Chapter 696

1985 REPLACEMENT PART

Real Estate and Escrow Activities

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REAL ESTATE LICENSEES

(Generally)

696.005 [1963 c.580 §39; repealed by 1965 c.617 §8]

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

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

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

696.010 Definitions for ORS 696.010 to 696.490 and 696.710 to 696.730. As used in ORS 696.010 to 696.490 and 696.710 to 696.730, unless the context requires otherwise:

(1) "Advance fee" means a fee received before the professional real estate activity involved is completed, where such activity is the listing of any real estate for sale, lease or exchange. The term "advance fee" shall not include a retainer fee paid to a real estate broker or organization to secure the availability of such broker or organization for future services, or a consulting fee paid to a real estate licensee engaged to provide consultation or advice concerning the valuation, marketability or acquisition potential of real estate.

(2) "Bank" includes any bank or trust company, mutual savings bank or savings and loan association that maintains a head office or a branch in this state in the capacity of a bank or trust company, mutual savings bank or savings and loan association.

(3) "Board" means the Real Estate Board.

(4)(a) "Branch office" means a business location other than the main office designated under ORS 696.200 (1), where professional real estate activity is regularly conducted or which 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 distribution and dissemination, 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) "Controlling shareholder" means:

(a) Any individual who owns or controls, directly or indirectly, a majority of the outstanding shares of a corporate real estate organization.

(b) Any real estate salesperson who owns shares of stock of a corporate real estate organization, the majority of shares of which are owned or controlled, directly or indirectly, by real estate salespersons.

(8) "Division" means the Real Estate Division of the Department of Commerce.

(9) "Inactive license" means a license which has been returned to the commissioner and is being held by the commissioner on an inactive status.

(10) "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) Appraises, offers, attempts or agrees to appraise real estate.

(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) Collects, offers, attempts or agrees to collect rental for the use of 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) Engages in the business of charging an advance fee in connection with any contract whereby the person undertakes to promote the sale of real estate either through its listing in a publication issued for that purpose or through referral of information concerning the real estate to brokers, or both.

(m) Except as otherwise provided in ORS 696.030 (1)(k), advises, counsels, consults or analyzes in connection with real estate values, sales or dispositions, including dispositions through eminent domain procedures.

(n) 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.

(11) "Real estate" includes leaseholds and licenses to use as well as any and every interest or estate in land, whether corporeal or incorporeal, whether freehold or nonfreehold, whether held separately or in common with others and whether the land is situated in this state or elsewhere.

(12) "Real estate appraisal" means a statement setting forth an estimate of value of an adequately described property as of a specified date and supported by the analysis and presentation of relevant factual basis. An estimate of sales price, done for the purpose of obtaining an employment contract (listing) to market the property involved, when no specific fee is charged for such estimate, shall not be termed or considered a real estate appraisal.

(13) "Real estate licensee" means a person licensed by the commissioner in one of the following categories:

(a) "Real estate broker" as described in ORS 696.025 (1).

(b) "Real estate organization" as described in ORS 696.025 (2).

(c) "Designated real estate broker" as described in ORS 696.025 (3).

(d) "Associate real estate broker" as described in ORS 696.025 (4).

(e) "Real estate salesperson" as described in ORS 696.025 (5).

(f) "Real estate appraiser" as described in ORS 696.025 (6). [Amended by 1953 c.166 §5, 1955 c.322 §6, 1965 c.617 §1; 1973 c.416 §1, 1975 c 746 §1; 1977 c.649 §9; 1981 c.617 §2; 1985 c.589 §6]

696.015 Legislative finding; short title. (1) The Legislative Assembly finds the activity of persons seeking to assist others, for compensation, to deal in real estate in this state to be a matter of public concern. The provisions of ORS 696.010 to 696.495 and 696.710 to 696.785 and 696.990 are enacted to assist in creating for the public a healthy real estate market atmosphere and to assure that professional real estate activity is conducted with high fiduciary standards.

(2) ORS 696.010 to 696.495 and 696.710 to 696.785 and 696.990 may be cited as the Oregon Real Estate License Law. [1977 c.649 §2]

(Licensing)

696.020 Persons engaged in professional real estate activity required to be licensed. (1) No person shall engage in, carry on, advertise or purport to engage in or carry on professional real estate activity, or act in the capacity of, a real estate licensee within this state without first obtaining a license as provided for in this chapter.

(2) A real estate licensee shall be bound by and subject to the requirements of ORS 696.010 to 696.490, 696.710 to 696.730 and 696.990 in engaging in any professional real estate activity or while acting in the licensee's own behalf in the offer to, negotiations for, or sale, exchange, lease option or purchase of real estate. [Amended by 1969 c.674 §1; 1975 c.746 §1a, 1977 c 649 §10; 1981 c.617 §2a]

696.025 Categories of real estate licenses. The commissioner may issue a real estate license to a real estate licensee in any one of the following categories, which authorizes the licensee to perform only the duties described for that category:

(1) Real estate broker, which authorizes such person to engage in professional real estate activity directly with others as a sole proprietor of a

business operated under the name of such person, or under an assumed business name filed in accordance with ORS chapter 648.

(2) Real estate organization, which authorizes such partnership, association or corporation to engage in professional real estate activity directly with others only in the name of such partnership, association or corporation or under an assumed business name filed under ORS chapter 648.

(3) Designated real estate broker, which authorizes such person or persons to engage in professional real estate activity directly with others, but limited to activity in the name of a real estate organization designating such person to be a designated real estate broker, and not otherwise.

(4) Associate real estate broker, which authorizes a person otherwise eligible as a real estate broker to engage in professional real estate activity only as an agent of a real estate broker or real estate organization, and to manage one or more offices of the real estate broker or real estate organization as authorized by ORS 696.200 (3).

(5) Real estate salesperson, which authorizes such person to engage in professional real estate activity only as an agent of a real estate broker or real estate organization, and not otherwise.

(6) Real estate appraiser, which authorizes such person to offer, attempt, agree to, or perform a real estate appraisal directly for anyone and for compensation, or with the intention or in the expectation or upon the promise of receiving or collecting compensation. [1977 c 649 §8a; 1981 c.617 §3]

696.030 Certain persons exempted. (1) ORS 696.010 to 696.375, 696.395 to 696.435, 696.490, 696.710 to 696.730 and 696.990 do not apply to, and the term "real estate licensee" does not include:

(a) A nonlicensed regular full-time employe of a single owner of real estate whose activities involve the real estate of the employer and are incidental to the employe's normal, nonreal estate activities; or a nonlicensed regular full-time employe whose activity involving such real estate is the employe's principal activity, but the employer's principal activity or business is not the sale, exchange, lease option or acquisition of real estate.

(b) Any nonlicensed person acting as attorney in fact under a duly executed power of attorney from the owner authorizing the supervision of the closing of or supervision of the performance of any contract for the sale, leasing or exchanging of real estate, if the power of attorney is recorded in the office of the recording officer for the county in which the property to be sold, leased or exchanged is located.

(c) Any attorney at law rendering services in the performance of duties as an attorney at law.

(d) While acting as such, any receiver, trustee in bankruptcy, personal representative; or any trustee or the regular salaried employes thereof, acting under a trust agreement, deed of trust or will.

(e) Any person doing any of the acts of professional real estate activity under order of any court.

(f) A nonlicensed regular full-time employe employed by and acting for a single nonlicensed corporation, partnership, association or individual owner in the rental or management, but not sale, exchange, lease option or purchase of the real property of the employer.

(g) Any registered professional engineer or architect rendering services in performance of duties as a professional engineer or architect.

(h) A nonlicensed individual employed by a real estate broker or a real estate organization and acting as a manager for any real estate whose activities are limited to negotiating rental or lease agreements, the checking of tenant and credit references, the physical maintenance of the real estate, tenant relations and the collection of rent, and the supervision of premises' managers.

(i) Any person, partnership, association or corporation or any employe of any such person while engaging in the disposition of human bodies under the provisions of ORS 97.010 to 97.990, and engaged in the sale or leasing of cemetery lots, parcels or units in Oregon.

(j) Any salaried employe of the State of Oregon, or any of its political subdivisions, while engaged in professional real estate activity as a part of such employment.

(k) Any nonlicensed person, organization, or any regular full-time employe thereof, as to the activities of the person, organization, or employe in analyzing or advising of permissible land use alternatives, environmental impact, building and use permit procedures, or demographic market studies. This exclusion does not apply to the handling of transactional negotiations for transfer of an interest in real estate and performing real estate appraisal functions.

(L) Any hotelkeeper or innkeeper as defined by ORS 699.005 while in the course of business as a hotelkeeper or innkeeper.

(m) Any travel agent while in the course of business as a travel agent in arranging for com-

pensation the rental of transient lodging at a hotel or inn as defined in ORS 699.005. For the purpose of this paragraph, "travel agent" means a person, including employes thereof, regularly engaged in the business of representing and selling travel services to the public either directly or indirectly through other travel agents, or both.

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

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

(p) Any professional forester appraising or valuing timber, timberland or both as part of services performed as a private consultant in forest management, but only if, in the case of timberland, the appraisal or valuation is limited to the use of the land as forest land as defined in ORS 321.257 and 321.805.

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

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

(s) A membership camping contract broker or salesperson registered with the division when engaged in the sale of membership camping contracts.

(2) The vesting of title to real estate in more than one person by tenancy by the entirety, tenancy in common or by survivorship shall be construed as that of a single owner for the purposes of this section. [Amended by 1955 c.322 §7; 1963 c.593 §1; 1967 c 277 §1; 1969 c.674 §2; 1975 c.746 §2; 1977 c.649 §11, 1979 c.125 §3; 1979 c 289 §1a; 1981 c.617 §4; 1985 c 639 §13; 1985 c.677 §64]

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

696.050 Qualifications of applicants for licenses. (1) Licenses shall be granted only to persons who are trustworthy and competent to transact professional real estate activity in such manner as to safeguard the interests of the public and only after satisfactory proof has been presented to the commissioner. Every applicant for a license as a real estate licensee except as a real estate organization shall be of the age of 18 years or over.

(2) A licensed broker or salesperson who is currently licensed by a state, and who is a resident of that state, may file an application for a broker's or salesperson's license as a nonresident licensee, providing that the state by which the applicant is currently licensed has a written reciprocal agreement with this state under ORS 696.250.

