

(Including Amendments to Resolve Conflicts)

B-Engrossed House Bill 2604

Ordered by the Senate June 13
Including House Amendments dated April 6 and Senate Amendments
dated June 13

Sponsored by Representative KITTS; Representatives HASS, SCOTT, Senators DECKERT, B STARR (at the request of Oregon Association of Realtors)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Modifies grounds for discipline of real estate licensee. Directs Real Estate Commissioner to adopt rules relating to investigation of complaints and providing for progressive discipline.

Allows broker associated with principal broker to create business organization for purpose of receiving commission payments.

Directs Real Estate Agency to establish procedure for disbursement of disputed funds from Clients' Trust Account to person who delivered funds to real estate broker or principal real estate broker.

Clarifies that real estate licensee does not have duty to investigate condition of property, legal status of property's title or owner's past conformance with law.

Provides that conduct constituting unlicensed professional real estate activity that results from failure of real estate licensee to renew license within time allowed by law constitutes single offense of unlicensed professional real estate activity for each 30-day period after expiration of license during which person engages in professional real estate activities.

A BILL FOR AN ACT

1
2 Relating to professional real estate activity; creating new provisions; and amending ORS 696.026,
3 696.241, 696.301, 696.805, 696.810 and 696.990.

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

5 **SECTION 1.** ORS 696.026 is amended to read:

6 696.026. (1) A real estate broker or principal real estate broker may conduct business under the
7 broker's name or may register a business name with the Real Estate Agency. Registering a business
8 name allows the real estate broker or principal real estate broker to conduct professional real estate
9 activity in the registered business name. The registered business name has no license standing in-
10 dependent of the broker registering the business.

11 (2) The agency by rule shall adopt a registration system for business names. The system shall
12 allow the registration of any branch office of either a real estate broker or a principal real estate
13 broker acting as a sole practitioner.

14 (3) A real estate broker or principal real estate broker operating under a business name regis-
15 tered by the broker need not be an owner or officer of any organization otherwise lawfully entitled
16 to use the registered business name or have an ownership interest in the registered name. However,
17 all professional real estate activity conducted by or on behalf of the broker must be conducted under
18 the business name registered by the broker.

19 (4) A real estate broker or principal real estate broker may register two or more business names
20 if the business names are for affiliated or subsidiary business organizations. If a real estate broker

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 or principal real estate broker registers the business names for two or more affiliated or subsidiary
2 business organizations, the broker may conduct professional real estate activity separately under
3 each business name. A real estate broker or principal real estate broker must supervise and control
4 the professional real estate activity conducted under the broker's name or registered business name.

5 (5) A real estate broker employed, engaged or supervised by a principal real estate broker for
6 required training and supervision by the principal real estate broker may have an ownership interest
7 in any business through which the principal broker conducts professional real estate activity, but
8 may not control or supervise the professional real estate activity of the principal broker and may
9 not interfere with or be responsible for the training and supervision of any other broker.

10 (6) A nonlicensed person may have an ownership interest in any business through which a real
11 estate broker or principal real estate broker engages in professional real estate activity, but may
12 not control or supervise the professional real estate activity of any real estate broker or principal
13 real estate broker licensed to control or supervise the professional real estate activity of such
14 business.

15 (7) A real estate business in which two or more real estate brokers engage in professional real
16 estate activity may not have two or more principal real estate brokers who are jointly responsible
17 for the supervision and control of the professional real estate activity conducted through the busi-
18 ness, unless the principal brokers enter into a written agreement and have written office policies
19 dividing control and supervision responsibilities.

20 (8) Two or more principal real estate brokers operating under the same registered business name
21 who have engaged one or more real estate brokers for training or supervision or who have super-
22 visory control over other principal real estate brokers may not be jointly responsible for the
23 supervision and control of the real estate brokers engaged by them or the other principal real estate
24 brokers under their supervision unless the principal brokers enter into a written agreement and
25 have written office policies dividing control and supervision responsibilities.

