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DIVISION 1

PROCEDURAL RULES

**863-001-0000
Notice of Proposed Rule**

Prior to the adoption, amendment, or repeal of any rule, the Real Estate Commissioner shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least twenty-one (21) days prior to the effective date.

(2) By mailing a copy of the notice at least twenty-eight (28) days before the effective date of the rule to persons on the Real Estate Commissioner's mailing list established pursuant to ORS 183.335(7) and all appropriate Legislators as designated by ORS 183.335(14).

(3) By mailing a copy of the notice to the following persons, organizations, or publications:

- (a) For Real Estate Brokers and Salespersons rules:
 - (A) All local Boards or Associations of Realtors;
 - (B) The Associated Press and the Capitol Press Room;
 - (C) Oregon Association of Realtors;
 - (D) The Oregon Realtor, publication of the Oregon Association of Realtors;
 - (E) All multiple listing services;
 - (F) Oregon Land Title Association.
 - (b) For Oregon Subdivision and Series Partition Control Law rules, Oregon Condominium Act rules, rules for ORS 94.803 to 94.945, relating to timeshare estates, or rules for ORS 94.953 to 94.985 relating to the sale of membership camping contracts:
 - (A) Sawhorse, publication of the Oregon Building Industry Association;
 - (B) The Associated Press and the Capitol Press Room;
 - (C) Oregon Association of Realtors;
 - (D) The Oregon Realtor, publication of the Oregon Association of Realtors;
 - (E) Oregon Building Industry Association;
 - (F) Oregon County Courts and Boards of Commissioners.
 - (c) For Oregon Escrow Law rules:
 - (A) The Associated Press, and the Capitol Press Room;
 - (B) Oregon Escrow Council, Inc.;
 - (C) Oregon Escrow Council Educator, publication of the Oregon Escrow Council, Inc.;
 - (D) Licensed Escrow Agents;
 - (E) Oregon Land Title Association.
- [Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 183, ORS 192 & ORS 696
 Stats. Implemented: ORS 183.385(3)
 Hist.: REC 43, f. & ef. 11-6-75; REC 1-1982, f. & ef. 2-3-82; REC 2-1984, f. & ef. 6-18-84; REA 1-1987, f. 12-3-87, ef. 1-1-88; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97; REA 4-1997, f. 11-24-97, cert. ef. 12-1-97

863-001-0005

Rules of Procedure

Pursuant to the provisions of ORS 183.341, the Real Estate Agency adopts the Attorney General's Model Rules of Procedure under the Administrative Procedure Act bearing the effective date of December 23, 1999.

Stat. Auth.: ORS 181, ORS 183.335, ORS 183.341, Ch. 293 & ORS 696.385
 Stats. Implemented: ORS 183.341
 Hist.: REC 32, f. 11-2-71, ef. 11-15-71; REC 36, f. 1-15-74, ef. 2-11-74; REC 48, f. & ef. 7-19-76; REC 4-1978, f. & ef. 7-2-78; REC 1-1982, f. & ef. 2-3-82; REC 2-1983, f. & ef. 10-13-83; REC 1-1986, f. & ef. 2-11-86; REA 2-1988, f. & cert. ef. 9-9-88; REA 2-1989(Temp), f. & cert. ef. 9-22-89; REA 3-1990, f. 12-13-90, cert. ef. 2-1-90; REA 6-1992, f. 11-4-92, cert. ef. 1-1-93; REA 1-1996, f. 6-3-96, cert. ef. 6-10-96; REA 1-1998, f. & cert. ef. 4-3-98; REA 2-1998, f. 5-28-98, cert. ef. 6-1-98; REA 1-2000, f. & cert. ef. 1-28-00; REA 2-2000, f. 3-27-00, cert. ef. 3-31-00

863-001-0006

Hearing Notices and Postponements

(1) A notice of intent is properly served by the Real Estate Agency when delivered personally or deposited in the United States mail, registered or certified mail, addressed to the real estate licensee or to any other person having an interest in a proceeding before the Commissioner at the licensee's or other person's last known address of record with the Agency. All other notices are properly served by the Agency when delivered personally or deposited in the United States mail, regular mail, to the addressee's last known address of record with the Agency.

(2) The Commissioner or Agency may grant a postponement of a hearing at the request of a party to the hearing if:

(a) The request is made not later than six business days prior to the date of the hearing. "Business days" are days on which the office of the Real Estate Agency is regularly open for the transaction of business; and

(b) The party has shown good cause in the request for not attending the hearing as scheduled. "Good cause" exists if the circumstances causing the request are beyond the reasonable control of the requesting party and the failure to grant the postponement would result in undue hardship to the requesting party.

Stat. Auth.: ORS 183 & ORS 696
 Stats. Implemented: ORS 183.415

Hist.: REC 2-1984, f. & ef. 6-18-84; REA 1-1987, f. 12-3-87, ef. 1-1-88

863-001-0007

Refunds and Charges

(1) The agency shall not refund fees, civil penalties or other moneys overpaid by an amount of \$15 or less unless such repayment is requested in writing by the payor within three years after the date of the overpayment.

(2) If the Agency receives payment of any fees by check and the check is returned to the Agency as an NSF check, the payor of the fees will be assessed an NSF charge of \$25 in addition to the required payment of the fees.

Stat. Auth.: ORS 181, ORS 183, ORS 293 & ORS 696

Stats. Implemented: ORS 293.445(4)

Hist.: REA 3-1990, f. 12-13-90, cert. ef. 2-1-90; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97

863-001-0010

Public Records

Pursuant to ORS 192.430 and 192.440, the Commissioner shall charge the following fees for certification or copying of any public records in the Commissioner's custody and not otherwise exempt from disclosure:

(a) For each certification containing five pages or less, \$5;
 (b) For each page of a certified document in excess of five pages, 25¢ per page;

(c) For uncertified copies:

(A) From one to 10 pages are free, from 11 to 20 pages are a flat fee of \$5 and any pages in excess of 20 are 25¢ per page; or

(B) \$15 per hour or any portion of an hour plus 3¢ per copies page; or

(C) In the case of extraordinarily large copy requests, the total actual cost of providing a temporary employee to complete the request (Usual minimum of four hours), plus 3¢ per copies page.

(d) All charges for both certified and uncertified copies, except those sent by facsimile, must be paid for prior to delivery of the copies to the person requesting the copies;

(e) For copies to be sent by facsimile (fax), \$5 for the first three pages (not including the fax cover sheet and the billing sheet) and 50¢ for each additional page over three. Costs will be billed to the person requesting the copies on a billing sheet which will be sent by facsimile with the requested copies.

(2) In addition to the charges prescribed in section (1) of this rule, may charge an amount, as determined reasonable by the Commissioner, to reimburse the Agency for the actual cost of making the records available.

(3) The Commissioner shall make all public records of the Agency, not otherwise exempt from disclosure by law, available for inspection and copying during regular business hours of the Agency.

(4) Service will be delivered on the basis of first-come, first-served. Walk-in customers or customers with large requests may be asked to make their requests in writing for later mail delivery as workload priorities permit.

(5) Access to investigation files which are scheduled for a hearing shall be governed by the Public Records Law. Requests to review such a file or to obtain copies from such a file must be in writing and received by the Agency not later than ten working days prior to the scheduled date of the hearing. The review appointment or the requested copies must be provided not later than five working days prior to the scheduled date of the hearing.

(6) May condition the time and manner of inspection or copying as necessary under the circumstances to protect the records and to prevent interference with the regular discharge of the duties of the Agency, its officers and employees.

Stat. Auth.: ORS 183.355, ORS 192 & ORS 696.385

Stats. Implemented: ORS 192.430 & ORS 192.440

Hist.: REC 1-1982, f. & ef. 2-3-82; REA 4-1992, f. 6-25-92, cert. ef. 7-1-92

DIVISION 10

REAL ESTATE BROKERS AND SALESPERSONS**863-010-0005****Definitions**

As used in OAR 863-010-0010 to 863-010-0260 unless the context requires otherwise:

(1) "Associate Broker" and "Associate Real Estate Broker" mean an associate real estate broker, as described in ORS 696.025.

(2) "Broker" or "Real Estate Broker" includes a real estate broker, a real estate organization and a designated real estate broker.

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

(4) "Agency" means the Real Estate Agency.

(5) "Licensed Name" means the name of a real estate licensee as it appears on the current, valid real estate license issued to the licensee under the Oregon Real Estate License Law.

(6) "Real Estate Activity," "Professional Real Estate Activity" and "Real Estate Business" mean "professional real estate activity" as defined in subsection (12) of ORS 696.010.

(7) "Real Estate Licensee" and "Licensee" mean a "real estate licensee," as defined in subsection (14) of ORS 696.010.

(8) "Property Manager" means a real estate broker engaged in property management activity and a real estate property manager, described in ORS 696.025. Unless the context requires otherwise, any reference to "property manager" in OAR 863-010-0207 to 863-010-0225 includes real estate licensees and nonlicensed employees engaging in property management activity under the supervision and control of a real estate broker and also includes nonlicensed employees engaging in property management activity under the supervision and control of a real estate property manager described in ORS 696.025.

(9) "Salesperson" and "Real Estate Salesperson" mean a real estate salesperson, as described in ORS 696.025.

Stat. Auth.: ORS 183.335 & ORS 696.385

Stats. Implemented: ORS 696.010

Hist.: REC 1-1981, f. 10-30-81, ef. 11-1-81; REA 3-1987, f. 12-3-87, ef. 1-1-88; REA 2-1991, f. 11-5-91, cert. ef. 1-1-92; REA 1-1992, f. 1-13-92, cert. ef. 2-1-92; REA 4-1997, f. 11-24-97, cert. ef. 12-1-97

863-010-0010**Advertising**

(1)(a) Except as provided in section (3) of this rule, a real estate licensee shall not use advertising in professional real estate activity in a manner indicating that the person conducting the advertising is not a real estate licensee;

(b) For the purposes of this rule, real estate property managers shall be considered real estate brokers and advertising by or on behalf of such property managers is governed by this rule;

(c) Advertising by real estate licensees in their personal transactions is subject to OAR 863-010-0046.

(2)(a) All advertising must be under the direct supervision of the real estate broker and must be done in the name of the real estate broker. The broker may delegate direct supervisory authority over advertising originating in a branch office to the branch office manager under ORS 696.200(3). However, the real estate broker remains responsible for all advertising done under the broker's real estate license;

(b) The broker or branch office manager shall review and approve the advertising prior to use. Licensees shall make the advertising immediately available to the broker or branch office manager prior to use;

(c) All advertising must be truthful and not deceptive or misleading;

(d) In any advertising, "real estate sales associate" or "sales associate" shall be considered the same as real estate salesperson under ORS 696.025. In any advertising, no licensee shall use wording which will state or imply that the licensed status of the licensee is other than that currently held by the licensee.

(3) Sections (1) and (2) of this rule do not apply to advertising by a real estate licensee for the rental or lease of property owned by the licensee.

(4) Each real estate broker using the name of a franchise service or other service in the broker's advertising shall clearly, dis-

tinctly, and prominently reveal the licensed name of the broker in the advertising.

(5)(a) The business sign required under ORS 696.200 at the designated main office of each real estate broker shall be located:

(A) On or near the main entrance of the office location, or on a wall or window immediately adjacent to the entrance; or

(B) If the broker designates an office location within a general office not engaged principally in professional real estate activity, on the individual office door, on the desk, or prominently displayed within the space or area designated as the broker's office.

(b) An attorney, engineer or member of another profession who also holds a real estate broker's license shall comply with ORS 696.200 and this section;

(c) Nothing in this section shall be construed to authorize the maintenance of an office or office sign, in conflict with local zoning regulations, local ordinances or state laws.

(6) As used in this rule and in OAR 863-010-0046, "advertising" includes all forms of representation, promotion and solicitation disseminated in any manner and by any means of communication for any purpose related to professional real estate activity.

Stat. Auth.: ORS 183.335 & ORS 696.385

Stats. Implemented: ORS 696.020(2), ORS 696.025, ORS 696.200, ORS 696.301(1), ORS 696.301(6) & ORS 696.301(27)

Hist.: REC 10, f. 8-27-59; REC 23, f. 7-3-69, ef. 9-1-69; REC 42, f. & ef. 1-2-75; REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 1-1980, f. 2-1-80, ef. 3-1-80; REC 1-1981, f. 10-30-81, ef. 11-1-81; REC 5-1984, f. 6-18-84, ef. 7-1-84; REA 3-1989, f. 12-13-89, cert. ef. 2-1-90; REA 3-1990(Temp), f. & cert. ef. 6-5-90; REA 5-1990, f. 11-1-90, cert. ef. 12-1-90; REA 1-1992, f. 1-13-92, cert. ef. 2-1-92; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97

863-010-0015**Listings**

(1) A real estate licensee who obtains a listing shall, at the time of securing such listing, give the person signing the listing a true, legible copy thereof.

(2) Every listing agreement, whether exclusive or nonexclusive, shall:

(a) State a definite expiration date;

(b) Not contain a provision requiring the person signing the listing to notify the real estate broker of the person's intention to cancel the listing after the stated, definite expiration date; and

(c) Not contain a provision subjecting the owner of the listed property to the payment of two or more commissions for one sale in the event the owner lists the same property with a second or subsequent broker after the termination of the first or preceding listing agreement.

(3) No real estate licensee shall singly or with other persons enter into activity to deprive an original listing broker of a commission.

Stat. Auth.: ORS 696

Stats. Implemented: ORS 696.280

Hist.: REC 20, f. 5-5-65, ef. 7-1-65; REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 1-1981, f. 10-30-81, ef. 11-1-81

863-010-0020**Offers to Purchase**

(1) A real estate licensee at the time of obtaining an offer to purchase real property or counter-offer to the offer shall give the person signing the offer or counter-offer a true, legible copy thereof.

(2) A real estate licensee shall promptly tender to the offeree every written offer or counter-offer obtained by the licensee.

(3) A written record of the date and time of each tender described in section (2) of this rule and of the response of the offeree to the written offer or counter-offer signed by the offeree or his designee, shall be maintained by the licensee in the file created under ORS 696.280 for the offer or transaction and if the offer is rejected by the offeree, a true copy shall be provided to the offeror.

(4) Upon obtaining a written acceptance of an offer or counter-offer to purchase real property, a real estate licensee shall promptly deliver true, legible copies of the offer or counter-offer, signed by the seller and purchaser, to both purchaser and seller.

(5) Real estate licensees shall include all of the terms and conditions of the real estate transaction in the offer to purchase, or directly or by reference in the counter-offer, including but not limited to

whether the transaction is to be accomplished by way of deed or land sales contract and whether and at what time evidence of title is to be furnished to the prospective purchaser. The type of earnest money received in any real estate transaction, whether in the form of cash, check or promissory note, shall be specifically stated in the document serving as earnest money receipt. In preparing a promissory note for use as earnest money, a licensee shall make the note payable on acceptance of the offer by the seller or acceptable within a stated time subsequent to seller's acceptance to assure that seller has legal consideration for the acceptance of the offer. The note should be made payable to the seller or the selling or listing broker.

(6) An earnest money agreement signed by a prospective purchaser is an offer to purchase.

Stat. Auth.: ORS 696

Stats. Implemented: ORS 696.241, ORS 696.280, ORS 696.301(11), ORS 696.301(22), ORS 696.805, ORS 696.810 & ORS 696.815

Hist.: REC 10, f. 8-27-59; REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 3-1980, f. 10-20-80, ef. 11-1-80; REC 1-1981, f. 10-30-81, ef. 11-1-81; REC 5-1984, f. 6-18-84, ef. 7-1-84; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97

863-010-0025

Deposits

(1) Except as provided in section (9) and (11) of this rule, all funds, whether in the form of money, checks, drafts, or warrants belonging to others and accepted by any real estate licensee while engaged in professional real estate activity shall be deposited prior to the close of business of the third banking day following the date of the receipt of the funds into a neutral escrow depository located within this state or into a Clients' Trust Account established by the licensee's broker under ORS 696.241. The broker shall account for all funds received. For the purpose of this section, "banking day" includes each day a financial institution is required to be open for the normal conduct of its business, but does not include Saturday, Sunday, or any legal holiday.

(2) A real estate licensee shall promptly transmit to the licensee's real estate broker any money, checks, drafts, warrants, promissory notes or other consideration and any documents received by the licensee in any professional real estate activity in which the licensee is engaged.

(3) A real estate broker shall not deposit any advance fees in the broker's personal account or commingle the fees with personal funds of the broker.

(4) Every deposit made under ORS 696.241, shall be made with deposit slips identifying each offer or transaction by a written notation of the file number assigned to the offer or transaction.