(3) In order to qualify for a salesperson's license, the applicant also shall demonstrate satisfactory evidence of competence in Legal Aspects of Real Estate (Real Estate Law), Real Estate Practice and Real Estate Finance. The completion of a course of study approved by the commissioner with a final examination score acceptable to the commissioner, or the successful passing of an examination prescribed by the commissioner shall be considered evidence of competence as to any of the three areas of required real estate knowledge. Such demonstration of competence in each of the three areas of required real estate knowledge shall take place prior to the date of the application for issuance of the license.

(4) In order to qualify for a broker's license, the applicant must also furnish proof satisfactory to the commissioner that:

(a) The applicant has held an active license as a real estate salesperson licensee for a period of at least three years, in the five-year period immediately prior to the date of the application for issuance of the license; and

(b) The applicant has demonstrated satisfactory evidence of competence in Legal Aspects of Real Estate (Real Estate Law), Real Estate Practice, Real Estate Finance, Real Estate Office Management and Supervision of Sales Personnel, and Real Estate Appraisal. The completion of a course of study approved by the commissioner with a final examination score acceptable to the commissioner or the successful passing of an

examination prescribed by the commissioner shall be considered evidence of competency in any of the five required areas of real estate. Such demonstration of competence shall take place prior to the date of the application for issuance of the license; or

(c) At the discretion of the board, the applicant has real estate related experience equivalent to the requirements of paragraph (a) or (b) of this subsection, and details the nature of such experience; or

(d) The applicant has a combination of partial fulfillment of the qualifications described by paragraphs (a), (b) and (c) of this subsection which in the opinion of the board is also the equivalent to the requirements of paragraphs (a) and (b) of this subsection.

(5) Notwithstanding paragraphs (a) to (d) of subsection (4) of this section, an applicant for a real estate broker's license who has graduated from a four-year college or university course with a degree in real estate, in a curriculum approved by the commissioner and who has held an active license as a real estate salesperson for a period of at least one year may, upon petition to the board, and approval by the board, be issued a real estate broker's license immediately upon passing the real estate brokers' examination.

(6) Notwithstanding paragraphs (a) to (d) of subsection (4) of this section and subsection (5) of this section, an applicant for a real estate broker's license who has a two-year community college associate degree in real estate technology in a curriculum approved by the commissioner, who has held an active license as a real estate salesperson for a period of at least two years, who has completed a course in Real Estate Office Management and Supervision of Sales Personnel approved by the commissioner, upon petition to and approval by the board, may be issued a real estate broker's license immediately upon passing the real estate brokers' examination. [Amended by 1955 c.322 §9, 1961 c.471 §1; 1963 c.412 §1; 1969 c.515 §1; 1969 c.674 §3, 1971 c.671 §1, 1973 c.416 §3; 1973 c.827 §78; 1974 s.s. c.36 §21; 1975 c.746 §3; 1977 c.191 §1; 1977 c.649 §13; 1981 c.617 §5; 1983 c.258 §1]

696.060 Form and contents of application for real estate broker license. Every applicant for a real estate broker's license shall apply in writing upon blanks prepared or furnished by the division. The application for a broker's license shall be verified by the applicant. If the application is made by a partnership or an association, it shall be verified by at least two members thereof. If the application is by a corporation, it shall be verified by the president and secretary thereof. The application shall be in such form as the commissioner may prescribe and shall set forth:

(1) The name and address of the applicant. If the applicant is a partnership or an association, the name and address of each member shall be set forth. If the applicant is a corporation, the name and address of each officer, controlling shareholder and director shall be set forth.

(2) The name under which the business is to be conducted.

(3) The place or places, including the street number, town, village or city, and county where the business is to be conducted.

(4) The business or occupation previously engaged in by the applicant for a period of at least two years immediately preceding the date of such application, and the location thereof; if the applicant is a partnership or an association, by each member thereof, or if a corporation by each controlling shareholder, director or officer thereof.

(5) The time and place of the applicant's previous experience in the real estate business, as broker or salesperson; if the applicant is a partnership or an association, by each member thereof, or if a corporation, by each controlling shareholder, officer or director thereof.

(6) Whether the applicant has ever been convicted of or is under indictment for a felony or misdemeanor substantially related to the applicant's trustworthiness or competence to engage in professional real estate activity; if the applicant is a partnership or an association, whether any member thereof has been so convicted or indicted; if the applicant is a corporation, whether any officer, controlling shareholder or director has been so convicted or indicted.

(7) Whether the applicant has been refused a real estate broker's or salesperson's license or any other occupational or professional license in any other state or whether the applicant's license as a broker or salesperson or in any other occupational or professional capacity has been revoked or suspended in any other state; if the applicant is a partnership or an association, whether any member thereof has had a license as a broker or a salesperson or in any other occupational or professional capacity refused, suspended or revoked in any other state; if the applicant is a corporation, whether any controlling shareholder, director or officer thereof has had a license as a broker or a salesperson or in any other occupational or professional capacity refused, suspended or revoked in any other state.

(8) If the applicant is a real estate organization, the name of the real estate broker or brokers who will conduct and supervise the professional real estate activity as the designated real estate broker under ORS 696.080.

(9) If the applicant is a designated real estate broker for a real estate organization, the name and office address of the real estate organization.

(10) Any information that is necessary for evaluation of an application under ORS 696.301. [Amended by 1975 c 746 §4; 1977 c.649 §14; 1981 c.617 §6]

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

696.080 Real estate organizations; designating person to make application and pass examination. (1) No license shall be issued to any real estate organization unless and until such real estate organization designates one or more real estate licensees holding or qualified to hold a real estate broker's license as its designated real estate broker or brokers.

(2) Upon compliance with all other requirements of law by the real estate organization, the commissioner shall issue a broker's license to the real estate organization.

(3) The real estate organization shall have the right to revoke the corporate authority of any designated real estate broker at any time and to designate other persons holding or qualified to hold a real estate broker's license as its designated real estate broker or brokers. Such change shall be valid upon the filing with the commissioner of appropriate forms or applications approved by the commissioner and the payment of the prescribed fees. The real estate organization must at all times have at least one qualified designated real estate broker in order to engage in professional real estate activity.

(4) The designated real estate broker or brokers shall engage in professional real estate activity in the name of the real estate organization, and not otherwise.

(5)(a) A real estate organization may create one or more affiliated or subsidiary real estate organizations. Any such related organizations may use the same designated broker provided that proof is submitted satisfactory to the commissioner that the designated real estate broker or brokers involved actually manages and controls each affiliated and subsidiary organization for which the broker is designated.

(b) In any real estate transaction in which one of the parties is an unlicensed subsidiary or affiliated corporation of a licensed corporate real estate organization, the parties to the transaction must be given a full disclosure of the actual ownership of the subsidiary or affiliated corporation and the licensee status of the parent or affiliated corporate real estate organization. [Amended by 1975 c.746 §5; 1977 c.649 §15; 1981 c.617 §6a]

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

696.100 Application for salesperson license. Every application for a salesperson's license shall be made in writing upon a form prescribed by the commissioner and shall contain such information as is required in a broker's application, and also shall set forth the period of time, if any, during which the applicant has been engaged in the real estate business, stating the name and address of the last principal real estate broker or organization of the applicant. Every application for a salesperson's license shall be verified by the applicant. [Amended by 1963 c.412 §3; 1977 c.649 §17]

696.110 Application and examination fee. (1) Every application for a license and any examination under ORS 696.010 to 696.490 and 696.710 to 696.730 shall be accompanied by the examination fee prescribed in ORS 696.270. The fee for all licenses issued shall, at all periods of the year, be the same as prescribed in ORS 696.270.

(2) The provisions of ORS 696.010 to 696.490 and 696.710 to 696.730 shall be exclusive and no political subdivision or agency of this state shall require or issue any license or charge any fee for licensing or regulation of persons duly licensed under ORS 696.010 to 696.490 and 696.710 to 696.730. Nothing in this subsection shall limit the authority of a county, city or town to levy and collect a general and nondiscriminatory license fee upon all businesses in the county, city or town or to levy a tax based upon the business conducted by any licensee or firm within the county, city or town. [Amended by 1955 c 322 §11; 1961 c.309 §3, 1965 c.617 §2, 1975 c.746 §1b]

696.120 Commissioner may require additional information from applicants; rules. (1) Applications for a broker's or salesperson's license shall contain such other information as to the applicant, in addition to that described in ORS 696.060 to 696.100, as the commissioner shall require. The commissioner may require such other proof, through the application, or otherwise, as the commissioner shall deem desirable, with due regard to the paramount interests of the public, as to the honesty, truthfulness, integrity and competency of the applicant.

(2) The commissioner expressly is vested with the power and authority to make and

enforce any and all such reasonable rules connected with the application for any license as shall be deemed necessary to administer and enforce the provisions of ORS 696.010 to 696.490 and 696.710 to 696.730. [Amended by 1977 c.649 §18]

696.130 Examination of applicants; issuance of license upon revocation of broker or salesperson license; limited license. (1) All applicants for a real estate license, other than for an appraiser's license or an unrestricted real estate broker's license shall be required to pass a basic written real estate examination to be conducted by the board. The examination shall include arithmetic and computation related to real estate, property descriptions, contracts and conveyances, real estate sales practices and instruments, problems generally encountered in real estate, appraising, real estate taxation and a general knowledge of the provisions of this chapter.

(2) The examination for an unrestricted real estate broker's license shall be on problems and matters affecting and involving a real estate broker including, but not limited to, business law, escrows, real estate office administration, property management, appraisals, real estate contracts, deposit receipts, earnest money receipts, deeds, mortgages, deeds of trust, leases, principles of business, land economics, real estate finance and Oregon laws relating to real estate.

(3) The board shall hold licensing examinations at such times and places as it may determine, except that the board shall hold the examinations no less frequently than every 120 days and shall hold not less than four examinations in each calendar year.

(4) The successful passing of an examination prescribed by the commissioner to demonstrate competence in the areas of Legal Aspects of Real Estate (Real Estate Law), Real Estate Practice and Real Estate Finance may be accepted by the board in lieu of the examination required by subsection (1) of this section for a salesperson's license provided that the prescribed examinations are all successfully passed within the period of two years.

(5) If the license of any real estate broker or salesperson is revoked by the commissioner, no new license shall be issued until the person complies with the provisions of ORS 696.010 to 696.490 and 696.710 to 696.730 unless at the time the order authorizes the issuance of a limited license or if a broker's license is revoked, the order authorizes the issuance of a salesperson's license.

