

HB 3137 A -A3 STAFF MEASURE SUMMARY

Senate Committee On Housing and Development

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Meeting Dates: 4/21, 5/14

WHAT THE MEASURE DOES:

The measure defines a new term, “managing principal broker” as distinct from a principal broker, and sets out specific duties and responsibilities for individuals who hold that title, including their oversight duties of other brokers. The measure updates the requirements for written supervisory agreements between brokers and their supervisors; changes the guidelines for renewing or reactivating a real estate license; defines “real estate teams” as subgroups working under a company’s registered name; and enumerates their obligations to clients.

Detailed Summary:

- Defines “managing principal broker” as an individual who is a principal real estate broker and who has registered or assumed responsibility for a registered business name and specifies roles, responsibilities, and duties of managing principal brokers. Modifies roles, responsibilities, and duties of principal real estate brokers.
- Specifies requirements and duties for supervision and control over the activities of real estate brokers and principal real estate brokers. Modifies requirements for written supervisory agreements.
- Modifies which individuals can engage in professional real estate activity to allow a principal real estate broker who is a managing principal broker, or who is associated with a managing principal broker and is supervised by the same managing principal broker to engage in professional real estate activity.
- Requires notification of a change to the managing principal broker or licensed real estate property manager responsible for a registered business.
- Requires a real estate licensee to pass an assessment of licensee proficiency to renew active license for the first time or to reactivate a license for the first time since the license was put in inactive status.
- Defines “real estate team” as a subdivision of a registered business that performs professional real estate activities comprised of one or more real estate licensees operating under a name other than the registered business name, specifies team requirements, duties, and responsibilities. Sets requirements for disclosure forms provided to clients before entering into a written representation agreement or listing agreement with a buyer or seller.
- Allows a real estate licensee to offer, promise, allow, give, pay or rebate, directly or indirectly, parts or shares of the licensee’s compensation, arising or accruing from any real estate transaction, to a charitable organization that is tax exempt under section 501(c)(3) of the Internal Revenue Code.
- Permits the Real Estate Commissioner to suspend, revoke, or deny the issuance or renewal of a managing principal broker license or reprimand such licensee if they failed to exercise reasonable supervision and control over the activities of associated real estate licensees.
- Requires that written supervisory agreements between a managing principal broker and a principal estate broker who share supervisory control of the same business include a succession plan that also addresses scenarios where the managing principal broker's license becomes inactive, expired or associated with a different registered business and includes opening and maintaining clients’ trust accounts.
- Permits real estate agencies to provide all real estate licensees free training material on all rules and laws the agency is charged with carrying out or enforcing.
- Permits the Real Estate Commissioner to assign and reassign staff for the creation of model advertisements, model procedures, and model recordkeeping practices as well as the review of advertisements, promotional activities of real estate licensees, model property management process guides, managing principal broker office policies, property manager office policies, and recordkeeping policies for compliance with rules

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promulgated by the commissioner.

- Requires that an action for collection of compensation from a client for professional real estate activity by a licensee only be brought by the managing principal broker with whom the licensee was associated when the alleged cause of the action arose.
- Replaces the need for intercompany control agreements with written supervisory agreements for the purposes of employing, engaging, or supervising the professional real estate activity of another real estate licensee; controlling and supervising professional real estate activity of a registered business; supervising licensees; and controlling or supervising a main office, branch office, or portions of an office.

Fiscal impact: Minimal fiscal impact

Revenue impact: No revenue impact

HOUSE VOTE: Ayes, 57; Nays, 0

ISSUES DISCUSSED:

- Tax liability and revenue implications
- Current Oregon law regarding sharing of compensation from a real estate transaction
- Provisions of the measure

EFFECT OF AMENDMENT:

-A3 The amendment resolves conflicts with Enrolled House Bill 2373.

Detailed Summary:

Resolves conflicts with Enrolled House Bill 2373 by

- repealing sections 14 of Enrolled House Bill 2373 to correspond with sections of ORS 696.301 which is changed by HB 3137, Section 18, to permit the Real Estate Commissioner to suspend, revoke, or deny the issuance or renewal of a managing principal broker license or reprimand such licensee if they failed to exercise reasonable supervision and control over the activities of associated real estate licensees;
- repealing section 18 of Enrolled House Bill 2373 to correspond with ORS 696.710 as changed by HB 3137, Section 27, requiring that an action for collection of compensation from a client for professional real estate activity by a licensee be brought by the managing principal broker with whom the licensee was associated when the alleged cause of the action arose.
- adding a definition of "managing principal broker" to clarify when a principal real estate broker who has registered or assumed responsibility for a registered business name and assumes roles, responsibilities, and duties of managing principal brokers.

BACKGROUND:

A real estate licensee is a general term that refers to anyone who holds a real estate license, whether that license is at the salesperson/agent level or the broker level (depending on the jurisdiction). This term covers any individual who has successfully completed the requirements for obtaining a real estate license within their state, which can include coursework, exams, and background checks. All real estate brokers are licensees, but not all licensees are brokers.

Real estate brokers have met more stringent education and experience requirements than agents/salespeople. They are allowed to operate independently and/or manage their own real estate brokerage firm. Brokers typically assume legal responsibility for the transactions conducted under their supervision (i.e., for the work of the agents they oversee). In many jurisdictions, only brokers can hold client funds in trust accounts and negotiate fees directly with clients, whereas agents must do so through their supervising broker.

A principal real estate broker is the lead professional in a brokerage, with advanced credentials and legal responsibility for managing transactions and supervising licensed brokers. They hold the highest level of real estate licensure issued by the Oregon Real Estate Agency (OREA). Principal brokers can supervise and manage other real estate brokers, and are responsible for ensuring that the brokerage and all supervised brokers follow Oregon real estate regulations and ethics standards.

To qualify as a principal broker, an individual must first hold a real estate broker license, typically work under supervision for a set period (usually three years), complete additional education specific to principal brokers, and pass the principal broker licensing exam. Principal brokers may establish their own real estate brokerage or practice independently. They can open trust accounts, hold client funds, and set business policies and procedures for their brokerage.

Oregon law tasks the principal broker with maintaining accurate records of all transactions and ensuring all paperwork and disclosures comply with state statutes and administrative rules. They are subject to oversight by OREA and carry the legal responsibility for brokerage operations.

Because they supervise other brokers and oversee day-to-day business, principal brokers in Oregon bear ultimate liability for the actions of their team. If a complaint arises, OREA typically holds the principal broker accountable for any failure to comply with licensing laws or regulations.