(5) A real estate broker must maintain in the broker's office a complete record of all funds, promissory notes, or other consideration received in the broker's professional real estate activity. This record shall show from whom the funds, promissory notes, or other consideration was received, the date of the receipt, the place and date of deposit, and, when the transaction has been completed or the offer has failed, the final disposition of the funds, promissory notes, or other consideration.

(6) If a real estate licensee is a principal in an offer or transaction, all earnest money or other deposits shall be placed in a neutral escrow in this state or, if in the form of funds, into a Clients' Trust Account maintained by the licensee or the licensee's broker under ORS 696.241.

(7) Checks used to disburse funds from a Clients' Trust Account shall be prenumbered and bear the words "Clients' Trust Account" upon the face thereof. A real estate broker shall account for all checks, including voided checks, as a part of the records maintained by the broker.

(8) A real estate broker shall record the transfer of promissory notes and other forms of consideration by a prenumbered Clients' Trust Account check or by written proof of transmittal or receipt retained in the broker's offer or transaction file. The broker shall record the transfer of other documents by written proof of transmittal or receipt retained in the broker's offer or transaction file.

(9) If a real estate broker receives a check as earnest money in a transaction in which the offer is rejected within three banking days following receipt of the check or the offer is rejected and the check is being held as specified in paragraph (11) of this rule, the broker

may return the check to the offeror without first depositing and processing the check through the broker's clients' trust account. The broker must maintain a copy of the check received, and obtain a receipt from the party upon return of the check. A complete record must be retained in the broker's offer or transaction file.

(10) If a real estate broker accepts a credit card payment as funds in a real estate transaction:

(a) The face amount of the credit card payment, without reducing the face amount by any merchant's discount and processing fee charged to the broker, is the amount the broker shall maintain, use, and refund as necessary; or

(b) The face amount of the credit card payment, reduced by any merchant's discount and processing fee, may be maintained and used by the broker when the broker has a separate written agreement signed by the credit card user authorizing this reduction. The face amount, including any merchant's discount and processing fees paid by the credit card user, must be refunded to the credit card user when a refund is necessary;

(c) The broker may not benefit from any of the merchant's discounts or processing fees generated by the use of a credit card;

(d) The deposit by a broker into the broker's clients' trust account of an amount equal to any merchant's discount and processing fees incurred shall be considered an operating expense of the broker and not commingling of broker's funds with clients' trust funds;

(e) A broker's clients' trust account may not be charged or debited for any merchant's discount or processing fees for use of the credit card in such transaction.

(11) If a real estate broker receives a check as earnest money in a transaction, the broker may hold the check undeposited until the offer is accepted or rejected provided that the sale agreement states that the check is being held undeposited by the broker and further states where and when the check will be deposited upon acceptance of the offer. A check so held shall be deposited into a Clients' Trust Account established by the broker under ORS 696.241 or shall be transmitted to a neutral escrow depository located with this state prior to the close of the third business day following mutual acceptance of the offer or a subsequent counter offer.

Stat. Auth.: ORS 696

Stats. Implemented: ORS 696.025(4), ORS 696.025(6), ORS 696.241 & ORS 696.301(10)

Hist.: REC 10, f. 8-27-59; REC 23, f. 7-3-69, ef. 9-1-69; REC 46, f. & ef. 1-22-76; REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 1-1980, f. 2-1-80, ef. 3-1-80; REC 3-1980, f. 10-20-80, ef. 11-1-80; REC 1-1981, f. 10-30-81, ef. 11-1-81; REC 5-1984, f. 6-18-84, ef. 7-1-84; REA 2-1987, f. 12-3-87, ef. 1-1-88; REA 1-2001, f. 4-25-01, cert. ef. 5-1-01

863-010-0026

Interest-Bearing Accounts

(1) The written approval necessary to establish an interest-bearing account shall specify to whom and under what circumstances the interest earnings from the account will accrue and be paid.

(2) In a transaction subject to ORS 696.241(5), the broker's interest in or receipt of any of the trust funds or interest earnings in the account is not a commingling of trust funds with a licensee's personal funds under OAR 863-010-0025(3).

(3) If a property manager establishes a federally insured interest-bearing account for the deposit of funds received under a property management agreement, the property manager must comply with ORS 696.241(5) and the following:

(a) If the funds represent conditionally refundable deposits of a tenant, obtain the prior written approval of the tenant as a party of interest;

(b) For each property managed, maintain an accounting of the funds deposited into an interest-bearing account, the amount interest earned on the funds and of the disposition of the interest earned on the funds by posting the appropriate tenant or owner ledger accounts and include the amount of any interest earned for an owner in the report to the owner;

(c) Fully disclose, in the written approval document to be signed by each party having an interest in funds, how the funds will be handled by the property manager, to whose benefit the interest earnings will accrue, how and when the interest earnings will be paid and any

limitations that may be imposed on the withdrawal of the funds deposited in the interest-bearing account.

Stat. Auth.: ORS 181, ORS 183.335, ORS 293 & ORS 696.385
 Stats. Implemented: ORS 696.241(5) & ORS 696.301(10)
 Hist.: REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 1-1981, f. 10-30-81, ef. 11-1-81;
 REC 5-1984, f. 6-18-84, ef. 7-1-84; REA 3-1987, f. 12-3-87, ef. 1-1-88; REA 3-1989, f. 12-13-89, cert. ef. 2-1-90; REA 2-1991, f. 11-5-91, cert. ef. 1-1-92; REA 4-1997, f. 11-24-97, cert. ef. 12-1-97

863-010-0040

Filing and Review of Documents

(1) A real estate broker shall review each document of agreement generated in the professional real estate activity subject to the broker's supervision within five days after execution of the document. If the document originates in a branch office, it may be reviewed by the real estate licensee who is the manager of the branch office under subsection (3) of ORS 696.200. The documents shall be kept in the main office and copies thereof may be retained, as appropriate, in the branch office. At the time of review, the broker or licensee-manager shall initial and date the document in writing.

(2) A broker may store inactive records required to be maintained under ORS 696.280 in a single location other than the broker's licensed business address, if the broker, first:

(a) Notifies the commissioner in writing of the intended removal of such records from the broker's business location, including the address of the new location for such records; and

(b) Gives written authorization to the commissioner to inspect such records at the new location. The authorization shall include the name of any necessary contact and the means of gaining access to the records for an inspection. The broker shall notify the commissioner of any change in the contact or means of access within ten days after such change occurs.

(3) As used in section (2) of this rule, "inactive records" means records of transactions completed or terminated at least two years prior to transfer to off-site storage under this rule and any other records that originated or were created prior to transfer to off-site storage under this rule.

Stat. Auth.: ORS 181, ORS 183, ORS 293 & ORS 696
 Stats. Implemented: ORS 696.025(4), ORS 696.025(6) & ORS 696.280
 Hist.: REC 18, f. 4-11-63; REC 41, f. & ef. 11-1-74; REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 5-1984, f. 6-18-84, ef. 7-1-84; REA 3-1989, f. 12-13-89, cert. ef. 2-1-90

863-010-0042

Nonresidential Property Management

(1) This rule applies only to the activities of a property manager in the property management of nonresidential real property. For purposes of this rule, "nonresidential real property" means real property that is not "dwelling units" or "premises," as those terms are defined by ORS 90.100.

(2) Property management activity shall not be conducted by any property manager without prior written agreement. The written agreement for management of real property shall clearly and fully specify the responsibilities of the property manager and the owner of the property, include the terms and period of the agreement, management fees, and the authority and powers given by the owner to the property manager.

(3) All funds accepted by any property manager from tenants under a property management agreement must be placed in a Clients' Trust Account and a client's ledger must be maintained for each owner of real property managed by the property manager. A real estate broker engaged in property management may establish a separate clients' trust account labeled "Clients' Trust Account " Property Management."

(4) Financial dealings under a property management agreement are subject to the following:

(a) A check shall not be issued or presented for payment or collection prior to the existence in the owner's account against which it is drawn or executed of a sufficient credit balance to cover the check;

(b) Transfer of funds between individual owners' accounts may not be accomplished by ledger entries alone, but must be accomplished by the writing of billings and receipts charging and crediting the appropriate owners' accounts. Transfers between two or more

accounts maintained for the same owner may be made if entries fully identifying the transaction are made on each of the ledger accounts affected and the property manager maintains specific written authorization for the transfer from the owner;

(c) A property manager shall not withdraw, pay, or transfer money from any owner's account in excess of the credit balance of the account at the time of such withdrawal, payment, or transfer; and

(d) Management fees must be withdrawn from an owner's account at least once a month unless otherwise provided in the applicable property management agreement. The fees shall identify by property name or account number the account for which the management fees were earned and withdrawn by the property manager.

(5) Property management activity must be conducted in the licensed name of the property manager.

(6) Conditionally refundable deposits shall be placed in the Clients' Trust Account of the property manager and maintained in the account until refund is made or until all or a portion of the deposit accrues to the owner under the tenant's agreement or the property management agreement, or both.

(7) The total of the balances of the individual open property management accounts of a property manager must equal the balance as shown in the check register and must equal the reconciled bank balance of the property manager. The property manager shall prepare a bank reconciliation monthly and shall preserve and file the reconciliations in logical sequence.

(8) Any authorization for a real estate broker to act as a real estate licensee in the sale or exchange of the real property described in a management agreement shall be set forth separate and apart from the management agreement. The authorization shall be signed separately by the property owner, disclose the compensation, and comply with OAR 863-010-0015.

(9) Use of interest bearing accounts for the deposit of funds received under property management agreements is subject to ORS 696.241(5) and OAR 863-010-0026.

Stat. Auth.: ORS 696
 Stats. Implemented: ORS 696.241, ORS 696.280, ORS 696.301(12), ORS 696.301(20) & ORS 696.361
 Hist.: REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 1-1981, f. 10-30-81, ef. 11-1-81;
 REC 5-1984, f. 6-18-84, ef. 7-1-84; REA 3-1987, f. 12-3-87, ef. 1-1-88; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97

863-010-0043

Broker's Supervision

(1) A real estate broker shall not permit the use of the broker's license to enable salespersons or associate brokers to engage in any professional real estate activity where the broker's only interest is the receipt of a fee for use of the broker's license by others, or where the broker has no or only nominal supervision of the professional real estate activity conducted under the broker's license.

(2) A real estate broker shall not state or imply to current or prospective licensees or to the public that the licensees licensed to the broker are not fully subject to the supervision of the broker or are not acting as agents of the broker.

(3) Any branch office of a real estate broker shall be licensed only with the approval of the Commissioner after the licensee has given satisfactory proof to the Commissioner that the professional real estate activity at the branch office will be conducted and supervised by a real estate licensee under ORS 696.200(3).

(4) For purposes of ORS 696.210, principal place of business shall include any branch office licensed by a broker to the extent that the license of any real estate salesperson acting as agent for the broker will be displayed in the branch office to which the real estate salesperson is assigned.

Stat. Auth.: ORS 696
 Stats. Implemented: ORS 696.025, ORS 696.169, ORS 696.200 & ORS 696.301(29)
 Hist.: REC 17, f. 3-1-63; REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 1-1980, f. 2-1-80, ef. 3-1-80; REC 3-1980, f. 10-20-80, ef. 11-1-80; REC 1-1981, f. 10-30-81, ef. 11-1-81; REC 5-1984, f. 6-18-84, ef. 7-1-84; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97

863-010-0046

Private Transactions by Licensees

(1) A real estate licensee, active or inactive, shall not, directly or indirectly, offer or negotiate for the sale, exchange, lease option, or purchase of real estate on the licensee's own behalf, without disclosing to the other party to the offer or transaction that the individual is a real estate licensee. The disclosure shall be made by the licensee in any advertising or display signs and shall appear in writing on at least the first written document of agreement concerning the offer or transaction. The disclosure set forth on the first written document of agreement shall also set forth that the real estate licensee is representing himself or herself as either buyer or seller in the transaction. The disclosure of licensee status need not be made in any advertising and on display signs done in the name of and on behalf of a real estate broker under OAR 863-010-0010.

(2) Transactions described in section (1) of this rule of a real estate broker or of a designated real estate broker shall be handled as other professional real estate activity of the licensee.

(3) Each transaction described in section (1) of this rule of an active associate real estate broker or active real estate salesperson must be conducted under the supervision of and all documents and funds transmitted through the licensee's real estate broker.

(4) If at all times during the period an offer or transaction described in section (1) of this rule is being effected, the licensee holds an inactive license:

(a) All funds received in or necessary to effect the offer or transaction shall be placed into a neutral escrow depository within the state; and

(b) The inactive licensee shall maintain a transaction or offer file concerning the matter in the manner required of a real estate broker under ORS 696.280.

(5) This section shall apply to offers and transactions entered into by corporations, partnerships, limited partnerships, or other legal entities in which any real estate licensee, active or inactive, is a holder of an ownership interest and where the licensee is, at any time, an active participant in or participates in negotiations concerning the offer or transaction on behalf of the entity.

Stat. Auth.: ORS 183.335 & ORS 696.385

Stats. Implemented: ORS 696.015, ORS 696.020(2), ORS 696.241, ORS 696.280, ORS 696.301(1), ORS 696.301(6), ORS 696.301(27) & ORS 696.301(29)

Hist.: REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 1-1981, f. 10-30-81, ef. 11-1-81; REA 1-1992, f. 1-13-92, cert. ef. 2-1-92; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97

863-010-0055

Single License

Every salesperson and associate broker shall be licensed to a real estate broker. An associate broker or salesperson cannot be licensed simultaneously with more than one broker during the same period of time.

Stat. Auth.: ORS 696

Stats. Implemented: ORS 696.160

Hist.: REC 10, f. 8-27-59; REC 46, f. & ef. 1-22-76; REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 3-1980, f. 10-20-80, ef. 11-1-80; REC 1-1981, f. 10-30-81, ef. 11-1-81

863-010-0060

Consummation of Real Estate Transactions

(1) A real estate broker shall promptly close any real estate transaction in which the broker is the listing broker, unless all parties to the transaction agree in writing to delegate the closing function to an escrow agent, attorney, or other real estate broker engaged in the transaction.

(2) A real estate salesperson shall not handle a closing function unless authorized in writing by the salesperson's real estate broker and only under the direct supervision of the broker. A copy of the written authorization bearing the broker's signature must be filed with the Division.

Stat. Auth.: ORS 696

Stats. Implemented: ORS 696.025(6) & ORS 696.301(4)

Hist.: REC 19, f. 8-5-64; REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 1-1981, f. 10-30-81, ef. 11-1-81

863-010-0062

Examinations

(1) The real estate salesperson's examination is the basic written real estate examination required under ORS 696.130.

(2) Any person desiring to take any real estate examination, other than the examination described in ORS 696.235(2)(b), shall apply for the examination on a form prescribed by the Commissioner. The completed application form and the required examination fee must be filed with the Agency on or before the fifth day of the month in which the examination is scheduled. An applicant may be scheduled for the requested examination even if the Agency has not completed the processing of the applicant's fingerprint card, has not received and reviewed all the criminal offender information on the applicant, and has not received documentation that all required education has been completed by the applicant. However, an applicant may not be considered for licensing until the Agency has completed such processing and review.

(3) As part of any application submitted under section (2) of this rule, the applicant shall submit two completed fingerprint cards on a form prescribed by the Commissioner and an additional fee sufficient to recover the costs of processing the applicant's fingerprint information and securing any criminal offender information pertaining to the applicant.

(4) At the request of a prospective examination applicant, Agency staff designated by the Commissioner may perform the fingerprinting process for such applicant during regular office hours of the Agency at the office of the Agency upon payment to the Agency by such applicant of a separate and additional fee of \$10.

(5) As provided in ORS 181.540, all fingerprint cards, photographs, records, reports and criminal offender information obtained or compiled by the Agency under ORS 696.050 are confidential and exempt from public inspection. The Commissioner shall keep such information segregated from other information on the applicant or licensee and maintain such information in a secure place.

(6) Any person desiring to take the examination under ORS 696.235(2)(b) may do so during regular office hours of the Agency after application for the examination and payment of the prescribed fee and subject to any examination procedures specified by the Commissioner.

(7) If the criminal offender information developed by the Agency on an applicant indicates that additional information should be obtained from the applicant, it will be the duty of the applicant, upon notice and request by the Agency, to provide the requested information in order to complete the application. Failure to comply may result in a determination that the application is incomplete which will result in a termination of the application.