(6) The limited license issued under subsection (5) of this section as the commissioner in the commissioner's discretion finds advisable in the public interest may be limited:

(a) By term;

(b) To serve as the agent of a particular real estate broker, if a salesperson; or

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

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

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

696.141 Effect of examination failures. A person who fails to take or pass an examination is not entitled to the return of any examination fees previously paid. [1975 c.746 §11 (enacted in lieu of 696 140), 1977 c.649 §51; 1979 c.243 §1]

696.150 Examination where applicant is real estate organization. If the applicant is a real estate organization, the examination requirements of ORS 696.130 shall be satisfied when the designated real estate broker or brokers are qualified for the issuance of such real estate broker's license. [Amended by 1977 c.649 §20]

696.160 Issuance of broker, salesperson or appraiser license. Upon satisfactorily passing the examination and upon complying with all other provisions of law and conditions of ORS 696.010 to 696.490 and 696.710 to 696.730, a license shall thereupon be granted by the commissioner to the successful applicant therefor as a real estate licensee of the appropriate category. The applicant, upon approval of the completed application for a license by the Real Estate Division, is authorized to conduct the business of a real estate broker or real estate salesperson or real estate appraiser, as the case may be, between the date of the license and the renewal date of the license, unless sooner revoked or suspended. Not more than one license shall be issued and outstanding to or in favor of any licensee at any one time. [Amended by 1969 c 674 §5; 1975 c.746 §12; 1977 c.649 §21]

696.162 Real estate appraiser license. (1) An applicant shall be issued a real estate appraiser's license if the board determines the applicant has had sufficient appraisal experience

or appraisal education or a combination of both, and the applicant successfully completes an examination on the principles and fundamentals of real estate appraising to be conducted by the Real Estate Board.

(2) A real estate organization may be licensed as a real estate appraiser if it designates an individual who qualifies for a real estate appraiser's license as designated appraiser. The designated real estate appraiser shall engage in appropriate professional real estate activity in the name of the organization and not otherwise.

(3) No real estate salesperson shall perform a real estate appraisal until such person has passed an examination on the principles and fundamentals of real estate appraising to be conducted by the Real Estate Board.

(4)(a) A real estate appraiser may be licensed to conduct real estate appraisals on behalf of a real estate broker, a real estate organization or another real estate appraiser, by subscribing to an agreement that the appraiser will not conduct real estate appraisals other than as an agent of and while associated with such broker, organization or appraiser. The form of this agreement is subject to the approval of the commissioner. Signed copies of such agreement shall be filed with the broker, organization or other appraiser involved and with the commissioner.

(b) Upon the filing of such agreement, surrender of the individual real estate appraiser's license and payment of the prescribed fee, the commissioner shall issue to such appraiser a license which shall designate such appraiser as being licensed as a real estate appraiser to act on behalf of the broker, organization or other appraiser.

(c) If such agreement is terminated, evidence of the termination shall be filed with such broker, organization or other appraiser and the commissioner which shall entitle the real estate appraiser to reapply for an individual license or to enter into such agreement with another broker, organization or appraiser. So far as applicable the provisions of this chapter relating to real estate brokers shall apply to a real estate appraiser.

(5) Upon written application, the commissioner may issue a written waiver of license to any person, as to the real estate appraisal activity of such person in the State of Oregon done in order to give an opinion concerning taxation in any administrative hearing or court proceeding. The commissioner must act on the waiver application within seven days. If the commissioner has not acted upon the application for waiver within seven days of receipt of the application, the waiver shall be considered granted. [1975 c.746 §8; 1977 c 190 §1, 1977 c.649 §22, 1981 c.617 §8]

696.165 Issuance of associate broker license; application of chapter to associate brokers. (1) A real estate broker may engage in professional real estate activity for another broker if the real estate broker obtains an associate broker's license. An associate broker's license may be obtained by a broker, without examination, by subscribing to an agreement that the broker will not engage in any act in the capacity of a broker other than as an agent of the other broker or the organization, while associated with the other broker or the organization. The form of this agreement is subject to the approval of the commissioner. The real estate broker shall file signed copies of the agreement with the other broker or the organization and with the commissioner. Before an associate broker's license may be issued, the applicant must also surrender to the commissioner for inactivation the applicant's license as a real estate broker. The license shall remain inactive as long as the associate broker's license is outstanding and effective, and shall be reissued upon inactivation of the associate broker's license and compliance with the other provisions of ORS 696.010 to 696.495 and 696.710 to 696.730 relating to brokers.

(2) Upon approval of the agreement mentioned in this section, and the tender of the broker's license to the commissioner, the commissioner shall issue, in the applicant's name, an associate broker's license. The commissioner shall deliver the license to the broker or organization in accordance with ORS 696.180. An associate broker's license shall designate the applicant as an associate real estate broker, and the applicant shall be known by that title. The provisions of ORS 696.010 to 696.495 and 696.710 to 696.730, other than ORS 696.130 to 696.150 and 696.162 that relate to and govern real estate salespersons shall also apply to and govern associate real estate brokers. [1953 c.166 §4; 1969 c 674 §6; 1977 c.649 §23; 1981 c.617 §8a]

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

696.169 Assistant broker and salesperson not authorized to control broker or organization. No associate real estate broker or real estate salesperson shall control or supervise the professional real estate activities of any real estate broker or organization. [1977 c.649 §16a (enacted in lieu of 696.090)]

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

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

696.174 License renewal date; effect of failure to make timely renewal; continued education required. (1) Each license as a real estate broker, or real estate salesperson may be renewed by the commissioner upon the payment by the licensee of the registration or renewal fee specified in ORS 696.270, with a complete renewal application and evidence of completion of educational requirements as provided in subsection (4) of this section. The completed application, fee, and evidence of educational requirements shall be delivered to the commissioner on or before the expiration date of the license.

(2) If the licensee fails to renew the license in the manner set forth in subsection (1) of this section on or before the expiration date of the license, the commissioner may accept a late payment, subject to such conditions as the commissioner may require. However, during the period beginning on the day following the expiration date of the license and ending on the date of renewal of the license the rights of the licensee under such license and the rights of each associate broker and salesperson engaged by the licensee shall be suspended, and during such suspension it is unlawful for any of such licensees to do or attempt or offer to engage in any professional real estate activity.

(3) The license of an associate broker or salesperson suspended as provided for in subsection (2) of this section may be reissued to the same broker or a new broker without fee if reissued during the same license period in which it was granted and on receipt of the associate broker's or salesperson's original license.

(4) To qualify an active license for renewal, the real estate licensee must present evidence of attendance during the preceding two license years of 24 clock-hours of real estate oriented educational sessions at the time of each of the first three renewals and 12 clock-hours of such sessions at the time of each succeeding renewal. Certification of attendance by the broker or appraiser with whom the licensee is licensed shall be considered evidence of attendance. A real estate broker licensed under ORS 696.025 (1), a designated real estate broker licensed under ORS 696.025 (3), a real estate appraiser licensed under ORS 696.025 (6) and a designated real estate appraiser licensed under ORS 696.162 (2) are not subject to the education requirements of this subsection at the time of renewal of an active license. "Real estate oriented educational sessions" include sessions relating to the subject matter of ORS chapter 696.

(5) The commissioner may waive the continuing education requirements of subsection (4) of this section for any licensee who submits satisfactory evidence of inability to attend such sessions because of health or other circumstances beyond the licensee's control. [1969 c.674 §11, 1973 c.416 §6; 1977 c.649 §25; 1981 c.617 §9; 1983 c.359 §1]

696.176 Terms of licenses. (1) A new license or renewal issued on or after July 1, 1975, shall be for the term of not more than 24 months up to and including the month of the birthdate of the licensee.

(2) Real estate organizations shall have established as the equivalent of a birthdate, that date upon which the license is issued.

(3) Branch offices shall have established as the equivalent of a birthdate, the expiration date of the license of the real estate broker or real estate organization establishing the branch office. [1969 c.674 §10; 1975 c.746 §13, 1977 c.649 §26]

696.180 Form and content of license. The commissioner shall issue to each licensee a license in such form and size as shall be prescribed by the commissioner. The license shall show the name and address of the licensee and, in case of a real estate salesperson's license, shall show the name of the real estate broker by whom the licensee is engaged. Each license shall have imprinted thereon the seal of the division and shall contain such other matter as shall be prescribed by the commissioner. The license of each real estate salesperson shall be delivered or mailed to the real estate broker by whom such real estate salesperson is engaged and shall be kept in the custody and control of such broker. [Amended by 1977 c.649 §27]

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

696.200 Real estate broker or organization to maintain place of business; branch offices; removal from state; change of business location. (1) Except for nonresident brokers licensed pursuant to ORS 696.250 and associate brokers licensed pursuant to ORS 696.165, every real estate broker and real estate organization shall maintain in this state a place of business to be designated as the broker's or organization's main office and designate such place of business by a sign which shall contain the name under which such broker is licensed.

(2) The place of business shall be specified in the application for license, and designated in the license. No license issued under ORS 696.010 to 696.490 and 696.710 to 696.730 authorizes the licensee to transact business from any office other

than that designated in the license, unless notice in writing is given to the commissioner prior to any such change of business location, designating the new location of such office, at which time the broker shall send in the broker's license and the licenses of the licensee agents with the fee required by ORS 696.270 for each new license. The commissioner forthwith shall issue a new license for the new location for the unexpired period. The change of a business location without notification to the commissioner is grounds for revocation of licenses previously issued.

(3) If a broker desires to establish one or more branch offices, the broker shall notify the commissioner, giving the location thereof, and pay the fee required by ORS 696.270 for each branch office to be established, whereupon the commissioner may issue a license therefor. The branch office license shall be issued in the same name that the main office license is issued, and the license must be posted in the branch office. Branch office signs shall conform with the provisions of subsection (1) of this section and the designation "Branch Office" shall be included. Each office, whether main or branch, shall be under the management of a licensee in the broker category as specified in ORS 696.025 who shall conduct and supervise the business of the office. A broker may conduct and supervise the business of more than one office, whether main or branch. The license of an associate real estate broker managing an office shall state that the broker is associated with or the agent of, as the case may be, the broker licensed to establish the office. Salespersons who were authorized to and were managing a "Branch Office" for a broker on October 5, 1973, may continue such management.

