(2) Within 10 business days from the date a clients' trust account is opened, a licensed real estate property manager or principal real estate broker shall notify the Real Estate Agency that the account has been opened. The notice must include information about the clients' trust account, including but not limited to:

- (a) The name of the bank where the account is located;
- (b) The account number;
- (c) The name of the account;
- (d) The date the account was opened; and
- (e) An acknowledged copy of the notice described in subsection (1) of this section.

(3) Within 10 business days from the date a clients' trust account is closed or transferred, a licensed real estate property manager or principal real estate broker shall notify the agency that the account has been closed or transferred and shall include in the notice the date on which the account was closed or transferred.

1 (4) Notification to the agency under subsections (2) and (3) of this section must be made in the
 2 manner established by the [agency] **Real Estate Board** by rule.

3 (5) The principal real estate broker or licensed real estate property manager shall retain the
 4 acknowledged copy of the notice described in subsection (1) of this section for at least six years
 5 following the closing of the account as provided in ORS 696.280.

6 **SECTION 17.** ORS 696.280 is amended to read:

7 696.280. (1) A licensed real estate property manager or principal real estate broker shall main-
 8 tain within this state, except as provided in subsection (6) of this section, complete and adequate
 9 records of all professional real estate activity conducted by or through the licensed real estate
 10 property manager or principal real estate broker. The Real Estate [Agency] **Board** shall specify by
 11 rule the records required to establish complete and adequate records of a licensed real estate
 12 property manager’s or principal real estate broker’s professional real estate activity. The only doc-
 13 uments the [agency] **board** may require by rule a licensed real estate property manager or principal
 14 real estate broker to use or generate are documents that are otherwise required by law or are vol-
 15 untarily generated in the course of conducting professional real estate activity.

16 (2) A real estate licensee shall maintain records of the licensee’s attendance in continuing edu-
 17 cation courses for a period of at least three years. The records of attendance must meet the re-
 18 quirements of ORS 696.174.

19 (3) Records maintained under this section must at all times be open for inspection by the Real
 20 Estate Commissioner or the commissioner’s authorized representatives.

21 (4) Except as provided in subsection (2) of this section, records under this section must be
 22 maintained by the real estate licensee for a period of not less than six years after the following date:

23 (a) For a notice of clients’ trust account and authorization to examine under ORS 696.245, the
 24 date the account was closed;

25 (b) For real estate transactions, the date a transaction closed or failed, whichever is later;

26 (c) For management of rental real estate, the date on which the record expired, was superseded
 27 or terminated, or otherwise ceased to be in effect; and

28 (d) For all other records, the date the record was created or received, whichever is later.

29 (5) Records under this section may be maintained in any format that allows for inspection and
 30 copying by the commissioner or the commissioner’s representatives, as prescribed by rule of the
 31 [agency] **board**.

32 (6) The [agency] **board** may prescribe by rule terms and conditions under which a licensed real
 33 estate property manager or principal real estate broker may maintain records outside this state.

34 **SECTION 18.** ORS 696.301 is amended to read:

35 696.301. Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real
 36 estate license of any real estate licensee, reprimand any real estate licensee or deny the issuance
 37 or renewal of a license to an applicant who has:

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

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

42 (3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785,
 43 696.800 to 696.870 and 696.890 or any rule of the Real Estate [Agency] **Board**.

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

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

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

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

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

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

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

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

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

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

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

23 (15) Engaged in any conduct that is below the standard of care for the practice of professional
24 real estate activity in Oregon as established by the community of individuals engaged in the practice
25 of professional real estate activity in Oregon.

26 **SECTION 19.** ORS 696.845 is amended to read:

27 696.845. When signing an offer to purchase, each buyer shall acknowledge the existing agency
28 relationships, if any. When a seller accepts or rejects an offer to purchase in writing, each seller
29 shall acknowledge the existing agency relationships, if any. An agent to the real property trans-
30 action shall obtain the signatures of the buyers and the sellers to the acknowledgment, which shall
31 be incorporated into or attached as an addendum to the offer to purchase or to the acceptance. The
32 Real Estate [Agency] **Board** shall prescribe by rule the form and content of the acknowledgment of
33 existing agency relationships.

34