Stat. Auth.: ORS 183.335 & ORS 696.385

Stats. Implemented: ORS 181.450, ORS 696.050, ORS 696.120(2), ORS 696.130, ORS 696.425, ORS 696.790 & ORS 696.793

Hist.: REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 1-1980, f. 2-1-80, ef. 3-1-80; REC 3-1980, f. 10-20-80, ef. 11-1-80; REC 1-1981, f. 10-30-81, ef. 11-1-81; REC 3-1982, f. & ef. 6-15-82; REC 5-1984, f. 6-18-84, ef. 7-1-84; REA 1-1989(Temp), f. & cert. ef. 9-20-89; REA 3-1989, f. 12-13-89, cert. ef. 2-1-90; REA 1-1992, f. 1-13-92, cert. ef. 2-1-92; REA 2-1996(Temp), f. 8-8-96, cert. ef. 9-6-96; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97; REA 3-1997, f. 6-30-97, cert. ef. 10-1-97

863-010-0065

Application for Real Estate License

(1) Any person desiring to become a real estate licensee must file with the Agency during regular business hours a completed application on a form prescribed by the Commissioner together with the prescribed fee. If a person requests that the Real Estate Board exercise its lawful discretion on any matter relating to the person's qualifications for a license, the request must be filed with the Agency no later than the fifth day of the month in which the board meeting is scheduled.

(2) If any person who has completed successfully the examination for any real estate license category specified in ORS 696.025 does not become licensed in the category within one year from the date of the examination, the person is no longer eligible for the license on the basis of the examination. If any person who has completed successfully one portion of a license examination does not successfully complete the remaining portion within twelve months from

the date of the examination on the completed portion, the successfully completed portion of the examination is no longer valid.

(3) If the qualifications of an applicant for a real estate broker's license are based wholly or partially upon an active real estate license held in another state, the applicant must furnish with the application a certification of active licensing from the licensing agency of the other state.

Stat. Auth.: ORS 183.335 & ORS 696.385

Stats. Implemented: ORS 696.050, ORS 696.060, ORS 696.100 & ORS 696.130
Hist.: REC 10, f. 8-27-59; REC 23, f. 7-3-69, ef. 9-1-69; REC 28, f. 11-1-70, ef. 1-1-71; REC 40, f. 6-25-74, ef. 6-25-74(Temp) and 7-25-74(Perm); REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 1-1980, f. 2-1-80, ef. 3-1-80; REC 2-1980(Temp), f. 2-29-80, ef. 3-1-80; REC 3-1980, f. 10-20-80, ef. 11-1-80; REC 1-1981, f. 10-30-81, ef. 11-1-81; REC 5-1984, f. 6-18-84, ef. 7-1-84; REA 1-1992, f. 1-13-92, cert. ef. 2-1-92

863-010-0081

Return of License

(1) Under ORS 696.221, an active real estate license remains outstanding and on active status until received by the agency. Except as provided in section (2) of this rule, the real estate broker to whom the licensee is licensed remains responsible for the professional real estate activity of the licensee until the licensee's real estate license is received in the office of the agency. If a real estate broker voluntarily gives the license to the person named in the license to return the license to the office of the agency or for any other purpose, the broker remains responsible for any subsequent professional real estate activity of the licensee until the license is received in the office of the agency.

(2) If a real estate license has been lost or if the person named in the license has removed the license from the broker's possession without permission from the broker, the broker may terminate the broker/licensee relationship with the licensee by certifying in writing to the Commissioner that the license has been lost or has been removed without authority. The certification is effective for licensing purposes on the date the certification is received in the office of the agency.

Stat. Auth.: ORS 183.335 & ORS 696.385

Stats. Implemented: ORS 696.221

Hist.: REA 1-1991, f. & cert. ef. 11-4-91

863-010-0085

Surrender, Lapse of License

(1) A real estate licensee may surrender the licensee's license to the Commissioner in a manner prescribed by the Commissioner. Upon surrender, all rights under the surrendered license are terminated, except that the Commissioner shall retain continuing jurisdiction to investigate the professional real estate activity conducted under the license and to take disciplinary action against the former licensee under the Oregon Real Estate License Law.

(2) A real estate licensee, upon surrendering a real estate license or upon notice of suspension or revocation of such license, shall return the license at once to the Commissioner. Except as otherwise provided in ORS 696.310(3), a real estate broker shall also forward to the Commissioner with the surrendered, suspended, or revoked broker's license all real estate licenses of other licensees that are outstanding with the broker.

(3) Any real estate licensee whose license has not been renewed within one year from the expiration date of such license shall not be eligible for renewal of such license. In order for former licensee to be relicensed the former licensee shall be considered an original applicant and shall apply, meet license qualifications, and be examined as provided for other original applicants under the Oregon Real Estate License Law.

Stat. Auth.: ORS 696

Stats. Implemented: ORS 696.174, ORS 696.301 & ORS 696.775

Hist.: REC 21, f. 7-5-67; REC 23, f. 7-3-69, ef. 9-1-69; REC 28, f. 11-1-70, ef. 1-1-71; REC 31, f. 8-6-71, ef. 9-9-71; REC 46, f. & ef. 1-22-76; REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 3-1980, f. 10-20-80, ef. 11-1-80; REC 1-1981, f. 10-30-81, ef. 11-1-81; REC 5-1984, f. 6-18-84, ef. 7-1-84

863-010-0086

Reissuance of Suspended License

An unexpired real estate license that has been suspended by order of the Commissioner may be reissued upon request of the

licensee and payment of the required fee within 30 days after the close of the suspension period. If the licensee fails to request reissuance of the license within the 30-day period, the license becomes inactive and may be reactivated only pursuant to ORS 696.235. If the license has otherwise expired prior to the request for reissuance, the license may be renewed only pursuant to ORS 696.174.

Stat. Auth.: ORS 181, ORS 183, ORS 293 & ORS 696

Stats. Implemented: ORS 696.174, ORS 696.235 & ORS 696.301

Hist.: REC 1-1981, f. 10-30-81, ef. 11-1-81; REC 5-1984, f. 6-18-84, ef. 7-1-84; REA 3-1989, f. 12-13-89, cert. ef. 2-1-90

863-010-0087

Subsidiary and Affiliated Organizations

(1) A subsidiary organization is one in which the majority of the voting stock or controlling ownership interest is owned by another organization.

(2) Affiliated organizations are two or more organizations whose controlling ownership interests are owned by the same individuals or entities.

Stat. Auth.: ORS 696

Stats. Implemented: ORS 696.025 & ORS 696.080

Hist.: REC 46, f. & ef. 1-22-76; REC 1-1981, f. 10-30-81, ef. 11-1-81; REC 5-1984, f. 6-18-84, ef. 7-1-84

863-010-0090

Attorney's Advice

A real estate licensee shall not discourage any party to a real estate transaction from seeking the advice of an attorney concerning any matter involving real estate activity in which such licensee is involved.

Stat. Auth.: ORS 696

Stats. Implemented: ORS 696.015 & ORS 696.301(31)

Hist.: REC 10, f. 8-27-59; REC 3-1978, f. 6-15-78, ef. 7-1-78

863-010-0092

Personal Representative of a Deceased Broker

(1) If a person is issued a temporary license under ORS 696.205 to close out the affairs of a deceased sole proprietor real estate broker, the person may only close or terminate the transactions which are in various stages of completion or termination at the death of the broker. The activities authorized under the temporary license include, but are not limited to:

(a) Termination of all listings in which there are no outstanding offers or earnest money receipts at the death of the broker;

(b) Completion of all negotiations between buyers and sellers on open transactions;

(c) Depositing and withdrawing moneys from the Clients' Trust Account in connection with the completion of all transactions pending at the death of the broker;

(d) Prompt payment of all real estate commissions owing after closing of all transactions, both to the decedent broker's estate and to salespersons or participating real estate brokers entitled to commissions resulting from the transactions; and

(e) Disposition of earnest moneys or other funds according to any outstanding earnest money receipt or other agreement.

(2) The holder of a temporary license issued under ORS 696.205 is subject to the Oregon Real Estate License Law and OAR 863-010-0010 to 863-010-0120 while engaging in professional real estate activity under the terms of the temporary license and this section.

Stat. Auth.: ORS 696

Stats. Implemented: ORS 696.205

Hist.: REC 46, f. & ef. 1-22-76; REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 1-1981, f. 10-30-81, ef. 11-1-81; REC 5-1984, f. 6-18-84, ef. 7-1-84

863-010-0093

Finders Fee

Under ORS 696.290, a "finders fee" is compensation given to a person for finding, referring or recommending a prospective client or customer interested in professional real estate activity.

Stat. Auth.: ORS 696

Stats. Implemented: ORS 696.290

Hist.: REC 46, f. & ef. 1-22-76; REC 3-1980, f. 10-20-80, ef. 11-1-80; REA 3-1989, f. 12-13-89, cert. ef. 2-1-90

863-010-0095

Effect of Rules

Any real estate licensee who does not comply with any provision of OAR 863-010-0010 to 863-010-0120 and OAR 863-010-0207 to 863-010-0225 shall be deemed, prima facie, to be guilty of improper dealings under subsection (31) of ORS 696.301, and may be subject to appropriate disciplinary action by the Commissioner.

Stat. Auth.: ORS 696

Stats. Implemented: ORS 696.301(31) & ORS 696.385

Hist.: REC 25, f. 12-11-69, ef. 12-15-69; REC 31, f. 8-6-71, ef. 9-9-71; REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 3-1980, f. 10-20-80, ef. 11-1-80; REC 1-1981, f. 10-30-81, ef. 11-1-81; REC 5-1984, f. 6-18-84, ef. 7-1-84; REA 3-1987, f. 12-3-87, ef. 1-1-88

863-010-0120

Report of Litigation Involving Licensees

(1) A real estate licensee shall notify the Commissioner of any adverse decision of or of any settlement accepted by any court of competent jurisdiction as the result of any suit or proceeding, civil or criminal, in which the licensee was named as a defendant or any adverse decision resulting from binding arbitration, and which involved the alleged misconduct of any nature concerning the licensee's professional real estate activity or any real estate offers or transactions engaged in by the licensee on the licensee's own behalf or which reflects adversely on the trustworthy and competent requirements of ORS 696.050(1). Adverse decisions of or settlements accepted by the Small Claims Department of any District Court or Justice's Court are not subject to the notification requirements of this section. However, if the decision is appealed as provided by law, each subsequent decision of any appellate court is subject to the notification requirements of this section.

(2) The notification required by section (1) of this rule shall be in writing and shall include a brief description of the real estate transaction involved, the names of the parties and, if civil litigation, the nature of the relief granted or, if a criminal matter, the criminal charge for which the licensee was convicted and the sentence imposed.

(3) The notification required by section (1) of this rule shall be made within ten days after the date of the adverse decision or settlement described in section (1) of this rule. Notification must be made under this rule whether or not the decision is appealed and, if appealed, each subsequent decision of an appellate court is subject to the notification requirements of this rule.

Stat. Auth.: ORS 696

Stats. Implemented: ORS 696.120, ORS 696.310(26) & ORS 696.310(31)

Hist.: REC 23, f. 7-3-69, ef. 9-1-69; REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 1-1981, f. 10-30-81, ef. 11-1-81; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97

863-010-0130

Unlicensed Activity

A real estate licensee may be required by the Real Estate Commissioner to forfeit and pay a civil penalty under ORS 696.990(4) and (5), if the licensee engages in professional real estate activity while the licensee's real estate license is:

- (1) On an inactive status under ORS 696.224;
- (2) Suspended for failure to renew under ORS 696.174(2); or
- (3) Suspended by Order of the Real Estate Commissioner under ORS 696.301.

Stat. Auth.: ORS 100 & ORS 696

Stats. Implemented: ORS 696.174(2), ORS 696.224, ORS 696.301, ORS 696.990(4) & ORS 696.990(5)

Hist.: REA 1-1990, f. & cert. ef. 4-18-90

863-010-0200

Real Estate Property Managers' Licensing

(1) To be eligible for issuance of a real estate property manager's license under ORS 696.160, an individual must:

- (a) Be capable of entering into lawful contracts;
- (b) Be trustworthy and competent to engage in property management activity to safeguard the interests of the public;
- (c) Provide any information requested by the Real Estate Commissioner under ORS 696.060 and 696.120;
- (d) Successfully complete the licensing examination prescribed by the Commissioner under ORS 696.130(3); and

(e) Pay the licensing fees required under ORS 696.270.

(2) A real estate property manager's license may not be issued to a person holding an outstanding real estate license unless the person first surrenders all rights to the outstanding real estate license under ORS 696.160 and OAR 863-010-0085.

(3) A real estate property manager may be licensed to a real estate broker to engage in property management activity on behalf of the broker and under the supervision of the broker. However, a broker may not authorize a real estate property manager licensee to act in the broker's absence under ORS 696.359.

(4) A real estate property manager described in ORS 696.025 who is not licensed to a real estate broker may not authorize an unlicensed individual or another real estate licensee to supervise that manager's licensed activity in the manager's absence.

(5) A person licensed as a real estate property manager described in ORS 696.025 who is not licensed to a real estate broker may engage only in real estate property management activity. The person may not offer to, negotiate, attempt to, or engage in the sale, purchase, lease-option, appraisal or exchange of real estate for another person for compensation. The person may not charge, pay, receive or accept a referral fee, finder's fee or compensation from or share in a commission paid to a real estate broker for any activity involving the sale, purchase, lease-option, appraisal or exchange of real estate. The person may charge, pay, receive and accept a referral fee or finder's fee from or to a real estate broker or another real estate property manager described in ORS 696.025 for finding or referring an owner, renter or lessee in real estate property management activity.

(6) A corporation, partnership or association may be licensed as a real estate property management organization and an individual may be licensed as a designated real estate property manager for the organization by complying with the requirements of ORS 696.080.

(7) A real estate broker is responsible for all property management activity conducted under the broker's real estate license and for the actions of the broker's real estate licensees and nonlicensed employees.

(8) A real estate property manager is responsible for all property management activity conducted under the manager's real estate license and for the actions of the manager's nonlicensed employees.

Stat. Auth.: ORS 181, ORS 183, ORS 293 & ORS 696

Stats. Implemented: ORS 696.080 & ORS 696.160

Hist.: REA 3-1987, f. 12-3-87, ef. 1-1-88; REA 3-1989, f. 12-13-89, cert. ef. 2-1-90

863-010-0205

Real Estate Property Manager's Licensing Examination

Pursuant to ORS 696.130(3), the Real Estate Commissioner prescribes the following as the subject matter for the licensing examination for persons applying for a license as a real estate property manager described in ORS 696.025:

(1) Oregon Real Estate License Law and administrative rules adopted thereunder, as the law and rules apply to real estate property management activity; including but not limited to establishing and maintaining clients' trust accounts, handling and accounting for clients' funds, reconciliation of clients' trust accounts and property management agreements.

(2) Residential Landlord and Tenant Act; including but not limited to application of the Act, rental agreements, tenant deposits, rights and obligations of landlords and tenants, eviction and forcible entry and detainer procedures.

(3) Agency relationship between property manager and property owner, management contracts, conflicts of interest and disclosure of conflicts.

(4) Real estate contract laws, as applied to property management agreements, rental agreements and leases, types of leases and common terminology in such agreements and leases.

(5) State and Federal laws prohibiting discrimination in housing accommodations, tenant selection and advertising of real estate for rental or lease.

(6) General business bookkeeping and record keeping fundamentals as applied to the conduct of property management.

Stat. Auth.: ORS 696

Stats. Implemented: ORS 696.130(3)

Hist.: REA 3-1987, f. 12-3-87, ef. 12-15-87; REA 1-1997, f. 4-28-97, cert. ef. 5-97

863-010-0207

Application

OAR 863-010-0210 to 863-010-0225 apply to the activities of a property manager in the property management of residential real property. For purposes of this rule, "residential real property" means real property that constitutes "dwelling units" and "premises," as those terms are defined by ORS 91.705.

Stat. Auth.: ORS 696

Stats. Implemented: ORS 696.025(5), ORS 696.160 & ORS 696.385

Hist.: REA 3-1987, f. 12-3-87, ef. 1-1-88

863-010-0210

Property Management Agreements

(1) A property manager may not engage in property management activity for any real estate without a prior, written, dated and signed property management agreement with the owner of the real estate. The agreement must clearly and fully specify the duties and responsibilities of the property manager and the owner of the real estate, including but not limited to the period of the agreement; the method for termination; the terms and conditions of the agreement; the management fees, rebates, discounts, overrides and any other form of compensation to be received by the property manager for property management activity; the disposition of the required records of the property management for the owner after compliance with ORS 696.280; and the authority and powers given by the owner to the property manager under the agreement. The property manager shall assign an identifying number or code to each property management agreement.

(2) The property manager shall promptly deliver a legible copy of the fully executed property management agreement to the owner of the real estate described in the agreement.

(3) If a real estate broker engaging in property management activity authorizes one of the broker's real estate licensees to negotiate and sign a property management agreement with an owner on behalf of the broker, the broker must review the agreement within five days after execution of the agreement by the owner for compliance with applicable property management laws and rules. The broker shall initial and date the broker's agreement to memorialize the broker's approval and acceptance of the agreement.

(4) Only a real estate property manager described in ORS 696.025 may negotiate and sign a property management agreement made in the course of the manager's property management activity.