(4) Upon removal from any location it shall be a broker's duty to see that the broker's name or the name under which the broker has operated is removed from the location which the broker has vacated. A broker shall not display any name as such at the designated places of business named in the broker's license or licenses other than the name under which the broker is licensed. [Amended by 1955 c.322 §14; 1961 c.471 §3; 1965 c.367 §1; 1973 c.416 §7; 1975 c.746 §14; 1977 c.649 §29; 1979 c.823 §1; 1981 c.617 §10]

696.205 Death of sole proprietor broker; temporary license. In the event of the death of a licensed broker who is the sole proprietor of a real estate business, the commissioner may issue a temporary license to the executor, administrator or personal representative of the estate of the deceased broker, or to some other person designated by the commissioner, to continue to transact said business for the sole purpose of winding up the affairs of the deceased broker. Unless the commissioner, in the discretion of the commissioner, extends the term of the temporary license upon sufficient cause being furnished to the commissioner by the temporary licensee, the term of a temporary license shall not exceed one year from the date of issuance. [1975 c.746 §7]

696.210 Display of licenses at place of business. Each real estate broker shall display prominently in the broker's principal place of business the broker's own license as well as the licenses of all real estate salespersons who are agents for the real estate broker. [Amended by 1977 c.649 §30]

696.220 [Repealed by 1955 c 322 §15]

696.221 Return of license to commissioner. (1) A real estate broker or real estate appraiser at any time may, and at the request of a licensee under the broker's or appraiser's supervision shall without delay, return the license of the licensee to the commissioner. When, and only when, the license of the licensee is returned to the commissioner, the relationship of the broker or appraiser returning the license and the licensee whose license is returned, is, for the purposes of ORS 696.010 to 696.490 and 696.710 to 696.730, terminated. Before the broker or appraiser returns the license of a licensee to the commissioner the broker or appraiser shall make a reasonable attempt to give the licensee notice of the broker's or appraiser's intent to do so.

(2) After the license of a licensee has been returned to the commissioner under subsection (1) of this section by the broker or appraiser it may:

(a) Become an inactive license.

(b) Be reissued to the same broker or appraiser.

(c) Be reissued to a different broker or appraiser. [1955 c.322 §4; 1969 c.674 §12; 1977 c.649 §31; 1983 c.258 §2]

696.224 Inactive real estate license. (1) The license of a real estate licensee becomes an inactive license if it is not reissued, revoked or suspended within 10 days after the licensee's agency relationship with a broker or appraiser is terminated.

(2) The license of a real estate licensee shall be reissued to the same or a different broker or appraiser when, within 10 days after termination of the licensee's agency relationship with a broker or appraiser:

(a) Notice of the licensee's agency relationship by the broker or appraiser and the name

of the agency relationship broker or appraiser is given to the commissioner by the real estate licensee; and

(b) The fee prescribed by ORS 696.270 for the transfer of licenses has been paid to the commissioner.

(c) Where the agency relationship between a real estate broker or appraiser and a licensee under the broker's or appraiser's supervision is terminated by reason of death of the real estate broker or appraiser, a 30-day period shall apply in lieu of the 10-day period mentioned in this section. [1955 c.322 §5; 1969 c.674 §13; 1977 c.649 §32; 1983 c.258 §3]

696.226 Return of broker or appraiser license to commissioner; inactive licensee not to engage in business; renewal, reactivation, revocation or suspension of inactive licenses. (1) When a broker or appraiser ceases to maintain a place of business the broker or appraiser shall return the broker's or appraiser's license and the licenses of all persons under the broker's or appraiser's supervision to the commissioner, who shall keep such licenses on record as inactive licenses.

(2) While a license is being held by the commissioner as an inactive license, the licensee shall not engage in, or carry on, or advertise or hold the licensee out as engaging in professional real estate activity within this state.

(3) Inactive licenses may be:

(a) Renewed upon the payment of the renewal fee specified in ORS 696.270.

(b) Reactivated upon application to the commissioner and the payment of the reactivation fee specified in ORS 696.270.

(c) Revoked or suspended by the commissioner when conditions exist under which the commissioner would have been authorized to revoke or suspend the license if it were active. [1955 c.322 §2, 1977 c 649 §33; 1983 c.258 §4]

696.228 Return of associate broker license; inactive licensee not to engage in business; renewal, reactivation, revocation or suspension of inactive license. (1) When an associate real estate broker ceases to act as an agent for another broker the broker shall return the associate broker's license to the commissioner who shall keep such license on record as an inactive license.

(2) While an associate broker's license is being held by the commissioner as an inactive license, the licensee shall not engage in professional real estate activity or carry on, or advertise or hold the licensee out as being authorized to do so.

(3) Inactive licenses may be:

(a) Renewed upon the payment of the renewal fee specified in ORS 696.270.

(b) Reactivated upon application to the commissioner and the payment of the reactivation fee specified in ORS 696.270.

(c) Revoked or suspended by the commissioner when conditions exist under which the commissioner would have been authorized to revoke or suspend the license if it were active. [1969 c.674 §8, 1977 c.649 §34; 1983 c.258 §5]

696.230 [Repealed by 1969 c.674 §21]

696.232 Return of license by employe of division; reissuance upon termination of employment. (1) An employe or officer of the Real Estate Division licensed as a real estate licensee under this chapter shall return the employe's or officer's license to the division at the time of commencement of the employment. The division shall hold the license as a suspended license. At the termination of an employe's or officer's employment, the license may be reissued as an active or inactive license. The license shall be reissued without payment of further fee and shall expire on the date on which it would have expired if the license had not been suspended.

(2) Except as stated in subsection (1) of this section, the reissuance of the license and all renewals shall be subject to the provisions of ORS 696.010 to 696.490 and 696.710 to 696.730. [1975 c.746 §16; 1977 c 649 §35; 1983 c.258 §6]

696.235 Renewal of inactive license; termination; effect; reactivation of inactive license. (1) An inactive license may be renewed as an inactive license for a period of two years.

(2) To activate an inactive license which has been renewed as an inactive license and has been in inactive status for more than 24 consecutive months, the licensee, during the year in which the licensee wishes to activate the license and prior to the issuance of the active license, must:

(a) Complete the education requirements of ORS 696.174 (4); and

(b) Complete successfully an examination to be conducted by the Real Estate Division to exhibit knowledge on current real estate matters.

(3) This section shall not apply to a broker whose license becomes inactive on account of the issuance and retention of an active associate broker license. [1975 c.746 §15, 1977 c.649 §36; 1981 c 617 §11]

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

696.241 Clients' trust accounts; notice to division; authority to examine account; branch trust account; when broker or appraiser entitled to earnest money; funds not subject to execution; rules. (1) Each real estate broker and appraiser 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 broker, appraiser and the real estate licensees subject to the supervision of the broker or appraiser on behalf of any other person shall be deposited unless, pursuant to written agreement of all parties having an interest in the trust funds, the trust funds are immediately placed in a neutral escrow depository in this state.

(2) Each real estate broker and appraiser shall file with the division, on forms approved by the 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 real estate broker and appraiser shall authorize the division, by a form approved by the commissioner, to examine any Clients' Trust Account, by a duly authorized representative of the division. The examination shall be made at such times as the commissioner may direct.

(4) If a branch office maintains a separate Clients' Trust Account a separate bookkeeping system shall be maintained in the branch office, provided a copy of each document required by the provisions of ORS 696.280 is maintained in the main office of the real estate broker and appraiser.

(5) Trust funds received by a real estate broker or appraiser may be placed by the broker or appraiser 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 real estate broker or appraiser unless expressly approved in writing before deposit of the trust funds by all parties having an interest in the trust funds.

(6) A real estate broker or appraiser 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 broker or appraiser in connection with any real estate transaction as part or all of the broker's or appraiser's commission or fee until the transaction has been completed or terminated. The question of the disposition of forfeited earnest money shall be negotiated between a real estate broker and 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.

(7) Clients' Trust Account funds are not subject to execution or attachment on any claim against the real estate broker.

(8) No person shall 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 real estate broker, except actual trust funds deposited with the broker.

(9) The division may provide by rules for other records to be maintained and for the manner in which trust funds are deposited, held and disbursed. [1975 c.746 §18 (enacted in lieu of 696.240); 1977 c.649 §39; 1981 c.617 §11a; 1985 c.589 §4]

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

NOTICE OF CLIENTS' TRUST ACCOUNT
To: (name of bank)

_____

Under the Oregon Real Estate License Law, I am the real estate broker, designated real estate broker, real estate appraiser or designated real estate appraiser for (licensed name of broker, appraiser or organization) _____.

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

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

Dated: (insert date)

_____
(signature of broker/appraiser)

ACKNOWLEDGMENT OF RECEIPT

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

_____ (signature)

_____ (title)

(2) The acknowledged copy of the notice described in subsection (1) of this section shall be retained by the real estate broker or appraiser as provided in ORS 696.241 for the retention of trust account records, subject to inspection by the commissioner or the commissioner's authorized representative. [1985 c.589 §2]

Note: 696.245 was added to and made a part of ORS 696.010 to 696.490 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

696.250 Licensing of nonresidents. (1) Nonresident real estate licensees may be licensed in this state by written reciprocal agreement between this state and the state of residence of each nonresident real estate licensee. The commissioner may enter into a written reciprocal agreement with another state only if the commissioner finds that the real estate licensing standards, qualifications and examinations are substantially similar to the real estate licensing standards, qualifications and examinations of Oregon and both states agree to and do exchange current licensing information and license status changes for their nonresident licensees. Each nonresident licensee shall be limited and subject to the terms of the written reciprocal agreement. Such nonresident licensee may not maintain a place of business within this state. In any event the commissioner may refuse to issue a real estate license to an applicant who is not a resident of this state.

(2) When a nonresident licensee no longer regularly engages in the real estate business in the state of the licensee's resident real estate license, the nonresident license and the nonresident licenses of licensees in the employ of the nonresident licensee shall be surrendered to the commissioner.

(3) As used in this section, "nonresident licensee" means a person licensed in the appropriate category under a written reciprocal agreement who does not maintain a place of business in this state or who is licensed to a nonresident broker who does not maintain a place of business in this state. [Amended by 1953 c.202 §2, 1961 c 675 §1; 1965 c 367 §2; 1969 c.674 §14; 1975 c.746 §19; 1977 c.649 §37, 1981 c.617 §12]

696.255 Nonresident license equivalent to appointment of commissioner as agent for service of process; service on commissioner. (1) The acceptance by a nonresident of a real estate license, whether or not issued under ORS 696.250, shall be considered equivalent to an appointment by the nonresident of the commissioner as the nonresident licensee's true and lawful attorney, upon whom may be served any lawful summons, process or pleading in any action or suit against the nonresident licensee in any court of this state, arising out of any business done by the nonresident licensee as a real estate licensee in this state. The acceptance shall be considered equivalent to an agreement by the nonresident licensee that any summons, process or pleading so served shall be of the same legal force and validity as if served on the nonresident licensee personally in this state.

