

Enrolled
Senate Bill 140

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for Real Estate Agency)

CHAPTER 224

AN ACT

Relating to real estate licensees; creating new provisions; and amending ORS 696.010, 696.026, 696.200, 696.241, 696.445 and 696.990.

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

SECTION 1. ORS 696.026 is amended to read:

696.026. (1)(a) *[A real estate broker or]* **A real estate licensee who is a sole practitioner, principal real estate broker or real estate property manager** may conduct professional real estate activity under:

- (A) *[The broker's name,]* **The name of the licensee;**
- (B) A registered business name; or
- (C) A name prescribed by *[agency]* **rule of the Real Estate Agency.**

(b) Only a real estate licensee who is a sole practitioner, principal real estate broker or real estate property manager may register a business name.

(2) The registered business name under which a *[broker]* **real estate licensee** conducts professional real estate activity has no license standing *[independent of the broker]*.

[(2)] (3) 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 or real estate property manager.

[(3)] (4) *[A real estate broker or principal real estate broker]* **A real estate licensee** operating under a business name registered by the *[broker]* **licensee** 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 business name. However, all professional real estate activity conducted by or on behalf of the *[broker]* **real estate licensee** must be conducted under the business name registered by the *[broker]* **licensee**.

[(4)] (5)(a) *[A real estate broker or principal real estate broker]* **A real estate licensee who registers a business name as provided by subsection (1) of this section** may register two or more business names if the business names are for affiliated or subsidiary business organizations.

(b) *[If a real estate broker or principal real estate broker registers the]* If a real estate licensee registers two or more business names for *[two or more]* affiliated or subsidiary business organizations, the *[broker]* licensee may conduct professional real estate activity separately under each business name.

(6) [A real estate broker or principal real estate broker] A real estate licensee must supervise and control the professional real estate activity conducted under the [broker's name or registered business] name **designated as provided by subsection (1) of this section.**

[(5)] (7) 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 real estate broker conducts professional real estate activity, but may not control or supervise the professional real estate activity of the principal real estate broker and may not interfere with or be responsible for the training and supervision of any other real estate broker.

[(6)] (8) 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] the business.

[(7)] (9) 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)] (10) 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 **sole practitioner, principal real estate broker or real estate broker** associated with a principal real estate 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 real estate broker associated with a principal real estate broker may only receive compensation from a principal real estate 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.

SECTION 2. Section 3 of this 2009 Act is added to and made a part of ORS 696.010 to 696.495.

SECTION 3. (1) The Real Estate Commissioner may issue a limited license to an applicant for a license as a real estate broker, sole practitioner, principal real estate broker or real estate property manager if the commissioner determines that the issuance is in the public interest. The commissioner may limit a license issued under this section:

- (a) By term;
- (b) To acts subject to the supervision of a specific principal real estate broker;
- (c) By conditions to be observed in the exercise and the privileges granted; or
- (d) In other ways determined by the commissioner as necessary or appropriate to protect the public.

(2) A limited license issued under this section does not confer any property right in the privileges to be exercised under the license, and the holder of a limited license does not have the right to renewal of the limited license. A limited license may be suspended or revoked, or the real estate licensee may be reprimanded, by the commissioner on the grounds set out in ORS 696.301 or for failure to comply with the limitations of the license.

SECTION 4. ORS 696.200 is amended to read:

696.200. (1) To establish a main office or a branch office under this section, a real estate licensee must be:

- (a) A sole practitioner;
- (b) A principal real estate broker; or
- (c) A real estate property manager.

[(1)] (2) [Except for real estate brokers associated with a principal real estate broker, every real estate broker and principal real estate broker shall] **Every real estate licensee identified in subsection (1) of this section must:**

(a) Maintain in this state a place of business to be designated as the [broker's] licensee's main office; and

(b) Designate the place of business by a sign that contains the name under which the [broker is licensed] licensee conducts professional real estate activity.

[(2)] (3) The place of business of a real estate licensee 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] real estate licensee must 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] a license.

[(3)] (4) [A real estate broker or principal real estate broker] A real estate licensee identified in subsection (1) of this section may establish one or more branch offices as separate business locations under the management of the [broker] licensee. A [broker] real estate licensee may conduct and supervise the business of more than one office, whether a main office or a branch office. The [broker shall] real estate licensee must 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] licensee conducts professional real estate activity.

[(4)] (5) Upon vacating any business location, the [broker] real estate licensee shall ensure that the sign containing the [broker's] licensee's name or the name under which the [broker] licensee has operated is removed from the location [that the broker has vacated].

(6) A [broker] real estate licensee 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] licensee conducts professional real estate activity.

SECTION 5. ORS 696.241 is amended to read:

696.241. (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 licensed 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 disbursal not more than 20 days after a request is made for the disbursal. A disbursal 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.

SECTION 6. ORS 696.445 is amended to read:

696.445. (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,]* **and the city and state** of real estate licensees who have been reprimanded, of real estate and escrow **agent** licensees whose licenses have been suspended or revoked and of real estate and escrow **agent** 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.

SECTION 7. ORS 696.990 is amended to read:

696.990. (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)(a) Except as provided in paragraph (b) of this subsection, a real estate licensee who is a real estate property manager or principal real estate broker and who is engaging in or who has engaged in the management of rental real estate may be required to forfeit and pay to the General Fund of the State Treasury a civil penalty of up to \$1,000 per day of violation, or a lesser penalty in an amount determined by the commissioner, if the licensee fails to comply with rules that require the licensee to produce for inspection records related to the management of rental real estate that are maintained by the licensee as provided by ORS 696.280.

(b) A civil penalty imposed under this subsection may not exceed \$10,000.

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

[(7)] (8) The civil penalty provisions of subsections [(4) and (5)] (4) to (6) of this section are in addition to and not in lieu of the criminal penalties for unlicensed professional real estate activity in subsections (1) and (2) of this section.

[(8)] (9) 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)] (10) 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.

SECTION 8. ORS 696.010 is amended to read:

696.010. As used in ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and 696.995, 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)] (2), 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.

Passed by Senate March 2, 2009

.....
Secretary of Senate

.....
President of Senate

Passed by House May 20, 2009

.....
Speaker of House

Received by Governor:

.....M.,....., 2009

Approved:

.....M.,....., 2009

.....
Governor

Filed in Office of Secretary of State:

.....M.,....., 2009

.....
Secretary of State