26 (9) Two or more principal real estate brokers operating under the same registered business name
27 who have engaged one or more real estate brokers to provide administrative or managerial services
28 may not be jointly responsible for supervision and control of the real estate brokers providing ad-
29 ministrative or managerial services unless the principal brokers enter into a written agreement and
30 have written office policies dividing the responsibilities for control and supervision.

31 (10) Two or more real estate brokers operating under the same registered business name who
32 do not exercise any administrative or supervisory control over one another are solely responsible
33 for their own professional real estate activity.

34 **(11) Notwithstanding any other provision of ORS 696.010 to 696.495, 696.600 to 696.785,**
35 **696.800 to 696.855, 696.990 and 696.995, a broker associated with a principal broker may create**
36 **a corporation, limited liability company, limited liability partnership or any other lawfully**
37 **constituted business organization for the purpose of receiving commission payments from**
38 **the principal broker. A business organization created under this subsection may not be li-**
39 **icensed under ORS 696.022 or conduct in its own name professional real estate activity re-**
40 **quiring a real estate license.**

41 **SECTION 2.** ORS 696.241 is amended to read:

42 696.241. (1) Each real estate broker who is a sole practitioner and each principal real estate
43 broker shall maintain in this state one or more separate bank accounts that shall be designated a
44 Clients' Trust Account in which all trust funds received or handled by the broker and the real estate
45 licensees subject to the supervision of the broker on behalf of any other person shall be deposited

1 unless, pursuant to written agreement of all parties having an interest in the trust funds, the trust
2 funds are immediately placed in a neutral escrow depository in this state.

3 (2) Each real estate broker or principal real estate broker shall file with the Real Estate
4 Agency, on forms approved by the Real Estate Commissioner, a statement identifying the name of
5 the bank or banks, account number or account numbers, and name of account or accounts for each
6 Clients' Trust Account maintained.

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

11 (4) If a real estate broker or principal real estate broker maintains a separate Clients' Trust
12 Account in a branch office, a separate bookkeeping system shall be maintained in the branch office,
13 provided a copy of the records required by the provisions of ORS 696.280 are maintained in the main
14 office of the broker.

15 (5) Trust funds received by a real estate broker or principal real estate broker may be placed
16 by the broker in a federally insured interest-bearing bank account, designated a Clients' Trust Ac-
17 count, but only with the prior written approval of all parties having an interest in the trust funds.
18 The earnings of such interest-bearing account shall not inure to the benefit of the real estate broker
19 or principal real estate broker unless expressly approved in writing before deposit of the trust funds
20 by all parties having an interest in the trust funds.

21 (6) With prior written notice to all parties who have an interest in the trust funds, a real estate
22 broker or principal real estate broker may place trust funds received by the real estate broker or
23 principal real estate broker in a federally insured interest-bearing bank account that is designated
24 a Clients' Trust Account and the earnings of which inure to the benefit of a public benefit corpo-
25 ration, as defined in ORS 65.001, for distribution to organizations and individuals for first-time
26 homebuying assistance and for development of affordable housing. The real estate broker or prin-
27 cipal real estate broker shall select a qualified public benefit corporation to receive the interest
28 earnings.

29 (7) A real estate broker or principal real estate broker is not entitled to any part of any interest
30 earnings on trust funds deposited under subsection (5) of this section or to any part of the earnest
31 money or other money paid to the broker in connection with any real estate transaction as part or
32 all of the broker's commission or fee until the transaction has been completed or terminated. The
33 question of the disposition of forfeited earnest money shall be negotiated between the real estate
34 broker or principal real estate broker and the seller at the time of executing any listing agreement
35 or earnest money agreement. The result of such negotiation shall be filled in on the agreement form
36 at the time of signing by the seller and either separately initialed by the seller or placed imme-
37 diately above the signature of the seller.

38 (8) Clients' Trust Account funds are not subject to execution or attachment on any claim against
39 a real estate broker or principal real estate broker.

40 (9) No person shall knowingly keep or cause to be kept any funds or money in any bank under
41 the heading of Clients' Trust Account or any other name designating such funds or money as be-
42 longing to the clients of any real estate broker or principal real estate broker, except actual trust
43 funds deposited with the broker.