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

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

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

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

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

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

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

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

696.270 Fees. The maximum fees described in this section may be charged by and paid to the Real Estate Division. Actual fees shall be prescribed by the Real Estate Commissioner with approval of the Executive Department. This section applies to the following fees:

(1) For each licensing examination described in ORS 696.130 (1) or (2), 696.162 or 696.167 applied for, $40. For each prescribed examination to show competence in a required area of real estate knowledge or each licensing examination prescribed in ORS 696.235 applied for, $15.

(2) For each real estate broker's, real estate organization or real estate appraiser's license, $110; and for each biennial renewal of a real estate license thereafter, $110.

(3) For each license as real estate broker issued to a designated real estate broker in a real estate corporation, $110; and for each biennial renewal of such license thereafter, $110.

(4) For each associate broker's license a fee of $110 and for each biennial renewal a fee of $110.

(5) For each real estate salesperson's license, $90; and for each biennial renewal of such license thereafter, $90.

(6) For each additional office or place of business, a biennial fee of $100.

(7) For each change of name or address of a broker on the records of the division, $10.

(8) For each duplicate license, where the original license is lost or destroyed and affidavit made thereof, $5.

(9) For each salesperson's or associate broker's license issued when change of business location or change of name, $10.

(10) For each transfer of a designated broker's license within the same license status and for each transfer of an associate broker's or salesperson's license, $10.

(11) For the renewal of a broker's inactive license, $110.

(12) For the renewal of a salesperson's inactive license, $90.

(13) For the reactivation of a broker's inactive license, $110, for the reactivation of an associate broker's inactive license, $110, and for the reactivation of a salesperson's inactive license, $90.

(14) In addition to the biennial renewal fee, for late renewal, $30.

(15) For a temporary license issued under ORS 696.205, $40, and for an extension thereof, $40. [Amended by 1953 c.166 §5; 1955 c.457 §1; subsections (13), (14), (15) enacted as 1955 c.322 §3; 1957 c.383 §2; 1961 c.670 §1; 1965 c.617 §3; 1969 c.674 §15; 1971 c.293 §1; 1975 c.746 §20; 1977 c.191 §3; 1977 c.649 §52; 1981 c.566 §4]

696.275 Prorating of license fee. If the effective period of a license specified in ORS 696.270 is to be less than 24 months by reason of the statutorily required expiration date, the required license fee shall be prorated to represent the larger of:

(1) One twenty-fourth of the full fee for each month of the license period to the expiration date, rounded to the nearest dollar; or

(2) 25 percent of the full fee, rounded to the nearest dollar. [1977 c.873 §18]

696.280 Real estate brokers and appraisers to maintain records. (1) Every person licensed as a real estate broker shall maintain within this state records of all professional real estate activity conducted by or through the broker. A broker shall keep records of offers handled by or through the broker on a prospective sale, purchase, lease option or exchange of real estate where the prospective transaction fails. The records shall include a consecutively numbered file for each offer or transaction which involves the actual sale, purchase, lease option or exchange of real property, which file shall contain, where applicable:

(a) A copy of any listing agreement, which shall evidence the signatures of the parties;

(b) A copy of any earnest money agreement, which shall evidence the signature of the party or parties;

(c) A copy of any receipt issued by the broker to evidence acceptance of funds or documents;

(d) In any real estate transaction in which the broker performed the closing, a copy of any closing statements showing all receipts, disbursements and adjustments, which shall evidence the signature of the seller or sellers, the buyer or buyers; and

(e) A copy of any vouchers of bills or obligations paid by the broker for the account of the seller(s) or buyer(s).

(2) Every person licensed as a real estate broker, when engaged in professional real estate activity other than that described in subsection (1) of this section, and every person licensed as a real estate appraiser shall maintain within this state adequate records of all professional real estate activity. Those records shall also include records of attendance at educational sessions by licensees licensed with the broker or appraiser. The record of attendance shall state the name of the licensee and the date of the licensee's attendance, and shall be the basis for the certificate of attendance submitted under ORS 696.174 (4).

(3) Such records shall at all times be open for inspection by the commissioner or the commissioner's duly authorized representatives. The records of each transaction shall be maintained by the licensee for a period of not less than six years after the date of the transaction. [Amended by 1977 c.649 §38; 1981 c.617 §12b; 1983 c.258 §7; 1983 c.359 §2]

696.290 Sharing commission with or paying finder's fee to unlicensed person prohibited. No real estate licensee shall offer, promise, allow, give, pay or rebate, directly or indirectly, any part or share of the licensee's commission or compensation arising or accruing from any real estate transaction or pay a finder's fee to any person who is not a real estate licensee licensed under ORS 696.010 to 696.490 and 696.710 to 696.730. However, a licensed real estate broker may pay a finder's fee or a share of the commission on a cooperative sale where such payment is made to a licensed real estate broker in another state provided that the state in which that broker is licensed has a law permitting real estate brokers to cooperate with real estate brokers in this state and that such nonresident real estate broker does not conduct in this state any of the negotiations for which a fee, compensation or commission is paid. No real estate salesperson or associate real estate broker shall be engaged by, or accept compensation from, any person other than the real estate broker under whom the salesperson or associate broker is licensed at the time, and no real estate broker shall make payment to the salesperson or associate broker of another real estate broker except through the real estate broker with whom such real estate salesperson or associate broker is licensed. Nothing in this section prevents payment of a commission or fee earned by such real estate salesperson or associate broker while licensed, because of change of affiliation or inactivation of the salesperson's or associate broker's license. [Amended by 1953 c.42 §2; 1961 c.670 §2; 1969 c.674 §16; 1975 c.746 §21; 1977 c.649 §40; 1981 c.617 §13]

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

696.301 Grounds for discipline. The commissioner may suspend or revoke the real estate license of any real estate licensee or reprimand any licensee, or may deny the issuance or renewal of a license to an applicant, who has done any of the following:

(1) Knowingly or negligently pursued a continued course of material misrepresentation in matters related to professional real estate activity, whether or not damage or injury resulted, or knowingly or negligently made any material misrepresentation or false promise in a matter related to professional real estate activity, if the material misrepresentation or material false promise created a reasonable probability of damage or injury, whether or not damage or injury actually resulted.

(2) Accepted a commission or other valuable consideration as a real estate salesperson or associate real estate broker for the performance of any professional real estate activity from any person, except the real estate broker with whom the real estate salesperson or associate real estate broker is licensed.

(3) Represented or attempted to represent a real estate broker other than the real estate broker with whom the real estate salesperson or associate real estate broker is licensed.

(4) Failed, within a reasonable time, to account for or to remit any moneys or to surrender to the rightful owner any documents or other valuable property coming into the licensee's possession which belongs to others.

(5) Disregarded or violated any provisions of ORS 696.010 to 696.490 and 696.710 to 696.730.

(6) Knowingly or negligently made, printed, distributed or in any manner published materially misleading or untruthful advertising, descriptions or promises, of such character as reasonably to induce any person to act to the damage or injury of the person, whether or not actual damage or injury resulted.

(7) Guaranteed, authorized or permitted any person to guarantee future profits which may result in the resale of real property.

(8) Placed a sign on any property offering it for sale or for rent without the written authority of the owner or the owner's authorized agent.

(9) Failed for any reason to pay to the commissioner the license registration or renewal fee as specified in ORS 696.270 within the time specified in that section.

(10) Commingled the money or other property of the principal or client with the licensee's own.

(11) Failed or refused upon demand to produce or to supply true copies of any document, book or record in the licensee's possession or control, or required by the provisions of ORS 696.280 concerning any real estate business transacted by the licensee, for inspection by the Real Estate Commissioner or the commissioner's authorized representative.

(12) Failed to maintain at all times in the licensee's principal place of business a complete record as required by law of every transaction which comes within the provisions of ORS 696.010 to 696.490 and 696.710 to 696.730.

(13) Violated ORS 659.033.

(14) Acted for more than one party in a transaction, in the negotiation of a transaction, without the knowledge and written permission of all parties for whom the licensee acted.

(15) Acted in the dual capacity of agent and undisclosed principal in any transaction.

(16) Induced any party to a contract, sale or lease to break such contract for the purpose of substituting in lieu thereof a new contract with the same principal or different principal.

(17) Offered real estate for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent.

(18) Negotiated a sale, exchange, lease option or lease of real estate directly with an owner or lessor knowing that such owner had a written outstanding contract in connection with such property, granting an exclusive agency or an exclusive right to sell to another real estate broker without the consent of the other broker.

(19) Accepted employment or compensation for a real estate appraisal contingent upon the reporting of a predetermined value or issued an appraisal report on real estate in which the licensee had an undisclosed interest.

(20) Failed to maintain on deposit in a bank account or neutral escrow depository funds entrusted to the licensee as a real estate broker by the principal or other as required by ORS 696.241 and the rules of the division.

(21) Paid a commission or compensation to any person, performing professional real estate activity who has not first secured a license under this chapter or is a nonresident real estate broker not licensed in this state, except as permitted by ORS 696.290.

(22) Failed to deliver within a reasonable time a completed copy of any purchase agreement or offer to buy or sell real estate to the purchaser and to the seller.

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

(24) If, as an associate real estate broker or real estate salesperson, failed to place, as soon after receipt as practicable, in the custody of the real estate broker with which the licensee is licensed, any deposit money or other money or funds entrusted to the licensee by any person dealing with the licensee as a representative of such licensed broker.

(25) Procured or attempted to procure, a real estate license for personal use or use of any associate broker or salesperson by fraud, misrepresentation, or deceit or by making any material misstatement of fact in an application for a real estate license.

(26) Entered a plea of nolo contendere, or has been found guilty of, or been convicted of, a felony or misdemeanor substantially related to the licensee's trustworthiness or competence to engage in professional real estate activity.

(27) Knowingly authorized, directed or aided in the publication, advertisement, distribution or circulation of any material false statement or misrepresentation concerning the licensee's business or any real estate offered for sale.

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

(29) If, as a broker licensee, failed to exercise supervision over the activities of real estate salespersons, associate real estate brokers or employes. For the purposes of this subsection, "supervision" means that management by a broker that is reasonably designed and implemented to result in compliance by the broker's real estate salespersons, associate real estate brokers and employes with ORS 696.010 to 696.490 and 696.710 to 696.730 and any administrative rules adopted thereunder.

(30) Violated any of the terms, conditions, restrictions and limitations contained in any order granting a limited license.

