

**SENATE AMENDMENTS TO
A-ENGROSSED HOUSE BILL 2604
(INCLUDING AMENDMENTS TO RESOLVE CONFLICTS)**

By COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT

June 13

1 On page 4 of the printed A-engrossed bill, line 2, delete the first "of".

2 After line 4, insert:

3 **"SECTION 2a. If House Bill 2096 becomes law, section 2 of this 2005 Act (amending ORS**
4 **696.241) is repealed and ORS 696.241, as amended by section 18, chapter 116, Oregon Laws 2005**
5 **(Enrolled House Bill 2096), is amended to read:**

6 "696.241. (1) Each sole practitioner and each principal real estate broker shall maintain in this
7 state one or more separate bank accounts that shall be designated a Clients' Trust Account in which
8 all trust funds received or handled by the sole practitioner or broker and the real estate licensees
9 subject to the supervision of the broker on behalf of any other person shall be deposited unless,
10 pursuant to written agreement of all parties having an interest in the trust funds, the trust funds
11 are immediately placed in a neutral escrow depository in this state.

12 "(2) Each sole practitioner or principal real estate broker shall file with the Real Estate Agency,
13 on forms approved by the Real Estate Commissioner, a statement identifying the name of the bank
14 or banks, account number or account numbers, and name of account or accounts for each Clients'
15 Trust Account maintained.

16 "(3) Each sole practitioner or principal real estate broker shall authorize the agency, by a form
17 approved by the commissioner, to examine any Clients' Trust Account, by a duly authorized repre-
18 sentative of the agency. The examination shall be made at such times as the commissioner may di-
19 rect.

20 "(4) If a sole practitioner or principal real estate broker maintains a separate Clients' Trust
21 Account in a branch office, a separate bookkeeping system shall be maintained in the branch office,
22 provided a copy of the records required by the provisions of ORS 696.280 are maintained in the main
23 office of the sole practitioner or broker.

24 "(5) Trust funds received by a sole practitioner or principal real estate broker may be placed
25 by the sole practitioner or broker in a federally insured interest-bearing bank account, designated
26 a Clients' Trust Account, but only with the prior written approval of all parties having an interest
27 in the trust funds. The earnings of such interest-bearing account shall not inure to the benefit of the
28 sole practitioner or principal real estate broker unless expressly approved in writing before deposit
29 of the trust funds by all parties having an interest in the trust funds.

30 "(6) With prior written notice to all parties who have an interest in the trust funds, a sole
31 practitioner or principal real estate broker may place trust funds received by the sole practitioner
32 or principal real estate broker in a federally insured interest-bearing bank account that is desig-
33 nated a Clients' Trust Account and the earnings of which inure to the benefit of a public benefit
34 corporation, as defined in ORS 65.001, for distribution to organizations and individuals for first-time

1 homebuying assistance and for development of affordable housing. The sole practitioner or principal
2 real estate broker shall select a qualified public benefit corporation to receive the interest earnings.

3 “(7) A sole practitioner or principal real estate broker is not entitled to any part of any interest
4 earnings on trust funds deposited under subsection (5) of this section or to any part of the earnest
5 money or other money paid to the sole practitioner or broker in connection with any real estate
6 transaction as part or all of the sole practitioner’s or broker’s commission or fee until the trans-
7 action has been completed or terminated. The question of the disposition of forfeited earnest money
8 shall be negotiated between the sole practitioner or principal real estate broker and the seller at
9 the time of executing any listing agreement or earnest money agreement. The result of such nego-
10 tiation shall be filled in on the agreement form at the time of signing by the seller and either sep-
11 arately initialed by the seller or placed immediately above the signature of the seller.

12 “(8) Clients’ Trust Account funds are not subject to execution or attachment on any claim
13 against a sole practitioner or principal real estate broker.

14 “(9) No person shall knowingly keep or cause to be kept any funds or money in any bank under
15 the heading of Clients’ Trust Account or any other name designating such funds or money as be-
16 longing to the clients of any sole practitioner or principal real estate broker, except actual trust
17 funds deposited with the sole practitioner or broker.

18 **“(10) The agency by rule shall establish a procedure for disbursement of disputed funds from
19 a Clients’ Trust Account to the person who delivered the funds to the sole practitioner or
20 principal real estate broker. The procedure shall allow disbursement not more than 20 days after
21 a request is made for the disbursement. Any disbursement pursuant to the procedure does not affect
22 the claim of any other person to the funds.**

23 “[~~(10)~~] (11) The agency may provide by rules for other records to be maintained and for the
24 manner in which trust funds are deposited, held and disbursed.”.

25 On page 7, line 2, delete “gross negligence,”.

26 After line 9, insert:

27 “(15) Engaged in any conduct that is below the standard of care for the practice of professional
28 real estate activity in Oregon as established by the community of persons engaged in the practice
29 of professional real estate activity in Oregon.”.