44 **(10) The agency by rule shall establish a procedure for disbursement of disputed funds from**
45 **a Clients' Trust Account to the person who delivered the funds to the real estate broker or**

1 **principal real estate broker. The procedure shall allow disbursement not more than 20 days after**
2 **a request is made for the disbursement. Any disbursement pursuant to the procedure does not affect**
3 **the claim of any other person to the funds.**

4 [(10)] (11) The agency may provide by rules for other records to be maintained and for the
5 manner in which trust funds are deposited, held and disbursed.

6 **SECTION 2a. If House Bill 2096 becomes law, section 2 of this 2005 Act (amending ORS**
7 **696.241) is repealed and ORS 696.241, as amended by section 18, chapter 116, Oregon Laws 2005**
8 **(Enrolled House Bill 2096), is amended to read:**

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

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

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

23 (4) If a sole practitioner or principal real estate broker maintains a separate Clients' Trust Ac-
24 count in a branch office, a separate bookkeeping system shall be maintained in the branch office,
25 provided a copy of the records required by the provisions of ORS 696.280 are maintained in the main
26 office of the sole practitioner or broker.

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

33 (6) With prior written notice to all parties who have an interest in the trust funds, a sole
34 practitioner or principal real estate broker may place trust funds received by the sole practitioner
35 or principal real estate broker in a federally insured interest-bearing bank account that is desig-
36 nated a Clients' Trust Account and the earnings of which inure to the benefit of a public benefit
37 corporation, as defined in ORS 65.001, for distribution to organizations and individuals for first-time
38 homebuying assistance and for development of affordable housing. The sole practitioner or principal
39 real estate broker shall select a qualified public benefit corporation to receive the interest earnings.

40 (7) A sole practitioner or principal real estate broker is not entitled to any part of any interest
41 earnings on trust funds deposited under subsection (5) of this section or to any part of the earnest
42 money or other money paid to the sole practitioner or broker in connection with any real estate
43 transaction as part or all of the sole practitioner's or broker's commission or fee until the trans-
44 action has been completed or terminated. The question of the disposition of forfeited earnest money
45 shall be negotiated between the sole practitioner or principal real estate broker and the seller at

1 the time of executing any listing agreement or earnest money agreement. The result of such nego-
2 tiation shall be filled in on the agreement form at the time of signing by the seller and either sep-
3 arately initialed by the seller or placed immediately above the signature of the seller.

4 (8) Clients' Trust Account funds are not subject to execution or attachment on any claim against
5 a sole practitioner or principal real estate broker.

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

10 **(10) The agency by rule shall establish a procedure for disbursal of disputed funds from**
11 **a Clients' Trust Account to the person who delivered the funds to the sole practitioner or**
12 **principal real estate broker. The procedure shall allow disbursal not more than 20 days after**
13 **a request is made for the disbursal. Any disbursal pursuant to the procedure does not affect**
14 **the claim of any other person to the funds.**

15 [(10)] (11) The agency may provide by rules for other records to be maintained and for the
16 manner in which trust funds are deposited, held and disbursed.

17 **SECTION 3.** ORS 696.301 is amended to read:

18 696.301. **Subject to section 5 of this 2005 Act,** the Real Estate Commissioner may suspend or
19 revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issu-
20 ance or renewal of a license to an applicant who has done any of the following:

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

26 [(2) *Accepted a commission or other valuable consideration as a real estate licensee for the per-*
27 *formance of any professional real estate activity from any person, except the principal real estate broker*
28 *with whom the licensee is associated. Nothing in this subsection is intended to prevent a real estate*
29 *broker from directly compensating a licensed personal assistant if permitted by the terms, conditions*
30 *and requirements of a licensed personal assistant agreement under ORS 696.028.*]

31 [(3) *Represented or attempted to represent a principal real estate broker other than the principal*
32 *real estate broker with whom the real estate broker is associated.*]

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

36 [(5) *Disregarded or violated any provisions of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800*
37 *to 696.855 and 696.995.*]