(5) An employee of a property manager acting for the property manager under ORS 696.030(1)(h) as a resident manager or otherwise, may not negotiate or sign a property management agreement with a property owner.

(6) In addition to and not in lieu of any applicable requirements of the Residential Landlord and Tenant Act, each tenant rental or lease agreement shall contain, at least:

(a) The licensed name and business address of the property manager and the name and address of the tenant. If a real estate licensee executes the rental or lease agreement on behalf of the licensee's real estate broker, the name of the real estate licensee acting for the real estate broker in executing the agreement;

(b) The mailing address, unit number or other identifying designation of property being rented or leased, the amount and payment conditions of the rental or lease, and the rental or lease term; and

(c) The amount of and the reason for all funds paid by the tenant to the property manager, including but not limited to funds for rent, prepaid rent, conditionally refundable deposits, and any fees or other charges.

(7) A property manager must review each tenant's rental or lease agreement within five days after execution of the agreement by the tenant for compliance with the property management agreement covering the rented or leased property. The property manager shall initial and date the tenant's rental or lease agreement to memorialize the manager's approval and acceptance of the agreement on behalf of the owner. A property manager may authorize in writing another individual who is licensed to or employed by the property manager to review and approve and accept tenants' rental and lease

agreements on behalf of the property manager. In case of such authorization, the property manager remains responsible for each tenant's rental and lease agreement approved or accepted by such real estate licensee or employee. The property manager must produce the written authorization at the request of the Commissioner or the Commissioner's authorized representative.

(8) Except as otherwise provided in section (10) of this rule, all records, books accounts and supporting documents required and made in the course of a property manager's licensed activity must be filed and maintained by the property manager in the manager's main office under ORS 696.280 for a period of six years after the date on which the agreement expired. An on-site resident manager may retain copies of tenant's rental and lease agreements at the site of the property being managed in order to have copies of the tenants' rental and lease agreements available to tenants under ORS 91.765.

(9) The original, executed copy of a property management agreement and the original, executed copy of each rental or lease agreement must be filed and maintained by the property manager in the manager's main office while such agreement is effective and for a period of six years following the date on which such agreement is superseded, is terminated or has expired.

(10) A property manager may store inactive records required to be maintained under ORS 696.280 and this rule in a single location other than the property manager's licensed business address, if the property manager first:

(a) Notifies the Commissioner in writing of the intended removal of such records from the property manager's licensed business location, including the address of the new location for such records; and

(b) Gives written authorization to the Commissioner to inspect such records at the new location. Such authorization shall include the name of any necessary contact and the means of gaining access to the records for an inspection. The property manager shall notify the Commissioner of any change in the location in the same manner as set forth in subsections (a) and (b) of this section. The property manager shall notify the Commissioner of any change in the contact or means of access within ten days after such change occurs.

(11) As used in section (10) of this rule, "inactive records" means:

(a) Materials described in section (8) of this rule that were received or created at least two years prior to transfer to off-site storage under this rule; and

(b) Agreements described in section (9) of this rule that were superseded, terminated or had expired at least two years prior to the transfer to off-site storage under this rule.

(12) A property manager may use the property manager's employees to perform work on an owner's managed property. However, if a property manager intends to use a personal business to perform work on the property for an owner, the property manager shall disclose the property manager's personal interest to the owner in writing as part of the property management agreement. If a property manager, who is already managing an owner's property, decides to use a personal business to perform work on the property for an owner, the property manager must first disclose the property manager's personal interest to the owner and obtain from the owner a written authorization for such use as an amendment to the property management agreement. As used in this section, "personal business" means any separate legal entity in which the property manager has a beneficial interest.

Stat. Auth.: ORS 181, ORS 183.335, ORS 293 & ORS 696.385

Stats. Implemented: ORS 696.280

Hist.: REA 3-1987, f. 12-3-87, ef. 1-1-88; REA 3-1989, f. 12-13-89, cert. ef. 2-1-90; REA 2-1991, f. 11-5-91, cert. ef. 1-1-92

863-010-0215

Property Management Accounting

(1) A property manager shall open and maintain at least one clients' trust account under ORS 696.241 for the deposit of funds received on behalf of owners of property managed under property management agreements. A property manager shall be an authorized signer on each clients' trust account utilized in the manager's licensed activity and shall control the receipts and disbursements on

each account. Preprinted checks used to disburse funds from a clients' trust account shall be prenumbered and bear the words "Clients' Trust Account" upon the face of the checks. Checks generated or filled in by a computer in use by the property manager shall be printed on prenumbered check blanks or shall be numbered consecutively as they are generated or filled in by the computer. A property manager shall account for all checks, including but not limited to voided checks, as part of the records maintained by that property manager.

(2) A property manager shall prepare and maintain at least one separate owner's ledger account for each property management agreement whether or not the property management agreement involves two or more owners or two or more properties. All owners' ledger accounts must be identified with the same identifying number or code assigned by the property manager to the corresponding property management agreement with the owner. The property manager shall post an owner's ledger account with an entry for each receipt and disbursement of funds made in accordance with the property management agreement and shall maintain a running chronological ledger balance for each owner's ledger account on a daily basis. Each entry for a receipt of funds shall contain the date of the receipt of the funds, the identity of the rental unit or the source of the funds, the amount of the funds received and the number of the written receipt issued for any cash funds received. Each entry for a disbursement of funds shall contain the number of the clients' trust account check issued, the amount of the disbursement, the date on which the check was issued and the payee of the check.

(3)(a) Except as provided in subsection (b) of this section, a property manager shall prepare and maintain at least one tenant's ledger account for each tenant or individual from whom the manager has received any funds under a property management agreement, whether or not the tenant has executed a written rental or lease agreement at the time of the payment of funds to the manager. A tenant's ledgers account shall be identified by the mailing address of the rental unit or the applicable unit number or designation;

(b) A property manager may prepare and maintain a separate tenants' ledger to record the receipt of funds from prospective tenants who are not tenants at the time of paying the funds to the property manager, who do not pay the funds for a particular rental unit, and who do not become tenants after such payment;

(c) The property manager shall post a tenant's ledger account with an entry for each receipt of the funds from the tenant and for each disbursement of a tenant's conditionally refundable deposits. Each entry shall contain the amount of the funds received, the amount and designation of any tenant's conditionally refundable deposits received, the date of receipt of the funds and the number of the receipt prepared for cash funds received. Each entry for a disbursement shall contain the date of disbursement, the payee of the check, the check number and the amount of the disbursement;

(d) If a property manager receives a check from a prospective tenant for prepaid rent, tenant's conditionally refundable deposits or fees and the prospective tenancy fails for any reason within three banking days following receipt of the check, the property manager may return the check to the prospective tenant without first depositing and processing the check through the manager's clients' trust account. The property manager shall retain a photocopy of the check and a dated receipt for the check in the required records of property management activity. The property manager shall note the amount of the check, the dates of receipt and return of the check on the ledger set up for the prospective tenant giving the check to the property manager.

(4) A property manager must prepare a legible written receipt for any cash funds received under a property management agreement. Receipts prepared shall be consecutively pre-numbered and be printed in at least duplicate form. Each receipt shall contain the date of the receipt of the cash funds, the amount of the funds, the reason for payment of the funds received, the identifying designation of the ledger account of the owner on whose behalf the cash funds were received, the tenant's name and the name of the individual who actually received the cash and prepared the receipt. A copy of the receipt shall be maintained in the manager's records.

(5) A property manager shall prepare and maintain a receipts and disbursements journal or a check register for each clients' trust account maintained in which the manager must record each receipt of funds and each disbursement of clients' trust account funds made by the manager under a property management agreement and shall maintain a running chronological ledger balance for each client's trust account on a daily basis. Each entry for a receipt of funds shall contain the date of the receipt, the applicable owners' ledger account number, the number of the written receipt issued for any cash funds and the amount of funds received. Each entry for a disbursement of funds shall contain the date of the disbursement, the applicable owner's ledger account number or code, the amount of the disbursement and the number of the clients' trust account check issued. The manager shall retain all billings and receipts explaining the amount of and purpose for the receipts or disbursements entered in the journal or register.

(6) A property manager must post the receipts and disbursements journal or the check register and each owner's ledger account at least once each month showing all receipts and disbursements made by the property manager for an owner since the last posting of the journal, register or account.

(7) If a property manager maintains a separate clients' trust account for a property management agreement involving one owner only, the property manager may maintain either a receipts and disbursement journal or an owner's ledger, rather than both such journal and ledger.

(8) If a property manager accepts a credit card payment as funds in the course of property management activity:

(a) The face amount of the credit card payment, without reducing the face amount by any merchant's discount and processing fee charged to the property manager, is the amount the property manager shall maintain, use, and refund as necessary; or

(b) The face amount of the credit card payment, reduced by any merchant's discount and processing fee, may be maintained and used by the property manager when the property manager has a separate written agreement signed by the credit card user authorizing this reduction. The face amount, including any merchant's discount and processing fees paid by the credit card user, must be refunded to the credit card user when a refund is necessary; and

(c) The property manager may not benefit from any of the merchant's discounts or processing fees generated by the use of a credit card; and

(d) The deposit by a property manager into the property manager's clients' trust account of an amount equal to any merchant's discount and processing fees incurred shall be considered an operating expense of the property manager and not commingling of property manager's funds with clients' trust funds; and

(e) A property manager's clients' trust account may not be charged or debited for any merchant's discount or processing fees for use of the credit card in such transactions.

(9) If a property manager uses a computerized system for the production and maintenance of records and reports required in the property manager's licensed activity, the computerized system must:

(a) Be capable of printing out any document used in the required accounting and record keeping process that would otherwise be generated or maintained by hand, such as receipt and disbursement journals, check registers and owners' and tenants' ledgers. At the time of any required reconciliation the property manager must print out the receipt and disbursement journal or check register and the owner's ledgers. The property manager shall preserve and file such printed documents as required records of the property manager's licensed activity;

(b) Be capable of backing up its stored data. At least once each month, the property manager must back up any data that is stored in the computerized system that was not printed out and preserved under subsection (a) of this section. The back up data shall be made available to the Commissioner or to the Commissioner's authorized representatives on demand;

(c) Monthly reconciliations and all supporting data shall be printed out at the time of reconciliation. Such printed materials shall be retained as required records of the property management activity;

(d) If the computer fills in or generates checks, and check copies, if any, all check stock and check copies must be consecutively prenumbered, or if unnumbered check stock is used, the computer must continually and consecutively number the checks as generated. The account number must appear in the magnetic coding on the bank check face to identify the account number for reading by the bank's computerized accounting system.

Stat. Auth.: ORS 181, ORS 183.335, ORS 293 & ORS 696.385

Stats. Implemented: ORS 696.241

Hist.: REA 3-1987, f. 12-3-87, ef. 1-1-88; REA 3-1989, f. 12-13-89, cert. ef. 2-1-90; REA 2-1991, f. 11-5-91, cert. ef. 1-1-92

863-010-0220

Property Management Financial Practices

(1) Except as otherwise provided in OAR 863-010-0215(3)(c), bank deposits of clients' trust funds by a property manager are subject to the requirements of OAR 863-010-0025(1), (3), and (4). A property manager shall receipt for all funds received and record all deposits of funds received on the appropriate property owners' ledger account and the appropriate tenant's ledger account.

(2) If a bank deposit to a clients' trust account is made by an individual authorized to act for the property manager, the person shall promptly turn over the bank deposit receipt to the property manager.

(3) Financial dealings by a property manager under a property management agreement must comply with the following:

(a) A property manager may not execute or issue a check prior to the existence of a sufficient credit balance to cover the check in the owners' ledger account against which the check is executed or issued;

(b) A property manager may transfer funds between the owners' ledger accounts of two or more different owners only with a prior written and dated loan agreement signed by the affected owners who are authorizing the transfer. The loan agreement must be separate from the property management agreements of the owners and include the terms of repayment and collection and any interest to be paid by the borrowing owner. The property manager must have a separate loan agreement for each transfer between owners. The transfer must be accomplished by the writing of billings and receipts as evidence of the charging and crediting of the appropriate owners' ledger accounts. The property manager must give to each owner a separate monthly accounting on the loan or include the accounting in the regular monthly report to the owner issued under section (7) of this rule. At the time of the transfer the property manager must enter the transfer information on each affected owners' ledger account, including but not limited to the amount of the transfer, date of the transfer and the source of the transferred funds;

(c) A property manager may transfer funds between two or more ledger accounts maintained for the same owner with the prior written approval of the owner. The owners' prior approval may be granted as a part of the property management agreement. At the time of the transfer the property manager must enter the transfer information in each affected owners' ledger account, including but not limited to the amount of the transfer, date of the transfer and the source of the transferred funds;

(d) A property manager may not withdraw, pay or transfer funds for payment of generally authorized expenses from an owners' ledger account in excess of the actual credit balance of the account. This credit balance shall not include the amount of tenant's conditionally refundable deposits being held at the time of the withdrawal, payment or transfer;

(e) If sufficient funds are available, a property manager must withdraw earned management fees from the appropriate clients' trust account at least once each month, unless otherwise provided in the owners' property management agreement. The journal or register and ledger entries for payment of fees from the clients' trust account shall include the date, the amount of the management fees withdrawn, the check number, the owners' ledger account number or identifying code;

(f) In maintaining a chronological running balance under OAR 863-010-0215(5) for each receipts and disbursements journal, the property manager may aggregate receipts and disbursements

affecting the balance of the journal on a daily basis. The property manager may adjust the balance in the journal reflecting the change in the balance from the aggregated individual receipts and disbursements. If the property manager posts the journal using an aggregated total of receipts and disbursements, the property manager must maintain account detail showing the nature and amount of each receipt and disbursement, as otherwise required, and make such detail available to the Commissioner or the Commissioner's authorized representatives upon request. The property manager shall preserve the journal detail as required records of the property manager's licensed activity;

(g) No disbursement from a clients' trust account may be made by a property manager based upon a wire or electronic transfer deposited into the clients' trust account until the deposit has been verified by the property manager. The property manager shall arrange with the account depository and other entities for an immediate follow up hard copy credit memo or a hard copy debit memo when funds are received or disbursed by wire or electronic transfer. A property manager must post receipt and disbursement of funds by wire or electronic transfer in the same manner as other receipts and disbursements;

(h) Upon request by the Commissioner or an authorized representative of the Commissioner, a property manager must demonstrate that, under subsection (a) of this section, a sufficient credit balance existed in an owner's ledger account at the time of executing or issuing a check on behalf of the owner by producing financial records showing that the disbursement of these funds did not involve the use of any other client's trust funds deposited into a clients' trust account and credited to any other owner's ledger account.

(4) A property manager must conduct property management activity only in the actual licensed name of the property manager.

(5) All tenants' conditionally refundable deposits received by a property manager must be deposited and maintained in the manager's clients' trust account until:

(a) The refund of any deposit to the tenant according to the terms of the tenant's rental or lease agreement or the property management agreement; or

(b) The expenditure of the tenant's conditionally refundable deposit for purposes authorized by the tenant's rental or lease agreement and the applicable property management agreement; or

(c) The forwarding of the tenant's conditionally refundable deposit by the property manager to the owner of the property according to the terms of the tenant's rental or lease agreement and the property management agreement; or

(d) The transfer of the tenant's deposit to another property manager or to an escrow agent upon the termination of the property management agreement, based upon the prior written instructions by the owner to the terminating property manager authorizing the transfer.

(6) A property manager must reconcile all clients' trust accounts at least once each month. The reconciled bank balance of the clients' trust account must equal the sum of the balances in individual owners' ledger accounts and also must equal the balance shown in the check register or the journal of receipts and disbursements for the clients' trust account. The property manager must preserve the bank statements and monthly reconciliations and file the bank statements and monthly reconciliations in logical sequence.

(7) A property manager must report in writing to each owner any change in the owners' ledger account. A monthly report, showing all receipts and disbursements for the account of the owner during the prior monthly period, is sufficient under this section. A copy of each such report shall be preserved and filed in the property manager's records of licensed activity. If an annual report contains information not required to be provided by the property manager under OAR 863-010-0215 and this rule, the property manager shall set forth such information separately.

(8) If a real estate broker is authorized to represent an owner through an employment contract or listing agreement for the purchase, sale, lease-option or exchange of the real property managed by the broker, the authorization must be set forth separate and apart from the property management agreement for the property. The authorization must be signed and dated separately by the owner, dis-

close the compensation to be paid by the owner for that professional real estate activity and comply with OAR 863-010-0015.

(9) Use of interest-bearing accounts for the deposit of funds received under property management agreements is subject to ORS 696.241(5) and OAR 863-010-0026.