(31) Any act or conduct, whether of the same or of a different character specified in this section which constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishon-

est, fraudulent or improper dealings. [1975 c.746 §23 (enacted in lieu of 696.300), 1977 c.649 §41; 1981 c.617 §14]

696.310 Intracompany supervision and control; effect of revocation on licensed associates. (1) All designated real estate brokers of a real estate organization shall have equal supervisory control over and shall be equally responsible for the conduct of other designated real estate brokers, or the associate real estate brokers or real estate salespersons licensed with such real estate organization, or other employes employed by such real estate organization.

(2) The real estate organization may, by appropriate internal action or agreement, provide for the management and control over the activities of the real estate organization and delegate the area of management functions or responsibilities as among the designated brokers of such real estate organization. Such internal action or agreement shall not, however, dilute the equal responsibility of each designated broker under subsection (1) of this section.

(3) An act constituting a violation of any of the provisions of ORS 696.010 to 696.490 and 696.710 to 696.730 or of any rule adopted thereunder by any licensee is not cause for the suspension or revocation of a license of any real estate licensee associated with or engaged by such licensee, unless it appears to the satisfaction of the commissioner that such associated or engaged real estate licensee had guilty knowledge of the act. A course of dealing shown to have been persistently and consistently followed by any real estate licensee shall constitute prima facie evidence of such knowledge upon the part of any real estate licensee associated with or engaged by that licensee. In the event of the revocation or suspension of the license issued to any member of a partnership or to any officer of an association or corporation, the license issued to such partnership, association or corporation shall be revoked by the commissioner, unless, within a time fixed by the commissioner, where a partnership, the member whose license has been suspended or revoked agrees to and does terminate any control over the professional real estate activity of the partnership during the member's suspension period or until the member's license is reinstated, or, where an association or corporation, the officer whose license has been suspended or revoked agrees to and does terminate any control over the professional real estate activity of the association or corporation during the officer's suspension period or until the officer's license is reinstated. However, such member or officer may retain an ownership interest in the partnership, association or corporation during and may reassume control over the professional real estate activity of the partnership, association or corporation following termination of the member's or officer's suspension or the reinstatement of the member's or officer's license. [Amended by 1977 c.649 §42; 1981 c.617 §15]

696.315 Licensee not to permit person whose license suspended or revoked to engage in activity with or on behalf of licensee. No real estate licensee shall knowingly permit any person whose license has been revoked or suspended to engage in professional real estate activity, with or on behalf of the licensee. [1977 c.649 §7; 1981 c 617 §15a]

696.320 Effect of suspension or revocation of broker license on salespersons and associate brokers. (1) The suspension or revocation of a real estate broker's license shall suspend automatically every license of salespersons and associate brokers engaged by the broker pending a change of principal real estate broker or the issuance of a new license. Such new license shall be issued without charge, if granted during the same license period in which the original license was granted, upon the receipt of the salesperson's or associate broker's original license.

(2) Subsection (1) of this section does not apply to the licenses of a real estate organization if the suspended or revoked designated real estate broker is replaced by the organization prior to the effective date of the suspension or revocation. [Amended by 1969 c.674 §18; 1975 c.746 §24; 1977 c.649 §43; 1981 c.617 §15b]

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

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

696.340 [Repealed by 1971 c.734 §21]

696.345 Form of compensated appraisal; when appraisal may be compensated. (1) Where a specific fee is solicited, charged or collected for a real estate appraisal by any real estate licensee authorized by the Oregon Real Estate License Law to provide such, the real estate appraisal so furnished must either be in narrative report form disclosing the supporting analysis and factual data, or the real estate licensee must have the supporting data and form of analysis within the office file for the particular appraisal assignment.

(2) Notwithstanding any provisions of the Oregon Real Estate License Law to the contrary, an associate real estate broker or real estate salesperson licensed to make real estate appraisals may receive compensation directly from clients for a real estate appraisal, if:

(a) The real estate broker with whom, or real estate organization with which such real estate licensee is licensed has filed with the commissioner written approval of such practice; and

(b) The licensee in each instance notifies the subject real estate broker or real estate organization in writing of all such activity engaged in, and fees charged and collected. [1977 c.649 §4]

696.350 [Repealed by 1971 c.734 §21]

696.355 Advance fee as trust fund; deposit; regulation of advance fees. (1) Any real estate broker who contracts for or collects an advance fee from any other person, referred to in this section as the "principal," shall deposit any such amount or amounts, when collected in a trust account with a bank or other recognized depository. Such funds are trust funds and not the funds of the agent. Amounts may be withdrawn therefrom for the benefit of the agent only when actually expended for the benefit of the principal or five days after the verified accounts mentioned in this section have been mailed to the principal.

(2) The commissioner may issue such rules as the commissioner deems necessary to regulate the method of accounting, and to accomplish the purpose of the provisions of this subsection relating to advance fees including, but not limited to, establishing forms for and determining information to be included in such accountings. Each principal shall be furnished a verified copy of such accountings not less frequently than once each calendar quarter and when the contract has been completely performed by the licensee. The Real Estate Commissioner shall be furnished a verified copy of any account or all accounts on demand therefor. [1977 c.649 §6]

696.359 Authorization for another to control broker's business; commissioner's approval; duration; extension; filing. (1) A real estate broker or designated real estate broker, for a period not to exceed 45 days, may authorize an associate real estate broker or real estate salesperson, licensed with such broker, or another real estate broker or designated broker not licensed with the authorizing broker, to control and supervise the professional real estate activity conducted by or through the authorizing broker during the absence of the authorizing broker. The commissioner, upon written request by the broker, may grant an extension of the 45-day period. Both the authorizing broker and the broker, associate broker or salesperson authorized to act in the absence of the authorizing broker shall have joint responsibility for all professional real estate activity conducted during the authorizing broker's absence.

(2) A copy of the written authorization, signed by the authorizing broker and the broker, associate broker or salesperson accepting supervisory responsibility under subsection (1) of this section, shall be filed with the commissioner prior to the effective date of such authorization. The commissioner may allow a later filing for good cause shown. [1981 c 617 §39]

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

696.363 Relationship between licensees as independent contractors or employer and employe. Nothing contained in ORS 696.010 to 696.495 and 696.710 to 696.785 and 696.990 prevents the establishment of an independent contractor relationship between real estate licensees or requires the establishment of an employer-employe relationship. [1981 c.617 §40]

(Administration)

696.375 Real Estate Division; Real Estate Commissioner; salary and bond of commissioner. (1) The Real Estate Division is established within the Department of Commerce.

(2) The Real Estate Division shall be under the supervision and control of an administrator who shall be known as the Real Estate Commissioner. The Director of Commerce shall, with the approval of the Governor, appoint the Real Estate Commissioner who shall have been, before the date of appointment, for five years a real estate broker actively engaged in business as such in this state or a person who has been actively connected with the administration of the Real Estate Division or its predecessor, the Oregon Real Estate Department for at least one year. The commissioner shall hold office at the pleasure of the Director of Commerce and shall be responsible for the performance of the duties imposed upon the division. The Real Estate Commissioner shall receive such salary as may be provided by law.

(3) Before entering upon the duties of office the commissioner shall give to the state a fidelity bond with one or more corporate sureties authorized to do business in this state in the sum fixed by the Director of Commerce. The premium for the bond shall be paid by the division. [1963 c 580 §§40, 41, 1974 s.s. c.25 §1; 1975 c.746 §25]

696.380 [Repealed by 1963 c.580 §103]

696.385 Power of division; rulemaking procedures. The division shall have the power to:

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

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

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

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

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

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

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

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

696.390 [Repealed by 1963 c.580 §103]

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

(1) For the purpose of administration, with the approval of the Director of Commerce, organize and reorganize, as necessary, the division in the manner that the commissioner deems necessary to properly conduct the work of the division.

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

(3) Require a fidelity bond of any officer or employe of the division who has charge of, handles or has access to any state money or property, and who is not otherwise required by law to give a bond. The amounts of the bonds shall be fixed by the commissioner, except as otherwise provided by law, and the sureties shall be approved by the commissioner. The division shall pay the premium on the bonds. [1963 c.580 §42; 1977 c.649 §45]

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

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

696.400 [Repealed by 1963 c.580 §103]

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

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

696.410 [Repealed by 1963 c.580 §103]

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

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

696.420 [Repealed by 1963 c.580 §103]

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

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

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

696.430 Records of commissioner as evidence; records open to inspection. Copies of all records and papers in the office of the commissioner duly certified and authenticated by the seal of the commissioner shall be received in evidence in all courts equally and with like effect as the original. All records kept in the office of the commissioner under authority of ORS 696.010 to 696.490 and 696.710 to 696.730 shall be open to public inspection under such reasonable rules and regulations as shall be prescribed by the commissioner.

696.435 Printed matter to be furnished licensees. Single copies of matter printed and circulated as authorized by ORS 696.385, except replacement pages or parts therefor, may be furnished free of charge to each licensee. Additional copies and any replacement pages or parts furnished to licensees or any copy furnished to any other person, except one required by law to be furnished, are to be sold for a charge set by the commissioner. The charge is to be set at a level reasonably estimated to be sufficient to recover the cost of printing and distributing copies to be sold. [1963 c.546 §5, 1965 c.617 §6]

696.440 [Repealed by 1963 c.580 §103]

696.445 Advancement of education and research; Oregon Real Estate News Journal; content as to disciplinary actions. (1) Pursuant to ORS 696.385 (2), the division 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 696.490.

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

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

696.450 [Repealed by 1963 c.580 §103]

696.460 [Repealed by 1963 c.580 §103]

696.470 [Repealed by 1963 c.580 §103]

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

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

(2) The moneys in the Real Estate Account are continuously appropriated for the payment of the expenses of the division in carrying out the provisions of ORS 92.305 to 92.495, 94.004 to 94.480, 94.803, 94.807 to 94.945, 94.991 and 696.010 to 696.785. [Amended by 1955 c 457 §2; 1961 c.309 §4; 1963 c.440 §16; 1963 c.580 §50; 1965 c.617 §7; 1971 c.293 §2; 1974 s s. c 26 §1; 1977 c.41 §2; 1981 c.85 §11; 1983 c.17 §30; 1983 c.530 §53; 1985 c 565 §117]

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

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

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

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

ESCROWS AND ESCROW AGENTS

(Generally)

696.505 Definitions for ORS 696.505 to 696.585. As used in ORS 696.505 to 696.585, unless the context requires otherwise:

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

(2) "Escrow" means any transaction wherein any written instrument, money, evidence of title to real or personal property or other thing of value is delivered to a person not otherwise having any right, title or interest therein for the purpose of effecting the sale, transfer, encumbrance or lease of real or personal property, to be held by that person as a neutral third party until the happening of a specified event or the performance of a prescribed condition, when it is then to be delivered by such person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, bailor, or any agent or employe of any of them pursuant to the written instructions of the principals to the transaction.