38 [(6) *Knowingly or negligently authorized, directed, made, printed, distributed, circulated or pub-*
39 *lished, in the course of the licensee's business, materially misleading or untruthful advertising, de-*
40 *scriptions, statements, representations or promises of such character as reasonably to induce a person*
41 *to act in a manner that may lead to damage or injury to the person, whether or not damage or injury*
42 *actually occurred.*]

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

45 [(8) *Placed a sign on any property offering it for sale or for rent without the written authority of*

1 *the owner or the owner's authorized agent.]*

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

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

5 [(11) Failed or refused upon demand to produce or to supply true copies of any document, book or
6 record in the licensee's possession or control, or required pursuant to ORS 696.280 concerning any real
7 estate business transacted by the licensee, for inspection by the Real Estate Commissioner or the com-
8 missioner's authorized representative.]

9 [(12) Failed to maintain at all times a complete record as required under ORS 696.280 and rules
10 of the Real Estate Agency of every transaction which comes within the provisions of ORS 696.010 to
11 696.495, 696.600 to 696.785, 696.800 to 696.855 and 696.995.]

12 [(13) Violated ORS 659A.421.]

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

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

16 [(16) Induced or attempted to induce any party to an employment agreement, contract, sale or lease
17 to break such contract for the purpose of substituting in lieu thereof a new contract with the same
18 principal or different principal.]

19 [(17) Offered real estate for sale or lease without the knowledge and consent of the owner or the
20 owner's authorized agent or on terms other than those authorized by the owner or the owner's au-
21 thorized agent.]

22 [(18) Negotiated or attempted to negotiate a purchase, sale, exchange, lease option or lease of real
23 estate directly with an owner, purchaser or lessor knowing that such owner, purchaser or lessor had
24 a written outstanding contract for exclusive representation with another real estate broker or principal
25 real estate broker to represent the owner, purchaser, or lessor in negotiations in connection with such
26 property without the prior written consent of the other broker.]

27 [(19) Accepted employment or compensation for:]

28 [(a) The preparation of a competitive market analysis or letter opinion, the representation of a
29 taxpayer under ORS 305.230, 306.115 or 309.100 or the giving of an opinion in any administrative or
30 judicial proceeding regarding the value of real estate for taxation contingent upon the reporting of a
31 predetermined value; or]

32 [(b) The preparation of a competitive market analysis or letter opinion, the representation of a
33 taxpayer under ORS 305.230, 306.115 or 309.100 or the giving of an opinion in any administrative or
34 judicial proceeding regarding the value of real estate for taxation for real estate in which the licensee
35 had an undisclosed interest.]

36 [(20) Failed to maintain on deposit in a bank account or neutral escrow depository funds entrusted
37 to the licensee as a real estate broker or principal real estate broker by the principal or other as re-
38 quired by ORS 696.241 and rules of the Real Estate Agency.]

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

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

44 [(23) Failed to ensure, in any real estate transaction in which such real estate broker or principal
45 real estate broker performed the closing, that the buyer and seller each received a complete detailed

1 closing statement showing the amount and purpose of all receipts, adjustments and disbursements.]

2 [(24) Failed, as a real estate broker associated with a principal real estate broker, to place, as soon
3 after receipt as practicable, in the custody of the principal real estate broker, any deposit money or
4 other money or funds entrusted to the real estate broker by any person dealing with the real estate
5 broker as a representative of the principal real estate broker.]

6 [(25) Procured or attempted to procure a real estate license for personal use or use of any other
7 person by fraud, misrepresentation or deceit or by making any material misstatement of fact in an ap-
8 plication for a real estate license.]

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

12 [(27) Violated or disregarded any rule of the Real Estate Agency.]

13 [(28) Demonstrated negligence, incompetence or untrustworthiness in performing any act for which
14 the licensee is required to hold a license.]