(10) If a property manager utilizes a separate clients' trust account as a pooled client's trust account for the collection and periodic payment of the expenses incurred on behalf of any single owner or several owners of the rental property managed, the manager must:

(a) Fully disburse the funds in the pooled account at least once each month;

(b) Have prior written approval from each owner whose funds would be placed in the pooled account for the use of the pooled account for payment of the owners' expenses;

(c) Maintain the master or common billings and receipts for payments of expenses made from the pooled account in both the records for the pooled account and the records for each owner whose expenses were paid through the use of the account; and

(d) Maintain a record of the sources of funds placed in the pooled account. An account ledger fully identifying each receipt to and disbursement from the pooled account is sufficient under this section. This account ledger must be used as the record of owners' liabilities in the pooled clients' trust account reconciliation done under section (6) of this rule.

Stat. Auth.: ORS 183.335 & ORS 696.385

Stats. Implemented: ORS 696.241, ORS 696.251, ORS 696.280 & ORS 696.301(20)

Hist.: REA 3-1987, f. 12-3-87, ef. 1-1-88; REA 2-1991, f. 11-5-91, cert. ef. 1-1-92; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97; REA 4-1997, f. 11-24-97, cert. ef. 12-1-97

863-010-0225

Termination, Transfer of Property Management

If a property management agreement is terminated for any reason, the property manager:

(1) Must terminate the property management activity conducted pursuant to the agreement in the manner provided by the terms of the agreement and except as otherwise provided by the agreement;

(2) Must notify the owner and any tenants of the property of the termination;

(3) Must provide the owner not later than 45 days after the effective date of the termination with any unobligated funds due to the owner under the agreement and not later than 90 days after the effective date of the termination provide the owner with a final accounting of the owners' ledger account, the amount of any obligated funds held in the property manager's clients' trust account under the agreement, a statement of why the obligated funds are being held by the property manager and a statement of when and to whom the obligated funds will be disbursed by the property manager;

(4) May only disburse any unobligated funds to the owner or, with the prior written authorization of the owner, to another property manager designated in writing by the owner;

(5) Must immediately notify each such tenant that the conditionally refundable deposit will be transferred to the owner or to a new property manager and, at the same time, the name and address of the owner or the new property manager to whom these deposits will be transferred, if any of the unobligated funds held by the property manager under the terminated agreement represents tenants' conditionally refundable deposits received from current tenants;

(6) May not expend any tenants' conditionally refundable deposits for payment of any expenses or fees not otherwise allowed by the tenants' rental or lease agreements; and

(7) Must complete any final accounting, inspection or other procedures required by the tenant's rental or lease agreement, by the Residential Landlord Tenant Act, or by the property management agreement, unless the owner otherwise directs in writing, if a tenant's termination of tenancy occurs simultaneously with or prior to termination of the management of the rented or leased premises.

(8) As part of the final accounting sent to the owner under section (7) of this rule, the property manager shall include a notice that

the required records of the property management performed by the property manager for the owner may be destroyed after six years.

Stat. Auth.: ORS 181, ORS 183.335, ORS 293 & ORS 696.385

Stats. Implemented: ORS 696.241, ORS 696.280, ORS 696.301(4) & ORS 696.301(12)

Hist.: REA 3-1987, f. 12-3-87, ef. 1-1-88; REA 3-1989, f. 12-13-89, cert. ef. 2-1-90; REA 2-1991, f. 11-5-91, cert. ef. 1-1-92

863-010-0235

Reciprocal Licensing

(1) A real estate licensee in another state who qualifies for a license under the provisions of ORS 696.258 shall be issued a reciprocal real estate license as a broker or salesperson.

(2) Reciprocal licenses issued to brokers and their licensees shall contain the business address of the reciprocal broker and shall be mailed to the office of the reciprocal broker in the other state.

(3) "Nonresident real estate broker or salesperson" as used in ORS 696.258 and ORS 696.265, means a real estate broker or salesperson licensed in this state who is principally licensed in another state.

(4) "State of residence" as used in ORS 696.258 and ORS 696.265 means the state where the nonresident licensee in section (1) is principally licensed.

(5) Except as provided in section (6), (7), (8) and (10) of this rule, reciprocal license terms, applications, processing, transfers and handling shall be as otherwise provided by law and rule for resident real estate licensees.

(6) An applicant for a reciprocal real estate broker or salesperson license must comply with criminal history and fingerprinting requirements. However, the applicant, upon demonstrating a satisfactory license history from the applicants state of residence, may be licensed in Oregon subject to favorable clearance of criminal history of the applicant following submission of the applicant's fingerprints by the state.

(7) Clients trust funds or property received or handled by a reciprocal licensee must be deposited and maintained in an Oregon escrow or deposited and maintained in this state or the broker's residence state as provided in ORS 696.241 until the transaction is completed or terminated.

(8) Reciprocal brokers shall produce in the office of the Real Estate Agency any records of real estate activity conducted under such broker's license at the request of the Agency.

(9) In the case of a reciprocal licensee moving from the licensee's initial state of residence to Oregon, he or she may obtain an Oregon real estate license under the following procedure so long as an Oregon reciprocal licensee who holds a reciprocal license in that initial state of residence is accorded the same licensing procedure upon moving to it. When such reciprocal licensee moving from the licensee's initial state of residence to Oregon holds either a salesperson or broker license in his or her prior state of residence such person shall be able to obtain, without examination, a comparable license in Oregon upon (1) the filing of the proper application, (2) the applicable license fee and (3) submission of an affidavit certifying that the applicant has reviewed and is familiar with the state real estate licensing act and rules and regulations of Oregon and agrees to be bound by the act, rules and regulations. Any person applying for an Oregon license under this section must make application within one year after moving to Oregon.

(10) All advertising, business signs, business cards, agreements and other documents used by a reciprocal real estate broker and by such broker's reciprocal real estate salespersons shall display the name and business address of the reciprocal broker in such broker's state of residence.

Stat. Auth.: ORS 181, ORS 183, ORS 293 & ORS 696

Stats. Implemented: ORS 696.258 – ORS 696.265

Hist.: REA 3-1989, f. 12-13-89, cert. ef. 2-1-90; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97; Hist.: REA 1-1999(Temp), f. 12-1-99, cert. ef. 12-2-99 thru 5-30-00; REA 2-2000, f. 3-27-00, cert. ef. 3-31-00; REA 3-2000(Temp), f. & cert. ef. 11-3-00 thru 5-1-01; REA 1-2001, f. 4-25-01, cert. ef. 5-1-01; REA 2-2001(Temp), f. 9-13-01, cert. ef. 9-14-01 thru 3-9-02

863-010-0245

Reconciliation

A real estate broker must reconcile all clients' trust accounts at least once each month. The reconciled bank balance of the account must equal the sum of the broker's ledger accounts showing the liabilities to clients having funds deposited in the account. The reconciled bank balance of the account must also equal the balance shown in the check register for the account or the journal of receipts and disbursements for the account. The broker must date and sign the reconciliation upon its completion and must preserve the bank statements and monthly reconciliations for each clients' trust account in logical sequence.

Stat. Auth.: ORS 181, ORS 183.335, ORS 293 & ORS 696.385
 Stats. Implemented: ORS 696.241 & ORS 696.280
 Hist.: REA 3-1989, f. 12-13-89, cert. ef. 2-1-90; REA 1-1992, f. 1-13-92, cert. ef. 2-1-92

863-010-0250

Sellers Property Condition Disclosure

(1) In carrying out the provisions of ORS 105.465 to 105.490, a real estate broker holding any deposits or other consideration in a real estate transaction shall return such deposits and consideration to the buyer upon the written request of the buyer without the consent of the seller if:

(a) The buyer in writing assets that the buyer is revoking the buyer's outstanding offer pursuant to ORS 105.475 and makes demand for the return of any deposits and other consideration held by the broker is the transaction; and

(b) The broker does not have from any one buyer a waiver of the right of revocation executed by any one buyer; and

(c) The broker does not have the written acknowledgement from any one buyer of the expiration of the right of revocation in the transaction;

(d) If the broker is closing the transaction, the buyer has not provided the broker with executed written instructions and executed documents necessary to close the transaction; and

(e) The buyer has provided the broker with a written release from and indemnification against all liability arising from the return of all deposits and other consideration held by the broker in the transaction.

(2) In carrying out subsection (6) of ORS 105.475, a real estate broker shall not disburse to a buyer described in section (1) of this rule any funds or other consideration provided to the broker by the buyer unless the client's trust funds deposited into the broker's clients trust account and credited to the buyer have been collected and are available for disbursement by the broker. The broker may not use any clients trust funds deposited and credited to any other person in making such a disbursement to the buyer.

(3) For the purposes of ORS 105.475:

(a) Under subsection (4), a buyer is considered to have closed a transaction when the buyer has executed any necessary written instructions and all documents necessary to close the transaction;

(b) Under subsections (1) and (2), the term "business day" includes Mondays, Tuesdays, Wednesdays, Thursdays and Fridays, and excludes Saturdays, Sundays and legal holidays under ORS 187.010.

Stat. Auth.: ORS 183.335 & ORS 696.385
 Stats. Implemented: ORS 105.465 - ORS 105.490
 Hist.: REA 1-1993, f. 12-1-93, cert. ef. 1-1-94

863-010-0260

Agency Relationship Disclosure

In carry out ORS 696.800 to 696.855, real estate licensees shall be bound by the following:

(1) As defined in subsection (1) of ORS 696.800 "agent" also means and includes any real estate licensee licensed to a real estate broker whether or not that licensee has a written agreement or contract with the broker.

(2) As defined in subsection (4) of ORS 696.800 "in-company" also includes any sole proprietor broker licensed to engage in professional real estate activity under his own name and any broker licensed to engage in professional real estate activity under an assumed business name.

(3) The "listing agent's file" and the "buyer's agent's file" are the respective transaction files maintained as required by ORS 696.280.

(4) "Any one buyer" means any one of the principals purchasing in a real estate transaction where a real estate broker is holding deposits or other consideration or is closing the real estate transaction for the principals, or both.

(5) For the purposes of ORS 696.820(2), "substantive contact" means and includes any communication beyond casual conversation concerning the facts and features of a property. Such communication ceases to be casual:

(a) At that point in any communication where personal information is elicited or disclosed about the buyer or seller concerning specific financial qualifications of buyer, or about the selling or buying objectives of the buyer or seller; or

(b) At that point in any communication where the buyer begins to divulge personal or financial information that, if disclosed to the other party, could harm the buyer's bargaining position.

(6) For the purposes of Section 5 of this rule, "substantive contact" does not include any preliminary conversations or small talk about price range or housing location and housing styles, or any responses to general factual questions from a potential client or customer about the advertised characteristics of properties offered for sale.

Stat. Auth.: ORS 183.335 & ORS 696.385
 Stats. Implemented: ORS 696.280 & ORS 696.800 - ORS 696.855
 Hist.: REA 1-1993, f. 12-1-93, cert. ef. 1-1-94; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97

863-010-0270

Competitive Market Analyses and Letter Opinions

(1) Competitive market analyses and letter opinions may be used by real estate licensees in the normal course of their business where they are giving an opinion in pursuit of a listing, to assist a potential purchaser in formulating an offer or to provide a broker's price opinion whether or not done for a fee.

(2) The term "value" as used in a competitive market analysis or letter opinion is the estimated worth of or price for a specific property and is not intended to mean or imply the "value" was arrived at by any method of appraisal.

(3) A competitive market analysis or letter opinion shall be in writing and shall contain at least the following:

(a) A statement of purpose and intent;

(b) A brief description of the property;

(c) The basis of reasoning used to reach the conclusion of value including the applicable market data and/or capitalization computation;

(d) Any limiting conditions;

(e) A disclosure of any existing or contemplated interest of the licensee in the subject property;

(f) The signature of the licensee issuing the competitive market analysis or letter opinion and the date of its issuance;

(g) A disclaimer that, unless the real estate licensee is also licensed by the Appraiser Certification and Licensure Board, the report is not intended to meet the requirements set out in the Uniform Standards of Appraisal Practice; and

(h) A disclaimer that the competitive market analysis or letter opinion is not intended as an appraisal and that if an appraisal is desired, the services of a competent professional licensed appraiser should be obtained.

Stat. Auth.: ORS 183.335, ORS 696.010(8) & ORS 696.010(11)
 Stats. Implemented: ORS 696.010(8) & ORS 696.010(11)
 Hist.: REA 4-1997, f. 11-24-97, cert. ef. 12-1-97

Real Estate Marketing Organization Rules

863-010-0600

Definitions

As used in OAR 863-010-0600 to 863-010-0660, unless the context requires otherwise:

(1) "Principal" or Principal person" includes owners of real estate marketing organizations having not less than 10% ownership interest in the organization, on-site managers who provide direct

supervision of real estate marketing employees in their real estate marketing activity and any telemarketing independent contractor employee.

(2) "Telemarketing independent contractor employee" means any person or other legal entity employed by a real estate marketing organization by means of an Independent Contractor's Agreement or some similar agreement to carry out real estate marketing on behalf of the real estate marketing organization. Any employees of the telemarketing independent contractor employee must be registered with the Agency as a real estate marketing employee.

Stat. Auth.: Section 4(1), Ch. 217, OL 1995

Stats. Implemented: ORS 696.606

Hist.: REA 1-1995(Temp), f. & cert. ef. 6-5-95; REA 2-1995, f. 11-27-95, cert. ef. 12-3-95; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97

863-010-0610

Application for Licensing

(1) Prior to being issued a real estate marketing organization license, a real estate marketing organization shall file with the Real Estate Commissioner, on a form provided by the Real Estate Commissioner or otherwise in written form, the following information:

(a) The name of the organization and any and all names under which the organization will engage in real estate marketing activity;

(b) The address and telephone number of the main office of the organization and the address or addresses and telephone numbers of all locations at which the organization will engage in real estate marketing activity;

(c) The names and addresses of all owners of the real estate marketing organization and the percentage of ownership for each owner if it is 10% or greater;

(d) If the organization is a partnership, L.L.C. or corporation, the names and addresses of the members and/or officers;

(e) The names of all on-site managers acting on behalf of the real estate marketing organization; and

(f) The name and address of all land developments or other clients for whom real estate marketing will be conducted; and

(g) The executed independent contractor agreements for any telemarketing independent contractor employees.

(2) The following information shall be provided for each and every principal person of the organization:

(a) Have you ever made application for, or ever been issued a real estate license in the State of Oregon? If yes, provide license type and date of application;

(b) Have you ever held a license or registration in this or any other state or in a foreign country to engage in any regulated occupation, trade or profession? If so, identify each such license or registration, state whether it is current and in what state or foreign country;

(c) Have you ever used any name other than the one herein given, either initials, surname, maiden name or alias? If so, please list;

(d) Are you the subject of any current investigation, administrative sanction proceeding, hearing, trial or similar action in progress at this time by any agency that has granted you a license or registration to engage in a regulated occupation, trade or profession? If so, explain and submit copies of documentation that describes the charges against you;

(e) Have you or any partnership or corporation in which you were a participant ever been reprimanded, fined, had any license or registration suspended or revoked, surrendered or resigned the license or registration, or in any way been sanctioned or penalized by the agency issuing the license or registration? If so, explain fully and submit a copy of the final order of the agency imposing or accepting the action taken;

(f) Have you ever entered a plea of nolo contendere, or been found guilty of, or been convicted of a felony or misdemeanor, or other criminal offense or offenses? Are you now awaiting trial or sentencing in any criminal proceeding? If so, explain fully and submit a copy of all legal documentation describing the charges and sanctions imposed for any and all offenses.

(3) In addition to the information set forth in sections (1) and (2) of this rule, the real estate organization shall submit the following with its license application:

(a) A full and complete list of the true names of all real estate marketing employees whom it will be employing at the time of license issuance;

(b) Two completed fingerprint cards for all principal persons of the real estate marketing organization;

(c) Documentation to satisfy the bonding requirements of ORS 696.606(3) including, but not limited to, completion of the Agency's Bond form or Assignment of Security form and any supporting documentation required by the Real Estate Commissioner; and

(d) If the real estate marketing organization is a nonresident real estate marketing organization, a completed and executed irrevocable Consent to Service form; and

(e) The appropriate fee required by OAR 863-010-0640; and

(f) Any other information the Real Estate Commissioner may determine is necessary.

(4) The documentation providing the information required by sections (1), (2), and (3) of this rule shall be accompanied by the following verification executed by the owner of a sole proprietorship, the partners of a partnership or an officer of a corporation: "I acknowledge that the information contained in this application for a real estate marketing organization license is true, correct, and complete to the best of my knowledge."

(5) Notification of any changes in the information required by sections (1), (2) and (3) of this rule must be filed immediately with the Real Estate Commissioner.