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

(4) "Real estate closing escrow" means an escrow where the escrow fee is paid in whole or in part by the principals to a real estate transaction and wherein the unpaid purchase price is delivered to an escrow agent for disbursal pursuant to the written instructions of the principals to the transaction simultaneously on the transfer of specified title to the real property. [1963 c.440 §1; 1977 c.351 §4; 1981 c.617 §20]

696.508 Legislative finding; short title. (1) The Legislative Assembly finds the activity of escrow agents in handling large sums of money and important rights of clients to be of public concern. In order to permit uniform and equitable regulation of all escrow agents and to improve the standards of escrow conduct, the provisions of ORS 696.505 to 696.585 shall be construed to grant the commissioner authority to protect the public.

(2) ORS 696.505 to 696.585 may be cited as the Oregon Escrow Law. [1977 c 351 §2]

696.510 [Repealed by 1961 c.309 §6]

(Licensing)

696.511 License required; application; issuance. (1) No person directly or indirectly shall engage in or carry on, or purport to engage in or carry on the business or act in the capacity of an escrow agent without first obtaining a license as an escrow agent under the provisions of ORS 696.505 to 696.585.

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

in the information contained in the application or in the ownership of the business must be immediately filed with the commissioner. If there are changes in elected corporation officers serving the corporation principally within this state, notification of those changes together with certified copies of the minutes of the directors' meeting at which the new officers were elected shall be filed with the commissioner.

(3) The commissioner may require additional information the commissioner considers necessary in connection with any application for a license under this section, including but not limited to verified current financial statements of the escrow agent and the escrow agent's principals, partners, officers, trustees or directors.

(4) The commissioner shall examine the application for a license and, if satisfied that the applicant should not be refused a license under ORS 696.535, the commissioner shall issue the license. [1963 c 440 §§4, 17; 1975 c.746 §29; 1977 c.351 §5, 1981 c.617 §21]

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

696.520 Application of ORS 696.505 to 696.585. The provisions of ORS 696.505 to 696.585 do not apply to and the term "escrow agent" does not include:

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

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

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

(4) Any person doing any of the acts specified in ORS 696.505 (2) under order of any court.

(5) Any real estate broker licensed under ORS 696.010 to 696.490 who performs the closing for the principals in a real estate transaction handled by the broker, if the principals are not charged a separate fee for escrow services. [1963 c.440 §2; 1967 c.359 §701; 1971 c.398 §1; 1977 c.351 §6; 1981 c.617 §22]

696.523 Application of ORS 696.505 to 696.585 to title insurance activities. The provisions of ORS 696.505 to 696.585 apply to those escrow activities of a title insurance company, or an agent of a title insurance company which prepares abstracts or makes searches of title which are used as a basis for the insurance of titles by a title insurance company. [1971 c.398 §3; 1977 c.351 §7]

696.525 Bond for escrow agents. (1) At the time of filing an application for an escrow agent's license, the applicant shall deposit with the commissioner a corporate surety bond running to the State of Oregon, executed by a surety company satisfactory to the commissioner, in the sum of $25,000, the provisions to be in the form substantially as follows:

Know All Persons by These Presents, That we, _____ as principal, and _____, a corporation, qualified and authorized to do business in the State of Oregon as surety, are held and firmly bound unto the State of Oregon for the use and benefit of any interested person, in the sum of $25,000, lawful money of the United States of America, to be paid to the State of Oregon for the use and benefit aforesaid, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

The condition of the above obligation is such that: Whereas the above-named principal has made application for registration as an escrow agent within the meaning of ORS 696.505 to 696.585 and is required by the provisions of ORS 696.505 to 696.585 to furnish a bond in the sum above named, conditioned as herein set forth:

Now, therefore, if the principal, the principal's agents and employes, shall strictly, honestly and faithfully comply with the provisions of ORS 696.505 to 696.585, and shall pay all actual damages suffered by any person by reason of the violation of any of the provisions of ORS 696.505 to 696.585, now or hereafter enacted, or by reason of any fraud, dishonesty, misrepresentation or concealment of material facts growing out of any transaction governed by the provisions of ORS 696.505 to 696.585, then this obligation shall be void; otherwise to remain in full force and effect.

This bond shall become effective on the ____day of _____, 19__, and shall remain in force until the surety is released from liability by the commissioner, or until this bond is canceled by the surety. The surety may cancel this bond and be relieved of further liability hereunder by

giving 30 days' written notice to the principal and to the commissioner.

This bond shall be one continuing obligation, and the liability of the surety for the aggregate of any and all claims which may arise hereunder shall in no event exceed the amount of the penalty hereof.

In witness whereof, the seal and signature of the principal hereto is affixed, and the corporate seal and the name of the surety hereto is affixed and attested by its duly authorized officers at _____, Oregon, this _____day of _____, 19_____.

_____ (Seal)

Principal

_____ (Seal)

Surety

By _____

_____

(2) The surety bond required in subsection (1) of this section, or deposit required in ORS 696.527, shall entitle the escrow agent, when properly licensed, to operate from one business location. In order to operate from additional office locations, a branch office license shall first be obtained. The escrow agent shall accompany each application for a branch office license with evidence that the liability amount of the required surety bond, or the amount of deposit or combination thereof has been increased in a sum equal to $10,000 for each additional business location. However, no escrow agent shall be required to furnish a surety bond, deposit or combination thereof greater than $200,000. [1963 c.440 §5; 1971 c.398 §4; 1977 c 351 §8; 1981 c 617 §23; 1983 c 258 §9]

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

(a) Cash;

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

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

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

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

(3) The commissioner, by order, shall have discretion to authorize the State Treasurer to use such deposit, as follows:

(a) To satisfy any final judgment entered against the escrow agent for actual damages suffered by any person by reason of the violation of any of the provisions of ORS 696.505 to 696.585, now or hereafter enacted, or by reason of any fraud, dishonesty, misrepresentation or concealment of material fact growing out of any escrow transaction;

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

(c) To release any or all of such deposit to the escrow agent when, in the opinion of the commissioner, such deposit is no longer necessary to protect the public.

(4) The commissioner shall waive the requirement of the surety bond or deposit for any escrow agent who demonstrates to the commissioner's satisfaction that the capital and surplus or net worth, of such escrow agent as of the end of the previous business accounting year of the agent is equal to, or greater than, the average month-end balance of custodial funds held by such agent during the previous business accounting year. [1977 c 351 §3; 1981 c.617 §24]

696.530 Renewal of license; fees. (1) The escrow agent's license shall expire June 30 next after the date of issuance if it is not renewed by July 1 of such year. A license may be renewed by filing a renewal application in writing, verified by the applicant and in the form prescribed by the commissioner and paying the annual license fee for the next succeeding fiscal year.

(2) The filing fees shall be:

(a) For filing an original or a renewal application, $200 for the principal office and $100 for each branch office.

(b) For filing an application for a duplicate copy of any license, upon satisfactory showing of such loss, the sum of $25.

(3) If the effective period of the license applied for is less than 12 months by reason of the statutorily required expiration date, the required license fee shall be prorated to represent the larger of:

(a) One-twelfth of the full fee for each month of the license period to the expiration date, rounded to the nearest dollar; or

(b) 25 percent of the full fee, rounded to the nearest dollar. [1963 c.440 §6; 1977 c.351 §9; 1977 c.873 §19; 1981 c.617 §25]

696.535 Grounds for refusal, suspension or revocation of licenses; records; inspection. (1) The commissioner may refuse to license any escrow agent, or may suspend or revoke any license, by entering an order to that effect, with the commissioner's findings in respect thereto, if upon examination into the affairs of the applicant or licensee, either in the performance of routine duties, or upon field examination, or upon hearing, it is determined that the applicant or licensee:

(a) Has, under generally accepted accounting principles, a deficit net worth in excess of the escrow agent's outstanding bond, in lieu deposits or average monthly custodial funds;

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

(c) Does not conduct business in accordance with law, or has violated any provisions of ORS 696.505 to 696.585;

(d) Has committed fraud in connection with any transaction governed by ORS 696.505 to 696.585;

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

(f) Has knowingly made or caused to be made to the commissioner any false representation of a material fact, or has suppressed or withheld from the commissioner any information which the applicant or licensee possesses, and which if submitted would have disqualified the applicant or licensee from original or renewed licensing under ORS 696.505 to 696.585;

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

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

(i) Has refused to permit an examination by the commissioner of the escrow agent's books and affairs, or has refused or failed, within a reasonable time, to furnish any information, records or files or make any report that may be required by the commissioner under the provisions of ORS 696.505 to 696.585; or

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

(2) It is sufficient cause for refusal or revocation of a license in case of a partnership or corporation or any unincorporated association, if any member of a partnership or any officer or director of the corporation or association has been guilty of any act or omission which would be cause for refusing or revoking the registration of an individual agent.

(3) All escrow agents shall keep and maintain at all times in their principal places of business, complete and suitable records of all escrow transactions made by them and of their business, including but not limited to books, papers and data clearly reflecting the financial condition of the business of such agents. Such records shall at all times be open for inspection by the commissioner or the commissioner's authorized representatives. [1963 c.440 §7; 1971 c.734 §159; 1977 c 351 §10, 1981 c.617 §26; 1985 c 399 §3]

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

696.541 Authority of commissioner over escrow agents. (1) The commissioner shall have general supervision and control over all escrow agents doing business in this state. Subject to ORS 183.310 to 183.550, the commissioner may adopt such rules as reasonably necessary for the enforcement of ORS 696.505 to 696.585.

(2) All such escrow agents shall be subject to audits or examinations by the commissioner, or the commissioner's authorized deputies at any time the commissioner considers advisable. The commissioner may collect from each escrow agent the reasonable expenses of such audit or examination.

(3) The provisions of this section and of any other section relating to the examination of the affairs of an escrow agent shall extend to an escrow agent whose license has expired or been revoked or suspended, if in the judgment of the commissioner, such agent has violated any condition of the license or any provisions of ORS 696.505 to 696.585. [1977 c.351 §12 (enacted in lieu of 696.540); 1981 c.617 §27; 1985 c.399 §4]

(Enforcement)

696.545 Investigation; injunction; jurisdiction. (1) The commissioner may investigate either upon complaint or otherwise whenever it appears that an escrow agent has violated ORS 696.505 to 696.585 or that any person is

engaging in the escrow business without being licensed under the provisions of ORS 696.505 to 696.585.