15 [(29) Failed, as a principal real estate broker, to exercise supervision over the activities of real es-
16 tate brokers or employees. For the purposes of this subsection, "supervision" means management by a
17 principal real estate broker that is reasonably designed to result in compliance by the broker's real
18 estate brokers and employees with ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.855 and
19 696.995 and any administrative rules adopted thereunder. Written agreements and office policies de-
20 scribed in ORS 696.026 and 696.310 (1) that are established and implemented by the principal real es-
21 tate broker, and the reasonableness of the principal real estate broker's actions taken to carry out the
22 agreements and policies, shall be the bases for determining whether the principal real estate broker's
23 supervision was adequate under the circumstances.]

24 [(30) Violated any of the terms, conditions, restrictions and limitations contained in any order is-
25 sued by the commissioner.]

26 [(31) Committed an act or conduct substantially related to the applicant or licensee's fitness to
27 conduct professional real estate activity, whether of the same or of a different character and whether
28 or not in the course of professional real estate activity, that constitutes or demonstrates bad faith or
29 dishonest or fraudulent dealings.]

30 [(32) Violated, as a reciprocal real estate broker or principal real estate broker, any of the terms,
31 conditions or requirements of this section, ORS 696.200 and 696.255 or rules adopted under ORS
32 696.265.]

33 [(33) Failed to comply with ORS 696.805, 696.810, 696.815, 696.820, 696.845 or 696.870.]

34 **(1) Created a reasonable probability of damage or injury to a person by making one or**
35 **more material misrepresentations or false promises in a matter related to professional real**
36 **estate activity.**

37 **(2) Represented, attempted to represent or accepted a commission or other compensation**
38 **from a principal real estate broker other than the principal real estate broker with whom**
39 **the real estate broker is associated.**

40 **(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to**
41 **696.785 and 696.800 to 696.855 or any rule of the Real Estate Agency.**

42 **(4) Knowingly or recklessly published materially misleading or untruthful advertising.**

43 **(5) Acted as an agent and an undisclosed principal in any transaction.**

44 **(6) Intentionally interfered with the contractual relations of others concerning real es-**
45 **tate or professional real estate activity.**

1 (7) Intentionally interfered with the exclusive representation or exclusive brokerage re-
2 lationship of another licensee.

3 (8) Accepted employment or compensation for the preparation of a competitive market
4 analysis or letter opinion that is contingent upon reporting a predetermined value or for real
5 estate in which the licensee had an undisclosed interest.

6 (9) Represented a taxpayer as described in ORS 305.230 or 309.100, contingent upon re-
7 porting a predetermined value or for real estate in which the licensee had an undisclosed
8 interest.

9 (10) Failed to ensure, in any real estate transaction in which the licensee performed the
10 closing, that the buyer and seller received a complete detailed closing statement showing the
11 amount and purpose of all receipts, adjustments and disbursements.

12 (11) Has been convicted of a felony or misdemeanor substantially related to the licensee's
13 trustworthiness or competence to engage in professional real estate activity.

14 (12) Demonstrated incompetence or untrustworthiness in performing any act for which
15 the licensee is required to hold a license.

16 (13) Violated a term, condition, restriction or limitation contained in an order issued by
17 the commissioner.

18 (14) Committed an act of fraud or engaged in dishonest conduct substantially related to
19 the fitness of the applicant or licensee to conduct professional real estate activity, without
20 regard to whether the act or conduct occurred in the course of professional real estate ac-
21 tivity.

22 (15) Engaged in any conduct that is below the standard of care for the practice of pro-
23 fessional real estate activity in Oregon as established by the community of persons engaged
24 in the practice of professional real estate activity in Oregon.

25 **SECTION 4.** Section 5 of this 2005 Act is added to and made a part of ORS 696.395 to
26 696.430.

27 **SECTION 5.** (1) The Real Estate Commissioner shall provide by rule for the progressive
28 discipline of real estate licensees and an objective method for investigation of complaints
29 alleging grounds for discipline under ORS 696.301.

30 (2) The rules adopted by the commissioner under this section:

31 (a) Must establish procedures for the discovery of material facts relevant to an investi-
32 gation and for the reporting of those facts without conclusions of violation or grounds for
33 discipline to the commissioner or the commissioner's designee by the individual assigned to
34 investigate the complaint.