Stat. Auth.: Section 4(1), Ch. 217, OL 1995

Stats. Implemented: ORS 696.606

Hist.: REA 1-1995(Temp), f. & cert. ef. 6-5-95; REA 2-1995, f. 11-27-95, cert. ef. 12-3-95; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97; REA 4-1997, f. 11-24-97, cert. ef. 12-1-97

863-010-0620

Term of License

(1) A new real estate marketing organization license shall be for a period of not more than 13 months and a renewal of such license shall be for a period of not more than 12 months from the expiration of the prior license.

(2) Renewal of a current license is accomplished by submitting a request in writing for the renewal of the license accompanied by the fee set out in OAR 863-010-0640.

(3) If a renewal of a current real estate marketing organization license is not completed before the expiration of the current license, the current license will expire and a complete application must be made for a new license.

Stat. Auth.: Sect. 4(1), Ch. 217, OL 1995

Stats. Implemented: ORS 696.606

Hist.: REA 1-1995(Temp), f. & cert. ef. 6-5-95; REA 2-1995, f. 11-27-95, cert. ef. 12-3-95; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97

863-010-0630

Issuance of License

(1) Upon receipt of all information required under OAR 863-010-0610 and completion of all processing of the information except for the completion of a criminal history check of the principal persons, a letter of authorization shall be issued to the real estate marketing organization which will allow it to engage in real estate marketing activity pending the completion of the criminal history check.

(2) Upon satisfactory completion of the criminal history check on all principal persons of the organization, a real estate marketing organization license will be issued effective as of the date of the letter of authorization.

Stat. Auth.: Sec. 4(1), Ch. 217, OL 1995

Stats. Implemented: ORS 696.606

Hist.: REA 1-1995(Temp), f. & cert. ef. 6-5-95; REA 2-1995, f. 11-27-95, cert. ef. 12-3-95

863-010-0640

Fees

The following fees shall apply to filings made pursuant to Chapter 217, Oregon Laws 1995:

(1) Issuance or renewal of a real estate marketing organization license: \$500.00;

(2) Filing of change of information required by OAR 863-010-0610(5): \$75.00;

(3) Upon loss or destruction of license, issuance of a duplicate license: \$5.00;

(4) Processing of each fingerprint card and criminal history check: \$40.00;

(5) Fingerprinting services: \$10.00.

Stat. Auth.: Sec. 4(1), Ch. 217, OL 1995

Stats. Implemented: ORS 696.606

Hist.: REA 1-1995(Temp), f. & cert. ef. 6-5-95; REA 2-1995, f. 11-27-95, cert. ef. 12-3-95

863-010-0650

Real Estate Marketing Employee Registration

(1) Each real estate marketing employee must be hired by, registered under, work under and use his or her legal name in real estate marketing activity for a licensed real estate marketing organization.

(2) No person may act as a real estate marketing employee until such time as his or her name has been registered with the Real Estate Commissioner as a real estate marketing employee. There is no fee for such registration other than the initial application fee or change of information fee. It is the obligation of the real estate marketing organization to provide such registration prior to allowing an employee to engage in real estate marketing activity.

(3) In accordance with OAR 863-010-0610(5), real estate marketing organizations shall immediately notify the Real Estate Commissioner upon the termination of any real estate marketing employee.

(4) A real estate licensee whose real estate license is on active status may not become a registered real estate marketing employee until such time as the real estate license is placed on inactive status with the Real Estate Agency or otherwise removed from active status.

(5) A registered real estate marketing employee is not a real estate licensee and therefore not required to make the disclosures contemplated by ORS 696.800 to 696.855. However, if the services of a real estate marketing organization are retained by a real estate broker, then the real estate marketing organization and its employees will be required to make any disclosures required to be made by the employing real estate broker.

Stat. Auth.: Sec. 4(1), Ch. 217, OL 1995

Stats. Implemented: ORS 696.606

Hist.: REA 1-1995(Temp), f. & cert. ef. 6-5-95; REA 2-1995, f. 11-27-95, cert. ef. 12-3-95; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97

863-010-0660

Onsite Inspection of Nonresident Real Estate Marketing Organizations

The Real Estate Commissioner may delegate any necessary onsite inspection of nonresident real estate marketing organizations to an agency of the state or foreign country in which the nonresident real estate marketing organization is located and which is found by the Real Estate Commissioner to be the appropriate local regulatory agency.

Stat. Auth.: Sec. 4(1), Ch. 217, OL 1995

Stats. Implemented: ORS 696.627

Hist.: REA 1-1995(Temp), f. & cert. ef. 6-5-95; REA 2-1995, f. 11-27-95, cert. ef. 12-3-95

DIVISION 30

OREGON SUBDIVISION CONTROL LAW

Timeshare Plans

863-030-0050

Definitions

As used in OAR 863-030-0050 to 863-030-0080, unless the context requires otherwise:

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

(2) "Agency" means the Real Estate Agency.

(3) "Accommodation," "assessment," "common expenses," "developer," "facility," "managing entity," "negotiate," "purchaser," "owner," "seller," "timeshare," "timeshare agreement,"

"timeshare period" and "timeshare plan" have the meaning given those terms in ORS 94.803.

Stat. Auth.: ORS 92, ORS 94 & ORS 696

Stats. Implemented: ORS 94.803

Hist.: REC 2-1982, f. 5-3-82, ef. 5-15-82; REC 1-1983(Temp), f. & ef. 8-3-83; REC 1-1984, f. 1-26-84, ef. 2-1-84; REA 5-1987, f. 12-3-87, ef. 1-1-88

863-030-0060

Filing with Commissioner

In addition to and at the time of filing the information required by ORS 94.823, the developer of a timeshare plan or the developer's agent shall submit to the commissioner the following:

(1) The identification of each timeshare period by letter, name, number or a combination of letters, names and numbers, as required by subsection (3) of ORS 94.821.

(2) A complete description, including all necessary implementing documents, of the methods proposed to be used by the developer in complying with the applicable provisions of ORS 94.843, 94.871 to 984.876 and 94.881 to 94.900.

(3) A statement of whether the timeshare plan is participating in an exchange program and, if so, the information on the exchange program to be supplied to a purchaser as required under OAR 863-030-0075(1).

(4) The name of any person authorized to change or add to the assessments to which the purchaser may be subject, and conditions under which the changes or additions may be imposed.

(5) The method, if any, by which the developer may change the managing entity or transfer the control of the managing entity.

(6) For a timeshare plan having timeshare property comprising only part of the accommodations in a hotel, motel or similar commercial lodging business and where the accommodations that are not part of the timeshare plan are used for transient accommodations concurrently with the operation of the timeshare plan, a copy of any contract for the following:

(a) Arrangements for the temporary use for transient accommodations of timeshare property and the temporary use of accommodations regularly used for transient accommodations as timeshare property; and

(b) The apportionment of the operating costs of the commercial lodging business that jointly benefit transient accommodations and the timeshare plan, including the apportionment method.

(7) For timeshare plans where the use or occupancy of timeshare property is on a first reserved, first served basis rather than by preassignment of a specific timeshare period to a specific purchaser and where timeshare property not timely reserved for use or occupancy by purchasers may be rented to members of the public:

(a) A description of the criteria used to determine whether a timeshare property has been timely reserved;

(b) Any rules of the timeshare plan or managing entity for the rental of timeshare property to the public;

(c) The method of cost apportionment for purchaser and public use or occupancy of timeshare property; and

(d) The disposition of all revenues received from public use of timeshare property.

(8) Any other information that is material to the offering, negotiation, purchase, sale, operation and management of the timeshare plan or which, by omission, tends to make the information otherwise disclosed misleading.

Stat. Auth.: ORS 92, ORS 94 & ORS 696

Stats. Implemented: ORS 94.823

Hist.: REC 2-1982, f. 5-3-82, ef. 5-15-82; REC 1-1983(Temp), f. & ef. 8-3-83; REC 1-1984, f. 1-26-84, ef. 2-1-84

863-030-0065

Presales of Timeshare Plans

(1) In cases where timeshare sales agreements are executed before the timeshare property is ready and available for use by the purchaser for the timeshare period bargained for in accordance with the timeshare instrument, the developer shall comply with ORS 94.873 to 94.905 in making such sales.

(2) All funds of the purchaser deposited in escrow, if invested, shall be in savings accounts, time certificate deposits, or other investments approved in advance by the commissioner.

(3) The presale timeshare purchase agreement made under this rule shall contain, at least, the following:

(a) The name of the timeshare plan and the appropriate designation for the timeshare period or other interest bargained for in the timeshare plan;

(b) The full amount of the purchase price and any prepaid assessments or other costs, including the amount and form of any earnest money paid by the purchasers;

(c) The name and address of the escrow agent and the terms of the escrow, unless the purchaser executes an individual escrow agreement or instruction establishing the escrow required by section (2) of this rule;

(d) If a purchaser's funds are to be invested, the name of the financial institution where the funds will be invested and to whom interest earnings or income will inure under all possible circumstances;

(e) The date of closing and the conditions that must exist and the requirements that must be met before the closing takes place; and

(f) The closing procedure;

(g) The authority of the developer to terminate the agreement and the forfeiture provisions, if any;

(h) If the developer has specified any contingencies, the date or time interval, if other than the date of closing, when all funds received from the purchasers, including any income derived therefrom, are to be returned if the contingency specified does not occur;

(i) Provisions that the purchaser is entitled to recover the amount paid to the developer in the event of default by the developer;

(j) The rights reserved by the developer, if any, to modify the timeshare plan or other documents by which the purchasers are or will be bound;

(k) Notice to purchaser of cancellation rights under ORS 94.836 to 94.841.

(4) In lieu of the requirements of section (2) of this rule, the commissioner may approve any alternative requirement or method that the commissioner considers satisfactory to guarantee that the purchaser will have the same protection provided by escrow.

Stat. Auth.: ORS 92, ORS 94 & ORS 696

Stats. Implemented: ORS 94.823, ORS 94.873 & ORS 94.878

Hist.: REC 2-1982, f. 5-3-82, ef. 5-15-83; REC 1-1983(Temp), f. & ef. 8-3-83; REC 1-1984, f. 1-26-84, ef. 2-1-84

863-030-0075

Exchange Programs

(1) A seller who offers an exchange program to a purchaser in conjunction with a timeshare plan shall provide the following information to the purchaser before executing a contract between the purchaser and the company offering the exchange program, in addition to the written information required under subsection (2) of ORS 94.826:

(a) A copy of any written agreement between the developer and the exchange company and a copy of any information submitted by the developer to the exchange company and upon which the exchange company based its membership decision regarding the timeshare plan of the developer;

(b) Whether the exchange company or any of its officers or directors has more than ten percent legal or beneficial interest in the developer or managing entity for the timeshare plan, and, if so, the nature of the interest;

(c) Whether the purchaser's contract with the exchange program is separate and distinct from the purchaser's contract with the developer of the timeshare plan;

(d) A complete description of all limitations, restrictions or priorities employed in the operation of the exchange program, including but not limited to, limitations on exchanges based on season, unit size or levels of occupancy; and, if the limitations, restrictions, or priorities are not applied uniformly by the exchange program, a complete description of the manner of their application;

(e) Whether exchanges are arranged on a space available basis and whether the exchange company guarantees fulfillment of specific requests for exchanges;

(f) Whether the fees for participation in the exchange program may be altered and the method for alteration;

(g) The names and locations of all accommodations and facilities included in the timeshare plans participating in the exchange program;

(h) The number of timeshare accommodations in each timeshare plan which are available for occupancy and which qualify for participation in the exchange program, expressed in the following numerical groupings: 1-5; 6-10; 11-20; 21-50 and 51 and over;

(i) The number of currently enrolled purchasers and owners at each timeshare plan participating in the exchange program, expressed in one of the following numerical groupings: 1-100; 101-249; 250-499; 500-999; and 1,000 and over; and a statement of the criteria used to determine those purchasers and owners who are currently enrolled in the exchange program;

(j) The disposition made by the exchange company of timeshare periods deposited with the exchange program by purchasers and owners enrolled in the exchange program.

(k) The material described in section (2) of this rule.

(2) An exchange company offering an exchange program to purchasers in Oregon on its own behalf or through a developer shall file the following information with the commissioner, prior to engaging in the offering and for each calendar year of such offering on or before July 1 of the year following the close of the calendar year. The information shall be independently audited by a certified public accountant or a public accountant before filing:

(a) The total number of owners eligible to participate in the exchange program categorized as having either a fee-paying or gratuitous membership in the exchange program;

(b) The total number of timeshare plans eligible to participate in the exchange program categorized as having either a contractual relationship with the developer of the timeshare plan or a contractual relationship directly with owners in a timeshare plan;

(c) The percentage of confirmed exchanges and a complete statement of the criteria used to determine whether an exchange request was properly requested. The percentage of confirmed exchanges is the number of exchanges confirmed by the exchange program divided by the number of exchanges properly requested;

(d) The number of timeshare periods for which the exchange program has an outstanding obligation to provide an exchange to purchasers who relinquished a timeshare period during the calendar year reported or any earlier year in exchange for a timeshare period in any future year;

(e) The number of exchanges confirmed by the exchange program during the calendar year reported;

(f) The names of all the officers and directors of the exchange company.

(3) The seller of a timeshare plan shall use and represent only the most current information on file with the commissioner under this rule when offering a timeshare plan, including an exchange program, to purchasers. It is sufficient for the developer and the exchange company referred to in this rule to rely upon the most current directory or other publication prepared and distributed by the exchange company which includes the information referred to in this rule.

(4) The percentage figure described in subsection (2)(c) of this rule shall be accompanied by the following statement, or a substantially equivalent statement, in bold-faced type:

"THIS PERCENTAGE IS A SUMMARY OF THE EXCHANGE REQUESTS ENTERED WITH THE EXCHANGE PROGRAM IN THE PERIOD REPORTED. THE PERCENTAGE DOES NOT INDICATE A PURCHASERS' PROBABILITIES OF RECEIVING ANY SPECIFIC CONFIRMED EXCHANGES."

Stat. Auth.: ORS 92, ORS 94 & ORS 696

Stats. Implemented: ORS 94.826

Hist.: REC 2-1982, f. 5-3-82, ef. 5-15-82; REC 1-1983(Temp), f. & ef. 8-3-83; REC 1-1984, f. 1-26-84, ef. 2-1-84

863-030-0080

Promotional Programs

(1) In conjunction with the filing required by OAR 863-030-0060, the developer shall submit to the commissioner or the commissioner's representative an outline of any promotional program prepared by the developer for the sale of the timeshare plan or a statement that no such program has been prepared. "Promotional program" includes, but is not limited to, the methods of marketing to be

employed, including but not limited to sweepstakes, lodging certificates, gifts, awards, premiums, discounts, drawings or contests.

(2) For the purpose of administering ORS 94.940 and 94.945, the developer shall submit to the commissioner or the commissioner's representative, prior to its being printed in final form and used, drafts of any promotional program materials or advertising to be used in sales of the timeshare plan. If the commissioner has not acted upon the submitted drafts within seven business days from the date of receipt by approving the drafts, disapproving the drafts or requesting further information on the drafts, the drafts shall be deemed approved as submitted.

Stat. Auth.: ORS 92, ORS 94 & ORS 696

Stats. Implemented: ORS 94.823, ORS 94.940 & ORS 94.945

Hist.: REC 2-1982, f. 5-3-82, ef. 5-15-82; REC 1-1983(Temp), f. & ef. 8-3-83; REC 1-1984, f. 1-26-84, ef. 2-1-84; REA 5-1987, f. 12-3-87, ef. 1-1-88

DIVISION 40

MEMBERSHIP CAMPING CONTRACT RULES

863-040-0010

Application for Membership Camping Contract Registration

In addition to and at the time of filing the information required by ORS 94.959, a membership camping operator shall file the following information and documentation with an application for the registration of a membership camping contract:

(1) The name, address and telephone number of each onsite manager of any campground located in Oregon.

(2) A current title report for the real property of any campground in Oregon along with a copy of all encumbrances listed on the report. If the operator is not in fee title to the real property, a copy of any documentation on which a right to use the property is claimed by the operator.

(3) Full and complete disclosure of any local requirements for the creation, siting and operation of campgrounds and verification from the local jurisdiction that the membership camping operator has complied with the requirements.

(4) A copy of the written disclosures to be provided to prospective purchasers in order to comply with ORS 94.974.

(5) With the information required by ORS 94.959(1)(b), the total number of camping sites available to the total number of membership camping contracts then in effect, both within and without this state, the total number of camping sites to be made available to the total number of membership camping contracts intended to be sold, both within and without this state and the numbering system or code by which the membership camping operator identifies the membership camping contracts entered into so that the number entered into and to be sold may be determined.

Stat. Auth.: ORS 94 & ORS 696

Stats. Implemented: ORS 94.959

Hist.: REA 6-1987, f. 12-3-87, ef. 1-1-88

863-040-0040

Membership Camping Contract Salesperson Registration and Renewal

(1) An MC operator may file with the Agency a written delegation of authority to allow a campground manager to sign an acceptance of a MCC salesperson registration under ORS 94.980(2) on behalf of the operator.

