

NOTICE OF PROPOSED RULEMAKING

CHAPTER 863

REAL ESTATE AGENCY

FILING CAPTION: Amends rule to substantively restore paragraphs 4 and 5 which were previously removed.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 03/27/2024 1:00 PM

HEARING(S):

DATE: 02/29/2024

TIME: 10:00 AM - 11:00 AM

OFFICER: Michael Hanifin

REMOTE HEARING DETAILS

MEETING URL: <https://teams.microsoft.com>

PHONE NUMBER: 503-446-4951

CONFERENCE ID: 279207897667

SPECIAL INSTRUCTIONS:

Passcode is Ry52TH. Phone conference ID is 778461303#

NEED FOR THE RULE(S):

Amendment required to ensure the public and licensees have accurate information about the Agency's progressive discipline rule.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

ORS 696.396, available thru the Oregon Legislature website <https://www.oregonlegislature.gov/lc>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE:

This rulemaking is purely clarification and only affects licensees so there is no impact on racial equity.

FISCAL AND ECONOMIC IMPACT:

As clarification, this rulemaking creates no new obligations or costs for the agency, therefore there is no fiscal impact.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

This rulemaking is clarification and does not impose any new or additional costs or obligations the public, licensees, other government bodies, or small businesses.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The rulemaking advisory committee included representatives of small business.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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AMEND: 863-027-0020

RULE TITLE: Progressive Discipline of Licensees

RULE SUMMARY: Restores paragraphs (4) and (5) that were removed in 2018. Language is substantively the same as pre-removal and tracks with ORS 696.396

RULE TEXT:

(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 Real Estate 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 Real Estate 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 or authorized Agency staff member 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 unless the licensee has committed an act or conduct that constitutes grounds for discipline under ORS 696.301 and such act or conduct:

(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 was 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).

STATUTORY/OTHER AUTHORITY: ORS 696.385, ORS 696.396

STATUTES/OTHER IMPLEMENTED: ORS 696.241, ORS 696.301