35 (b) Must provide for progressive discipline designed and implemented to correct inappro-
36 priate behavior.

37 (c) May not authorize imposition of a suspension or a revocation of a real estate license
38 unless the material facts establish a violation of a ground for discipline under ORS 696.301
39 that:

40 (A) Results in significant damage or injury;

41 (B) Exhibits incompetence in the performance of professional real estate activity;

42 (C) Exhibits dishonesty or fraudulent conduct; or

43 (D) Repeats conduct or an act that is substantially similar to conduct or an act for which
44 the real estate licensee was disciplined previously.

45 **SECTION 6.** ORS 696.805 is amended to read:

1 696.805. (1) A real estate licensee who acts under a listing agreement with the seller acts as the
2 seller's agent only.

3 (2) A seller's agent owes the seller, other principals and the principals' agents involved in a real
4 estate transaction the following affirmative duties:

5 (a) To deal honestly and in good faith;

6 (b) To present all written offers, written notices and other written communications to and from
7 the parties in a timely manner without regard to whether the property is subject to a contract for
8 sale or the buyer is already a party to a contract to purchase; and

9 (c) To disclose material facts known by the seller's agent and not apparent or readily
10 ascertainable to a party.

11 (3) A seller's agent owes the seller involved in a real estate transaction the following affirmative
12 duties:

13 (a) To exercise reasonable care and diligence;

14 (b) To account in a timely manner for money and property received from or on behalf of the
15 seller;

16 (c) To be loyal to the seller by not taking action that is adverse or detrimental to the seller's
17 interest in a transaction;

18 (d) To disclose in a timely manner to the seller any conflict of interest, existing or contemplated;

19 (e) To advise the seller to seek expert advice on matters related to the transaction that are
20 beyond the agent's expertise;

21 (f) To maintain confidential information from or about the seller except under subpoena or court
22 order, even after termination of the agency relationship; and

23 (g) Unless agreed otherwise in writing, to make a continuous, good faith effort to find a buyer
24 for the property, except that a seller's agent is not required to seek additional offers to purchase
25 the property while the property is subject to a contract for sale.

26 (4) A seller's agent may show properties owned by another seller to a prospective buyer and
27 may list competing properties for sale without breaching any affirmative duty to the seller.

28 (5) Except as provided in subsection (3)(g) of this section, an affirmative duty may not be waived.

29 (6) Nothing in this section implies a duty to investigate matters that are outside the scope of
30 the real estate licensee's expertise, **including but not limited to investigation of the condition**
31 **of property, the legal status of the title or the owner's past conformance with law**, unless the
32 licensee or the licensee's agent agrees in writing to investigate a matter.

33 **SECTION 7.** ORS 696.810 is amended to read:

34 696.810. (1) A real estate licensee other than the seller's agent may agree with the buyer to act
35 as the buyer's agent only. The buyer's agent is not representing the seller, even if the buyer's agent
36 is receiving compensation for services rendered, either in full or in part, from the seller or through
37 the seller's agent.

38 (2) A buyer's agent owes the buyer, other principals and the principals' agents involved in a real
39 estate transaction the following affirmative duties:

40 (a) To deal honestly and in good faith;

41 (b) To present all written offers, written notices and other written communications to and from
42 the parties in a timely manner without regard to whether the property is subject to a contract for
43 sale or the buyer is already a party to a contract to purchase; and

44 (c) To disclose material facts known by the buyer's agent and not apparent or readily
45 ascertainable to a party.

1 (3) A buyer's agent owes the buyer involved in a real estate transaction the following affirma-
2 tive duties:

3 (a) To exercise reasonable care and diligence;

4 (b) To account in a timely manner for money and property received from or on behalf of the
5 buyer;

6 (c) To be loyal to the buyer by not taking action that is adverse or detrimental to the buyer's
7 interest in a transaction;

8 (d) To disclose in a timely manner to the buyer any conflict of interest, existing or contemplated;

9 (e) To advise the buyer to seek expert advice on matters related to the transaction that are
10 beyond the agent's expertise;

11 (f) To maintain confidential information from or about the buyer except under subpoena or court
12 order, even after termination of the agency relationship; and

13 (g) Unless agreed otherwise in writing, to make a continuous, good faith effort to find property
14 for the buyer, except that a buyer's agent is not required to seek additional properties for the buyer
15 while the buyer is subject to a contract for purchase or to show properties for which there is no
16 written agreement to pay compensation to the buyer's agent.