(2) If upon investigation it appears that such agent is so conducting business or an unlicensed person is engaged in the escrow business the commissioner may, in addition to any other remedies, bring action in the name and on behalf of the State of Oregon against such person and any other person acting in violation of ORS 696.505 to 696.585, to enjoin such person and such other person from continuing any act in violation of ORS 696.505 to 696.585.

(3) The circuit court of any county of this state is vested with jurisdiction to restrain illegal practices or transactions and may grant injunctions to prevent and restrain such illegal practices or transactions, in addition to the penalties and other remedies provided in ORS 696.505 to 696.585. The court shall have power, during the pendency of the proceedings before it to issue such preliminary restraining orders as may appear to be just and proper; and the findings of the commissioner shall be deemed to be prima facie evidence and sufficient ground, in the discretion of the court, for the issue ex parte of a preliminary restraining order.

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

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

696.555 Commissioner to take possession of property and assets of escrow agent when assets or capital impaired; receiver may be appointed. (1) When the commissioner ascertains by examination or otherwise that the assets or capital of any agent are impaired, as described in ORS 696.535 (1)(a), the commissioner may immediately take possession of all the property, business and assets of the agent which are located in this state and retain possession of them pending the further proceedings specified in this section. Should the board of directors or any officer or person in charge of the offices of such agent refuse to permit the commissioner to take possession, the commissioner shall communicate the fact to the Attorney General, whereupon it shall become the duty of the Attorney General at once to institute such proceedings as may be necessary to place the commissioner in immediate possession of the property of the agent. The commissioner thereupon shall make or have made an inventory of the assets and known liabilities of the agent. The commissioner shall file one copy of the inventory in the commissioner's office and one copy in the office of the clerk of the circuit court of the county in which the principal office of the agent is located, and shall mail one copy to each stockholder of the agent at the stockholder's last-known address, if by the exercise of reasonable diligence it can be determined. The clerk of the court with whom the copy of the inventory is filed shall file it as any other case or proceeding pending in the court and shall give it a docket number.

(2) The officers, directors or stockholders of the agent may have 60 days from the date when the commissioner takes possession of the property, business and assets, to make good any deficit which may exist. At the expiration of this time, if the deficiency in assets or capital has not been made good, the commissioner may apply to the court for a receiver to be appointed, other than the commissioner or any officer or employe of the Real Estate Division, who shall proceed to liquidate the assets of the agent which are located in this state in the same manner as now provided by law for liquidation of a private corporation in receivership. The inventory made by the commissioner and all claims filed by creditors shall be open at all reasonable times for inspection and any action taken by the receiver upon any of the claims shall be subject to the approval of the court before whom the cause is pending. The expenses of the receiver and compensation of counsel, as well as all expenditures required in the liquidation proceedings, shall be fixed by the court, and shall be paid out of the funds in the hands of the receiver. [1963 c.440 §10(3), (4); 1975 c.746 §30; 1981 c.617 §29]

696.560 [1963 c 440 §11; 1975 c.746 §31; 1981 c.617 §30, 1985 c.589 §5; renumbered 696 578]

696.565 [1963 c.440 §12, renumbered 696 579]

696.570 Hearings procedure under ORS 696.505 to 696.585; subpena; depositions. (1) All hearings before the commissioner or the commissioner's authorized representative conducted under the authority of ORS 696.505 to 696.585 shall be conducted in accordance with the provisions of ORS 183.310 to 183.550.

(2) The commissioner, or anyone authorized by the commissioner, shall have the power to subpena witnesses and administer oaths in con-

nection with hearings in the enforcement of ORS 696.505 to 696.585. [1963 c 440 §13; 1981 c 617 §30a]

696.575 Civil or criminal actions not limited by ORS 696.505 to 696.585. Nothing in ORS 696.505 to 696.585 shall limit any statutory or common law right of any person to bring any action in any court for any act involved in the transaction of the escrow business or the right of the state to punish any person for any violation of any law. [1963 c.440 §14]

696.577 Commissioner's order against unlicensed agent. Whenever the commissioner finds that any person is offering to engage in or engaging in the business of an escrow agent without a license as an escrow agent as required under ORS 696.505 to 696.585, the commissioner may order the person to cease and desist from offering to engage in or engaging in the business of an escrow agent. Any proceeding under this section is subject to the requirements of ORS 183.310 to 183.550. [1981 c.617 §36]

(Escrow Property)

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

(2) An escrow agent shall notify the commissioner in writing of the opening and closing of an account described in subsection (1) of this section within 10 days following the date of opening and closing. The notification shall include the licensed name of the escrow agent, the name of the bank, the number of each account opened or closed, the designation for each account opened or closed and a continuing authorization for the commissioner or the commissioner's authorized representative to examine the account at such times as the commissioner may direct. [Formerly 696.560]

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

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

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

696.581 Written escrow instructions or agreement required; statement; instructions containing blank prohibited. (1) An escrow agent may not accept funds, property or documents in any escrow transaction without dated, written escrow instructions from the principals to the transaction or a dated executed agreement in writing between the principals to the transaction.

(2) An escrow agent may not close an escrow or disburse any funds or property in an escrow without obtaining dated, separate escrow instructions in writing from the principals to the transaction adequate to administer and close the transaction or, in the case of disbursement, to disburse the funds and property.

(3) The following statement or its substantial equivalent shall appear on or be attached to all written escrow instructions prepared by an escrow agent for signature of the principals to a transaction. The statement shall be in at least 10-point bold type. The statement shall either appear immediately above the signatures of the principals or be separately initialed by the principals:

"It is understood by the parties signing the above or attached instructions that the instructions are the complete instructions between this firm as an escrow agent and you as a principal to the escrow transaction. These instructions may not include all the terms of the agreement which is the subject of this escrow. Read these instructions carefully, and do not sign them unless they are acceptable to you."

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(4) An escrow agent may not solicit or accept any original, amended or supplemental escrow instructions containing any blank to be filled in after signing. An escrow agent shall not allow any alteration of original, amended or supplemental escrow instructions, unless the alteration is signed or initialed by all principals who signed or initialed the instructions before the alteration. [1985 c 399 §2]

696.582 Escrow agent to hold certain commissions; conditions; notice of demand; disbursement of money; copy of notice to principal. (1) An escrow agent shall hold as

provided in subsection (3) of this section, the amount of money or other property agreed to as a commission in a written real estate broker's commission agreement, if the escrow agent has at the office at which the escrow is being closed, before the date of closing:

(a) A written notice of demand in substantially the form set out in subsection (2) of this section; and

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

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

_____Notice of Demand for Real Estate Commission

To:_____
(Name of Escrow Company)

Re:_____
(Names of Principals to Transaction)

Your Escrow Number: _____

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

_____
(Name of Broker)

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

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

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

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

(4) At the time of filing a notice of demand with an escrow agent under subsection (1) of this section, the real estate broker filing the notice shall deliver a copy of the notice to the principal identified in the notice. [1985 c.449 §2]

(Civil Penalties)

696.585 Civil penalties. (1) Any person who violates any provision of ORS 696.505 to 696.545, or any lawful rule or final order of the commissioner or any final judgment or decree made by any court upon application of the commissioner, may be required to forfeit and pay to the General Fund of the State Treasury, a civil penalty in an amount determined by the commissioner of not more than $500 for each offense. Each violation shall be deemed a separate offense.

(2) In addition to the civil penalty set forth in subsection (1) of this section, any person who violates any provision of ORS 696.505 to 696.585, any lawful rule or final order of the commissioner or any final judgment or decree made by a court upon application to the commissioner, may be required to forfeit and pay to the General Fund of the State Treasury, a civil penalty in an amount determined by the commissioner but not to exceed the amount by which such person profited in any transaction which violates any such provision, rule, order, judgment or decree.

(3) Assessment of a civil penalty under this section is subject to ORS 183.310 to 183.550. Unless the penalty is paid within 20 days after the order becomes final, the order shall constitute a judgment and may be recorded in accordance with the provisions of ORS 18.320 to 18.370. The penalty provided in the order so recorded becomes a lien upon the title to any interest in real property in the county owned by the person against whom the order is entered. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(4) The provisions of this section are in addition to and not in lieu of any other enforcement provision contained in ORS 696.505 to 696.585. [1975 c.746 §32; 1981 c 617 §31; 1983 c.696 §26a]

696.610 [Repealed by 1981 c.617 §41]

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

696.630 [Repealed by 1981 c.617 §41]

696.640 [Repealed by 1981 c.617 §41]

ACTIONS AND REMEDIES

696.710 Necessity of alleging license in action to collect compensation. (1) No person engaged in the business of, or acting in the capacity of, a real estate broker or appraiser within this state shall bring or maintain any

action in the courts for the collection of compensation without alleging and proving that the person was a duly licensed real estate broker or appraiser at the time the alleged cause of action arose.

(2) No action in the courts for collection of compensation for an individual engaged in the business of, or acting in the capacity of a real estate salesperson or associate broker may be brought or maintained except by the duly licensed real estate broker with whom the salesperson or associate broker was engaged at the time the alleged cause of action arose. [Amended by 1981 c.617 §32]

696.720 Remedies are concurrent. The remedies provided for in ORS 696.010 to 696.490 and 696.710 to 696.730 are in addition to and not exclusive of any other remedies provided by law.

696.730 Jurisdiction of courts for violations; revoking license upon conviction. Any court of competent jurisdiction, including justices of the peace, has full power to try any violation of ORS 696.010 to 696.490 and 696.710 to 696.730, and, upon conviction, the court may, at its discretion and in addition to the other penalties imposed, revoke the license of the person or persons convicted.

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

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

696.775 Authority of commissioner when license lapsed, suspended or surrendered. The lapsing or suspension of a license by operation of law or by order of the commissioner or decision of a court of law, or the voluntary surrender of a license by a licensee shall not deprive the commissioner of jurisdiction to proceed with any investigation of or any action or disciplinary proceedings against such licensee, or to revise or render null and void an order suspending or revoking such license. [1977 c 649 §3; 1981 c.617 §32a]

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

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

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

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

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

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

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

CRIMINAL PENALTIES

696.990 Criminal penalties. (1) Violation of any provision of ORS 696.010 to 696.165, 696.169, 696.180 to 696.226, 696.240 to

696.375, 696.395 to 696.435, 696.490 and 696.710 to 696.730 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 696.165, 696.169, 696.180 to 696.226, 696.240 to 696.375, 696.395 to 696.435, 696.490 and 696.710 to 696.730 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 696.585 is a Class A misdemeanor. [Subsection (3) enacted as 1963 c.440 §18, 1977 c.649 §50; 1981 c 617 §34]