(2) MCC salespersons and MCC brokers may renew a registration within one year from the expiration date of the registration by filing with the commissioner a renewal application form and the appropriate fee. The renewed registration will be issued for one year from the date of renewal. If a renewal application is not filed with the commissioner within one year from the expiration of a registration, renewal of the registration will no longer be possible and the former registrant must meet the requirements of a new registration under ORS 94.980.

(3) As part of the application for registration as a MCC salesperson submitted under ORS 94.980, the applicant shall submit two completed fingerprint cards on a form prescribed by the Commissioner and an additional fee sufficient to recover the costs of the pro-

cessing of the applicant's fingerprint information and securing any criminal offender information pertaining to the applicant. If the applicant submitted the required fingerprint information and fee within 12 months prior to the date of the applicant's current application, such fingerprint card and additional fee need not be submitted as part of the current application.

(4) At the request of a prospective applicant for registration as a MCC salesperson under ORS 94.980, Agency staff designated by the Commissioner may perform the fingerprinting process for such applicant during regular office hours of the Agency at the office of the Agency upon payment to the Agency by such applicant of a separate and additional fee of \$10.

Stat. Auth.: ORS 94, ORS 181, ORS 183.335, ORS 293 & ORS 696.385

Stats. Implemented: ORS 94.980

Hist.: REA 6-1987, f. 12-3-87, ef. 1-1-88; REA 3-1989, f. 12-13-89, cert. ef. 2-1-90; REA 2-1992, f. 2-28-92, cert. ef. 4-1-92; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97; REA 4-1997, f. 11-24-97, cert. ef. 12-1-97

DIVISION 50

RULES AND REGULATIONS ESCROWS AND ESCROW AGENTS

General Rules

863-050-0015

Delivery of Documents or Property

(1) Except as otherwise provided in ORS 696.581(5) and (6), an escrow agent shall use documents or other property deposited in escrow only in accordance with the dated written instructions of the principals to the escrow transactions or pursuant to order of a court of competent jurisdiction.

(2) As used in subsection (6) of ORS 696.581, "one-sided escrow" means an escrow that is opened by use of a dated written agreement between two or more principals that is executed by one principal or by use of dated written escrow instructions from one principal.

(3) For the purpose of carry out subsection (6) of ORS 105.475, an escrow agent shall return all deposits and other consideration of a buyer held by the escrow agent without the need for separate written instructions from the seller if:

(a) The buyer in writing asserts that the buyer is revoking the buyer's outstanding offer pursuant to ORS 105.475, and demands return of all deposits and other consideration of the buyer held by the escrow agent; and

(b) The escrow does not contain a waiver of the right of revocation from any one buyer or a copy of such a waiver executed by any one buyer; and

(c) The buyer has not provided the escrow agent with executed written instructions and executed documents necessary to close the transaction; and

(d) The escrow does not contain a copy of an acknowledgement by any one buyer that the right to revoke has expired; and

(e) The buyer has provided the escrow agent with a written release from an indemnification against all liability arising from the return of all deposits and other consideration held by the escrow agent.

(4) If the buyer has provided the escrow agent with an executed waiver of the buyer's right to revoke the offer or if the buyer has provided the escrow agent with executed written instructions and executed documents necessary to close the transaction, the escrow agent shall not disburse funds in the escrow without the separate written instructions of the buyer and seller in the escrow. In carry out subsection (6) of ORS 105.475, an escrow agent receiving a revocation of offer from a buyer shall not be responsible for determining whether the revocation has been timely delivered to the seller.

(5) As used in sections (3) and (4) of this rule:

(a) "Buyer" means and includes all persons who are principals purchasing in the escrow in which the deposits and other consideration are held;

(b) “Any one buyer” means any one of the persons who are the principals purchasing in the escrow in which the deposits and other considerations are held.

(6) In carrying out subsection (6) of ORS 105.475, an escrow agent shall be subject to the collected funds requirements of OAR 863-050-0055(1), (2), and (11).

(7) If the escrow agent, holding funds described in section (1) of this rule, has reasonable cause to believe that a buyer is not entitled to return of the funds held in the escrow, the escrow agent may comply with subsections (6) and (7) of ORS 105.475 by interpleader of the deposits and considerations delivered to it.

Stat. Auth.: ORS 183.335, ORS 696.385, ORS 696.541(1), ORS 696.578(3), ORS 696.578(4) & ORS 696.581(6)

Stats. Implemented: ORS 105.475 & ORS 696.581

Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 2-1981, f. 10-30-81, ef. 11-1-81; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92; REA 1-1993, f. 12-1-93, cert. ef. 1-1-94

863-050-0020

Notice of Interest

(1) An escrow agent shall act without partiality to any of the principals to an escrow transaction.

(2) An escrow agent must disclose to the principals in an escrow transaction in a separate written notice any of the following interests of the agent, the owners of the escrow agent, any corporate officers of the escrow agent, the management staff in the office of the escrow agent handling the escrow transaction, the escrow officer handling the escrow transaction for the escrow agent or any employees of the escrow agent directly assisting such escrow officer in the transaction:

(a) A family relationship by blood or marriage of spouse, parent, grandparent, child, grandchild, brother or sister to any principal in the transaction or to any real estate licensee, builder or subdivider interested in the transaction; and

(b) The nature of any pecuniary business interest in the transaction other than as escrow agent; and

(c) The nature of any financial interest in any principal in the transaction or in any real estate licensee, builder or subdivider interested in the transaction.

(3) The following statement must be included in a disclosure made under section (2) of this rule:

“We call this interest to your attention in order to be open and fair with you. In our opinion this interest will not prevent us from being a fair and impartial escrow agent in this transaction. Nevertheless, you may request that this transaction be closed by some other licensed escrow agent if you so desire.”

(4) The statement described in section (3) of this rule and the interest must be disclosed to the principals when the escrow is accepted by the escrow agent and before any of the principals become liable for any costs or signs any written escrow instruction; or, if the interest is discovered later, promptly upon discovery of the interest.

(5) Each escrow agent making any disclosure required by section (2) of this rule shall take a written receipt for the disclosure statement or shall document the disclosure and its delivery to a principal. The escrow agent shall maintain the receipts and documentation as records under OAR 863-050-0115.

(6) The disclosure required by section (2) of this rule shall be given if the escrow agent, its owners, officers, management staff in the office of the escrow agent handling the escrow transaction, or the escrow officer handling the escrow transaction knows of any relationship described in section (2) of this rule. The Commissioner may impute to the escrow agent any knowledge of the individual having an interest described in section (2) of this rule, if the Commissioner finds that the escrow agent did not have an implemented internal policy requiring disclosure of any such interest by its owners, officers and employees described in section (2) of this rule in order to comply with this rule; or that the escrow agent was, in practice, attempting to evade the disclosure requirements of this rule to the potential detriment of a principal in the escrow transaction.

(7) As used in this rule, “owner” means a person having an ownership interest in the escrow agent equaling more than five percent of the total ownership interest in the escrow agent.

(8) For the purposes of subsections (2)(b) and (c) of this rule, if an escrow agent gives any services, property or anything of value

as a marketing tool to induce the recipient to bring or refer escrow business to the escrow agent, such giving shall not be considered a pecuniary business interest or financial interest for which disclosure must be made under this rule.

(9) The receipt by an escrow agent of bank services described in OAR 863-050-0065(2) and interest earned on clients trust funds under ORS 696.578(2) are not subject to the disclosure requirements of section (2) of this rule.

Stat. Auth.: ORS 183.335, ORS 696.385, ORS 696.541(1), ORS 696.578(3), ORS 696.578(4) & ORS 696.581(6)

Stats. Implemented: ORS 696.535(1)(e) & ORS 696.581

Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 2-1990, f. 4-18-90, cert. ef. 7-1-90; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92

863-050-0025

Closing Statement

Upon completion of an escrow transaction, the escrow agent shall deliver a written, verified statement of the applicable escrow account to each principal to the escrow. The statement shall specify all receipts and disbursements of escrow funds for the principal. Charges to persons in connection with an escrow transaction, shall be clearly designated and shall be shown separately from other disbursements of the escrow agent. Payments outside of escrow, if shown in the statement, shall be designated as payments outside of escrow and shall be set forth separately from payments by or to the escrow agent. A copy of the escrow statement shall be retained by the escrow agent in the escrow account file. The escrow agent shall date and sign the escrow statement and provide a copy of the statement of the represented principal(s), upon request, to any real estate broker representing such principal(s) involved in the transaction and any additional copy to a principal or the principal’s designee.

Stat. Auth.: ORS 696

Stats. Implemented: ORS 696.535(1)(g) & ORS 696.535(3)

Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 2-1981, f. 10-30-81, ef. 11-1-81; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 2-1997, f. 6-18-97, cert. ef. 7-1-97

863-050-0030

Bank Charges

An escrow agent shall not authorize or allow a bank to remove funds from its “Trust” or “Escrow” account established under ORS 696.578 for payment of bank service charges, overdraft charges, printed check charges, collection charges, or bank fees or bank service charges of any kind. Such charges shall be paid from the escrow agent’s own funds.

Stat. Auth.: ORS 696

Stats. Implemented: ORS 696.541 & ORS 696.578

Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REA 2-1997, f. 6-18-97, cert. ef. 7-1-97

863-050-0033

Notice of Judgments

(1) Except as otherwise provided by section (4) of this rule, an escrow agent shall notify the Real Estate Commissioner of:

(a) The entry of a judgment against the escrow agent in any civil action involving the alleged misconduct of the escrow agent in an escrow transaction; and

(b) The entry of a judgment against any officer, employee, or director of the escrow agent involving the alleged misconduct of the officer, employee or director in an escrow transaction handled through the escrow agent; and

(c) The adverse decision of a court of competent jurisdiction in any criminal proceeding involving the alleged misconduct of the escrow agent or of any officer, employee, or director of the escrow agent in an escrow transaction handled through the escrow agent; and

(d) Any adverse decision resulting from court ordered binding arbitration involving the alleged misconduct of the escrow agent in an escrow transaction.

(2) The notification required by section (1) of this rule shall be written and contain a brief description of the escrow transaction involved and the names of the principals. If a civil action, the notification shall include a copy of the judgment entered. If a criminal proceeding, the notification shall include the criminal charge for

which the escrow agent, officer, employee, or director was convicted and the sentence imposed.

(3) The notification required by sections (1) and (2) of this rule shall be made within ten days after the date of the entry of the judgment or the date of the sentencing in a criminal proceeding. Notification must be made under this section whether or not the judgment or conviction is appealed. If the judgment or conviction is appealed, each subsequent decision of an appellate court must be reported under this rule.

(4) A judgment or conviction of the Small Claims Department of any District Court or Justice's Court is exempt from the notification requirements of this rule. However, if the judgment or conviction is appealed, each subsequent decision of any appellate court must be reported under this rule.

Stat. Auth.: ORS 696

Stats. Implemented: ORS 696.511 & ORS 696.535(1)(b)

Hist.: REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 2-1997, f. 6-18-97, cert. ef. 7-1-97

Accounting Rules

863-050-0050

Accounting Controls

(1) An escrow agent shall establish and maintain the following books on the agent's escrow business:

(a) An individual escrow ledger sheet that is identified by separate letter or number to record the accounting on each escrow account; and

(b) Escrow liability control account or checkbook or a cash receipts and disbursements journal under generally accepted principles of accounting.

(2) Receipts and disbursements shall be posted to the cash journal. When receipts or disbursements are posted as a total to the cash journal or to the control account, the adding machine tape or other means of reconciliations necessary to trace the individual transactions in an audit shall be preserved and filed in a logical sequence.

(3) The records referred to in subsections (1)(a) and (b) of this rule shall be reconciled at least once each month.

(4) The balance of the control account or checkbook or cash receipts and disbursements journal described in subsection (1)(b) of this rule must equal the total of all outstanding liabilities shown on the individual escrow ledger sheets described in subsection (1)(a) of this rule. The balance of the control account or checkbook or cash receipts and disbursements journal must equal the balance of the escrow bank account and shall be reconciled at least once each month with the balance in the bank of the "Trust" or "Escrow" account established under ORS 696.578.

(5) An individual escrow ledger sheet for an escrow account shall contain the date of each receipt or disbursement of funds, the identity of any person from whom funds were received, the identity of any person to whom funds were disbursed, the receipt or check number, the amount of the funds received or disbursed and the balance in the individual escrow account after each such receipt or payment.

(6) This rule applies to escrow savings accounts however, such savings the accounts must be reconciled at least quarterly.

Stat. Auth.: ORS 181, ORS 183, ORS 293 & ORS 696

Stats. Implemented: ORS 696.535(2), ORS 696.541(2) & ORS 696.578

Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 2-1981, f. 10-30-81, ef. 11-1-81; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 3-1989, f. 12-13-89, cert. ef. 2-1-90

863-050-0055

Accounting Practices

(1) A check shall not be drawn, executed, or dated prior to the existence in the individual escrow account or a bank escrow account against which it is drawn, executed, or dated, of a sufficient credit balance to cover the check.

(2) Transfer of funds between individual closing escrow accounts may not be accomplished by ledger entries alone. The transfer must be accompanied by written checks and receipts charging and crediting the appropriate escrow account or by a written transfer form filed in each of the escrow accounts involved. A transfer form shall

contain the date of the transfer, the amount of funds being transferred, the identity of the escrow accounts being debited and credited, and the signature of a person authorized to sign checks on the escrow bank account. Transfer forms may be used only where the escrow accounts involved in the transfer are closed through the same bank account. The authorization for the transfer must be placed in each escrow file involved.

(3) Transfers between collection escrow accounts may be made by ledger entries alone. The entries must identify the transaction and be made on each affected ledger account. Transfer authorization must be filed in each escrow account.

(4) An escrow agent shall not withdraw or transfer money from any individual escrow account or bank escrow account in excess of the amount to the credit of such account at the time of the payment or transfer.

(5) Escrow fees from a closing escrow shall be withdrawn from the closing escrow account when the closing service has been performed. For the purposes of ORS 696.525 and 696.527 and this section, the obtaining and recording or filing after closing of documents that are required to clear or transfer title in a transaction shall be considered a title insurance function, rather than an escrow function. In phased escrow closings, the escrow agent may withdraw fees from the individual closing account at the conclusion of each phase with the prior written authorization of the principals in the phased transaction as part of the required written and dated escrow instructions of the principals. Any fees which are earned as provided in this section may be posted to a separate fee ledger. The separate fee ledger shall identify the escrow account number and the amount of each fee that was posted. If the fees are posted to a separate fee ledger, the fees must be withdrawn at least once each month. Unless transferred to a separate fee ledger, the check or voucher used to withdraw closing escrow fees shall disclose the escrow number and amount for each fee withdrawn.

(6) Escrow fees from a collection escrow shall be withdrawn from the collection escrow account when the collection service has been performed. The fees may be posted to a separate fee ledger. If the fees are set aside in a separate fee ledger, the fees must be withdrawn at least once each month. Unless transferred to a separate fee ledger, the check or voucher used to withdraw collection escrow fees shall disclose the escrow number and amount for each fee withdrawn.

(7) Only funds received as part of an escrow transaction or as trustee of a trust deed under ORS 86.705 to 86.795 may be deposited in the "Escrow" or "Trust" account established under ORS 696.578.

(8) All funds deposited in a "Trust" or "Escrow" account established under ORS 696.578 shall be withdrawn, paid out, or transferred to other accounts as specified in the written escrow instructions of the principals to the escrow transaction directed to the escrow agent or pursuant to order of a court of competent jurisdiction.

(9) All receipts and disbursements of escrow funds shall be posted on a separate escrow ledger sheet for each individual escrow account using the date of the transaction, without regard to the date of posting.

(10) An escrow agent shall provide the Commissioner upon the Commissioner's request with a continuing authorization to certify the actual balance in any "Escrow" or "Trust" account of the escrow agent established under ORS 696.560. The authorization shall be filed in the depository in which the account is maintained and a copy of the authorization shall be filed with the Commissioner.

(11) Upon request by an authorized representative of the Commissioner, an escrow agent must demonstrate that a "sufficient credit balance" existed in an individual escrow closing account prior to any disbursement by producing documentation and financial records showing that:

(a) The client's trust funds deposited into a clients' trust account and credited to the individual account were collected and available for disbursement; and

(b) The disbursement of these funds did not involve the use of any other client's trust funds deposited into a clients' trust account and credited to any other individual escrow closing account.