17 (4) A buyer's agent may show properties in which the buyer is interested to other prospective
18 buyers without breaching an affirmative duty to the buyer.

19 (5) Except as provided in subsection (3)(g) of this section, an affirmative duty may not be waived.

20 (6) Nothing in this section implies a duty to investigate matters that are outside the scope of
21 the real estate licensee's expertise, **including but not limited to investigation of the condition**
22 **of property, the legal status of the title or the owner's past conformance with law**, unless the
23 licensee or the licensee's agent agrees in writing to investigate a matter.

24 **SECTION 8.** ORS 696.990 is amended to read:

25 696.990. (1) Violation of any provision of ORS 696.010 to 696.130, 696.200 to 696.226, 696.241 to
26 696.375, 696.392, 696.395 to 696.430, 696.490, 696.600 to 696.785 and 696.995 is a Class A misdemeanor.

27 (2) Any officer, director or shareholder or agent of a corporation, or member or agent of a
28 partnership or association, who personally participates in or is an accessory to any violation of ORS
29 696.010 to 696.130, 696.200 to 696.226, 696.241 to 696.375, 696.392, 696.395 to 696.430, 696.490, 696.600
30 to 696.785 and 696.995 by the partnership, association or corporation, is subject to the penalties
31 prescribed in subsection (1) of this section.

32 (3) A violation of any one of the provisions of ORS 696.505 to 696.590 is a Class A misdemeanor.

33 (4) Any person who violates ORS 696.020 (1) may be required by the Real Estate Commissioner
34 to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined
35 by the commissioner of:

36 (a) Not less than \$100 nor more than \$500 for the first offense of unlicensed professional real
37 estate activity; and

38 (b) Not less than \$500 nor more than \$1,000 for the second and subsequent offenses of unlicensed
39 professional real estate activity.

40 (5) In addition to the civil penalty set forth in subsection (4) of this section, any person who
41 violates ORS 696.020 may be required by the commissioner to forfeit and pay to the General Fund
42 of the State Treasury a civil penalty in an amount determined by the commissioner but not to ex-
43 ceed the amount by which such person profited in any transaction which violates ORS 696.020.

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

45 (7) The civil penalty provisions of subsections (4) and (5) of this section are in addition to and

1 not in lieu of the criminal penalties for unlicensed professional real estate activity in subsections
2 (1) and (2) of this section.

3 **(8) For the purposes of subsection (4) of this section, any violation of ORS 696.020 (1) that**
4 **results from a failure of a real estate licensee to renew a license within the time allowed by**
5 **law constitutes a single offense of unlicensed professional real estate activity for each 30-day**
6 **period after expiration of the license during which the person engages in professional real**
7 **estate activities. A civil penalty imposed for a violation of ORS 696.020 (1) that results from**
8 **a failure of a real estate licensee to renew a license within the time allowed by law is not**
9 **subject to the minimum dollar amounts specified in subsection (4) of this section.**

10 **(9) Subsection (5) of this section does not apply to a violation of ORS 696.020 (1) that re-**
11 **sults from a failure of a real estate licensee to renew a license within the time allowed by**
12 **law.**

13 **SECTION 9. ORS 696.870 is added to and made a part of ORS 696.800 to 696.855.**

14 **SECTION 10. (1) The amendments to ORS 696.301 by section 3 of this 2005 Act apply to**
15 **an act or an omission occurring on or after the effective date of this 2005 Act.**

16 **(2) Section 5 of this 2005 Act applies to investigation of an act or omission of a real estate**
17 **licensee occurring on or after the effective date of this 2005 Act.**

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