Stat. Auth.: ORS 696.385 & ORS 696.541

Stats. Implemented: ORS 696.535(2) & ORS 696.578
Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 1-1988, f. 5-31-88, cert. ef. 7-1-88; REA 2-1990, f. 4-18-90, cert. ef. 7-1-90; REA 2-1997, f. 6-18-97, cert. ef. 7-1-97

863-050-0060

Interest-Bearing Accounts

(1) An escrow agent may place client's trust funds in a federally insured interest-bearing bank account, designated a clients' trust account, in a bank within this state with the prior written approval of all principals to the escrow transaction. Except as otherwise provided in ORS 696.581(5) and (6), the written escrow instruction shall include the written approval of all principals to the escrow transaction and shall specify how the funds are to be handled, including but not limited to the names of the principals, the identification of the escrow transaction, to whose account the interest earnings will accrue, the disbursement of the interest, and any limitations that may be imposed on the withdrawal of clients' trust funds deposited in the interest-bearing account. As provided in ORS 696.578(2), the interest earnings of such interest-bearing account may inure to the benefit of the escrow agent if expressly approved in writing before deposit of the trust funds by all parties having an interest in the trust funds.

(2) An escrow agent shall deposit and maintain the clients' trust funds in a federally insured interest-bearing account denominated as a "Trust" or "Escrow" account under ORS 696.578.

(3) An escrow agent shall account separately for the deposit of funds and disposition of interest earned in each escrow transaction and handle disposition of interest earned as a disbursement in the closing of the escrow transaction.

(4) An escrow agent may maintain one or more separate federally insured interest-bearing accounts for each escrow transaction subject to this rule.

(5) As used in this rule, "bank" means a financial institution in this state having one or more types of federally insured interest-bearing accounts available to depositors, including but not limited to commercial banks, savings and loans, mutual savings banks and credit unions.

Stat. Auth.: ORS 183.335, ORS 696.385, ORS 696.541(1), ORS 696.578(3), ORS 696.578(4) & ORS 696.581(6)
Stats. Implemented: ORS 696.578
Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 2-1981, f. 10-30-81, ef. 11-1-81; REC 7-1984, f. 9-4-84, ef. 10-1-84; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92

863-050-0065

Rebate, Discount, Refund, and Credit

(1) Except as provided in section (2) of this rule, an escrow agent shall account for and pass on to a principal any rebate, discount, or other benefit received directly or indirectly by the agent and resulting from disbursement of the principals escrow account or the agent's bank escrow or trust account.

(2) An escrow agent may retain bank services. As used in this rule, "bank services" are any monetary benefits received indirectly from its bank as services to the escrow agent because the escrow agent deposits and maintains its clients' trust funds in non-interest bearing accounts in such bank. The escrow agent must disclose to the principals in a transaction the nature of the benefit being received. The disclosure shall contain a good faith estimate of the amount of the benefit received as it applies to the individual escrow. As provided in ORS 696.578(3), any bank services provided to the escrow agent shall not be considered to affect the impartiality or neutrality of the escrow agent. Such services are permitted with approval in the written closing instructions of the principals.

(3) If an escrow agent receives a refund or return of moneys disbursed from an escrow, the escrow agent must account for and handle such moneys as any other funds deposited by or on behalf of a principal into the escrow. The escrow agent must adjust the ledger sheet for the escrow transaction to reflect the refund or return, disburse the refund or return in accordance with the dated written escrow instructions of the principal(s) and, as appropriate under such instructions, provide an explanation of the refund or return to the appropriate principal(s) to the escrow.

Stat. Auth.: ORS 183.335, ORS 696.385, ORS 696.541(1), ORS 696.578(3), ORS 696.578(4) & 696.581(6)
Stats. Implemented: ORS 696.578(3)
Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 2-1990, f. 4-18-90, cert. ef. 7-1-90; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92

863-050-0066

Deposits

(1) Except for any checks received from a lender who requires that the checks not be deposited until an escrow is ready to close, an escrow agent shall deposit all checks or cash received in escrow into the agent's trust account established under ORS 696.578 not later than the close of business of the banking day next following the date of receipt of the checks or cash.

(2) For the purposes of this rule, "banking day" includes each day a financial institution is required to be open for the normal conduct of its business but does not include Saturday, Sunday, or any legal holiday.

Stat. Auth.: ORS 696
Stats. Implemented: ORS 696.505 & ORS 696.578
Hist.: REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 6-1984, f. 6-18-84, ef. 7-1-84

Records Rules

863-050-0100

Records

(1) In addition to and not in lieu of any other record-keeping requirements under OAR 863-050-0015 to 863-050-0150 and the Oregon Escrow Law, an escrow agent shall keep the following records to account for funds received and disbursed in escrow:

(a) Copies of all receipt forms used by the escrow agent including voided receipts;

(b) All cancelled checks of the escrow agent which shall be filed with all numbered check forms accounted for, including voided checks; and

(c) All vouchers and check stubs used by the escrow agent, including voided vouchers and check stubs; and

(d) Copies of all transfer forms used in making transfers of funds between escrow accounts.

(2) For lost or missing checks described in subsection (1)(b) of this rule, an escrow agent shall maintain a signed, dated statement explaining why the check is missing.

(3) Except as provided in sections (4) and (5) of this rule, no trust funds shall be received or disbursed without issuing a receipt or check to account for the receipt or disbursement. An appropriate receipt shall be issued as soon as practicable after receiving cash in a collection escrow or receiving cash or checks in a closing escrow.

(4) An annual written statement may be sent by an escrow agent to a principal in a collection escrow to show all receipts in the collection escrow during the year covered in the report.

(5) No disbursement from an individual escrow account shall be made based upon a wire or electronic transfer deposited into the Trust or Escrow account of the escrow agent until the deposit has been verified by the escrow agent. The escrow agent shall make arrangements with the escrow depository and other entities for an immediate follow-up hard copy credit memo or a hard copy debit memo when funds are received or disbursed by wire or electronic transfer. Receipt of funds by wire or electronic transfer must be posted in the same manner as other receipts and include a traceable identifying name or number supplied by the escrow depository receiving the funds or by the transferring entity. The escrow agent disbursing funds by wire or electronic transfer shall retain in the individual escrow transaction file a copy of the written authorization from the principals to use wire or electronic transfer for disbursement or funds.

(6) Check forms used by an escrow agent shall be pre-numbered with consecutive numbers. If a computer fills in or generates checks and any check copies, all check stock and check copies must be consecutively pre-numbered. If a computer generates checks using unnumbered check stock, the computer must continually and consecutively number the checks as generated. The account number must

appear in the magnetic coding on the bank check face to identify the account number for reading by the bank's computerized accounting system.

(7) Upon request for a copy of any check form, voided check or check copy by an authorized representative of the commissioner, the escrow agent receiving the request shall supply the requested check or copy.

Stat. Auth.: ORS 183.335, ORS 696.385, ORS 696.541(1), ORS 696.578(3), ORS 696.578(4) & ORS 696.581(6)
Stats. Implemented: ORS 696.535(3)
Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 2-1990, f. 4-18-90, cert. ef. 7-1-90; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92; REA 2-1997, f. 6-18-97, cert. ef. 7-1-97

863-050-0105

Record Location

(1) An escrow agent must maintain all required records in this state.

(2) An escrow agent shall notify the Commissioner in writing of the location by street address of the agent's required records.

(3) An escrow agent shall notify the Commissioner of any relocation of the records at least 15 days prior to the relocation. The notice shall contain the new location by street address of the agent's required records. If the new location is not the licensed main office or a licensed branch office of the escrow agent, the escrow agent shall provide the Commissioner in writing with the information and contact persons necessary to have access to the records during regular business hours.

Stat. Auth.: ORS 181, ORS 183, ORS 293 & ORS 696
Stats. Implemented: ORS 696.535(3) & ORS 696.535(4)
Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 3-1989, f. 12-13-89, cert. ef. 2-1-90

863-050-0108

Reciprocal Licensee Records

(1) An escrow agent may provide office filing and transaction records storage services for persons holding reciprocal licenses under ORS 696.258. An escrow agent may charge reasonable fees for these services. The transaction records of a reciprocal licensee include those records required to be kept in this state with a licensed escrow agent under ORS 696.262.

(2) For the purposes of OAR 863-050-0020, the fact that an escrow agent is providing filing or records storage services for a reciprocal real estate licensee shall not be considered as a business or financial interest in the reciprocal licensee or as acting with partiality toward any principal to any transaction where the reciprocal licensee is a principal in the transaction.

Stat. Auth.: ORS 181, ORS 183, ORS 293 & ORS 696
Stats. Implemented: ORS 696.262 & ORS 696.535(3)
Hist.: REA 3-1989, f. 12-13-89, cert. ef. 2-1-90; REA 2-1997, f. 6-18-97, cert. ef. 7-1-97

863-050-0110

Record Inspection

(1) The offices, places of business, books, records, accounts, safes, computer codes and keys, files, and papers of an escrow agent shall be maintained freely accessible and available for audit or examination by the Commissioner or the Commissioner's authorized representative. An escrow agent using computer services of another firm shall file a continuing authorization with the Commissioner and the computer firm authorizing the Commissioner to examine, or audit the escrow agent's records being maintained at the computer firm's place of business.

(2) If an escrow agent uses a computerized system for the production and maintenance of records and accounts required in the escrow agent's licensed activity, the computerized system must:

(a) Be capable of printing out any document used in the required accounting and record keeping process that would otherwise be generated or maintained by hand, such as receipt and check registers, receipt and disbursement journals;

(b) Be capable of backing up its stored data. At least once each month, the escrow agent must back up any data that is stored in the computerized system that was not printed out and preserved under subsection (a) of this section within the last month. The back up data

shall be made available to the commissioner or to the commissioner's authorized representatives upon demand;

(c) The reconciliations and all required supporting data shall be printed out at the time of reconciliation. Such printed materials shall be filed and preserved as required records of the licensed escrow activity.

Stat. Auth.: ORS 183.335, ORS 696.385, ORS 696.541(1), ORS 696.578(3), ORS 696.578(4) & ORS 696.581(6)
Stats. Implemented: ORS 696.541(2)
Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92

863-050-0115

Record Destruction

An escrow agent shall retain for six years all bank statements of the agent's bank accounts and all records required by OAR 863-050-0005 to 863-050-0150 and the Oregon Escrow Law.

Stat. Auth.: ORS 696
Stats. Implemented: ORS 696.535(3)
Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 6-1984, f. 6-18-84, ef. 7-1-84

Audit Rules

863-050-0150

Audit, Annual Report

(1) An escrow agent shall be subject to audit or examination, as the Commissioner deems necessary, by the Commissioner or the Commissioner's authorized representative. The Commissioner shall collect from an escrow agent the reasonable expenses of the audit or examination.

(2) An escrow agent shall submit the following to the Commissioner not later than 120 days after the end of the agent's tax or accounting year:

(a) A balance sheet of the agent as of the end of the agent's tax or accounting year, prepared in accordance with generally accepted accounting principles; and

(b) A statement of profit and loss of the agent for the tax or accounting year, prepared in accordance with generally accepted accounting principles; and

(c) A schedule of the amount of trust funds received and disbursed each month on collection escrows and the amount of trust funds received and disbursed each month on closing escrows. The schedule shall include the beginning balance and the ending balance of each such account and be prepared based upon the individual escrow ledger sheets for such accounts; and

(d) A list of closing escrows which have been open for more than one year at the end of the audit period, showing the escrow account number, date opened, name of principals, amount of escrow liability and a statement of the reason for the account remaining open for more than one year; and

(e) The amount of clients' trust funds received and disbursed each month by the escrow agent while acting as a trustee under a trust deed pursuant to ORS 86.705 to 86.795. The schedule shall include the beginning balance and the ending balance for each account. The schedule shall be prepared from the outstanding individual escrow ledger sheet for such accounts; and

(f) An executed general authorization to inspect all clients' trust accounts set up as required by ORS 696.578(1) on a form approved by the Commissioner; and

(g) Any other information the Commissioner may request from the escrow agent as necessary in administering the provisions of ORS 696.505 and 696.585.

(3) The Commissioner may require an escrow agent to submit to the Commissioner an independent audit by a certified public accountant or a public accountant, conducted at the escrow agent's expense. The Commissioner may specify the nature and scope of the independent audit. The submission by an escrow agent of a required independent audit to the Commissioner or the Commissioner's authorized representative does not preclude any subsequent audit within the same year.

(4) An extension of time may be granted by the Commissioner for the filing of reports submitted under sections (2) or (3) of this rule

upon a written request by the agent showing sufficient cause why the reports cannot be filed by the specified date.

(5) As part of any report submitted under sections (2) or (3) of this rule, the escrow agent shall authorize the Commissioner or the Commissioner's authorized representative to examine and verify any asset or liability shown on the balance sheet. The authorization shall be in writing and shall be submitted to the Commissioner with the report. The report shall be signed by the owner or appropriate corporate officer of the escrow agent attesting to the accuracy of the information contained in the report.

Stat. Auth.: ORS 183.335, ORS 696.385, ORS 696.541(1), ORS 696.578(3), ORS 696.578(4) & ORS 696.581(6)
 Stats. Implemented: ORS 696.525 & ORS 696.535(1)(a)(i)
 Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 34, f. 2-8-73, ef. 3-1-73; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 2-1981, f. 10-30-81, ef. 11-1-81; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 2-1990, f. 4-18-90, cert. ef. 7-1-90; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92; REA 2-1997, f. 6-18-97, cert. ef. 7-1-97

863-050-0151

Penalties

Any escrow agent who does not comply with OAR 863-050-0010 to 863-050-0150 shall be deemed, prima facie, to have violated ORS 696.535 (1)(c), and may be subject to appropriate disciplinary action by the Commissioner.

Stat. Auth.: ORS 696
 Stats. Implemented: ORS 696.531(1)(c)
 Hist.: REC 34, f. 2-8-73, ef. 3-1-73; REC 6-1984, f. 6-18-84, ef. 7-1-84

863-050-0205

Definitions

As used in OAR 863-050-0205 to 863-050-0235, unless the context requires otherwise:

- (1) "Agency" means the Real Estate Agency.
- (2) "Claim" means a request filed with the Agency in accordance with OAR 863-050-0215 for recovery from:
 - (a) An escrow agent waived under ORS 696.527(4);
 - (b) The statutory deposit made by an escrow agent under ORS 696.527; or
 - (c) The corporate surety bond deposited with the Commissioner by the escrow agent under ORS 696.525.
- (3) "Claimant" means a person who has filed a claim with the Agency.
- (4) "Commissioner" means the Real Estate Commissioner.
- (5) "Escrow Activity" means any activity falling within the regulation and control of ORS 696.505 to 696.585.
- (6) "Escrow Agent" means an escrow agent as described in ORS 696.505(3) and licensed as required in ORS 696.511.
- (7) "Recoverable Damages" means compensation for all actual damage suffered by the claimant. Recoverable damages do not include the following: attorney's fees and costs, punitive damages or after judgment interest. This list is by way of description and not of limitation.

Stat. Auth.: ORS 183 & ORS 696
 Stats. Implemented: ORS 696.525 & ORS 696.527
 Hist.: REA 3-1988, f. 12-1-88, cert. ef. 1-1-89

863-050-0210

Filing of Claims

(1) A claim based on the escrow activity of an escrow agent is within the jurisdiction of the Agency. If the claim is based on escrow activity by a person who was not licensed by the State of Oregon under ORS 696.505 to 696.585, the Agency has no jurisdiction over the processing of a claim.

(2) Claims shall be deemed to have been filed when a Statement of Claim in compliance with OAR 863-050-0215 is received by the Agency.

(3) The Commissioner may refuse to accept or may reject any claim over which the Agency has no jurisdiction or which is based on escrow activity already reviewed by the Commissioner and found not to violate ORS 696.505 to 696.585 or found not to be fraudulent, dishonest, a misrepresentation or a concealment of a material fact.

(4) The Commissioner shall refuse to accept any claim for more than \$1,500 in recoverable damages against an escrow agent unless

the claimant submits a final court judgment against the escrow agent for the recoverable damages claimed.

(5) The Commissioner shall refuse to accept or to process any claim against an escrow agent for \$1,500 or less unless the claimant shows that:

- (a) The claimant has contacted the escrow agent in writing and made demand for payment of recoverable damages; and
- (b) The escrow agent has had 30 calendar days from the date of the claimant's written demand to deal with the demand; and
- (c) The escrow agent has not satisfied the claimant's demand for payment of recoverable damages.

Stat. Auth.: ORS 183.335, ORS 696.385, ORS 696.541(1), ORS 696.578(3), ORS 696.578(4) & ORS 696.581(6)
 Stats. Implemented: ORS 696.525 & ORS 696.527
 Hist.: REA 3-1988, f. 12-1-88, cert. ef. 1-1-89; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92

863-050-0215

Statement of Claim Form

(1) A claim shall be submitted on a claim form provided by the Agency and verified by the claimant. The Agency may require the most recent revision of the claim form to be used.

(2) The claimant shall submit the following information:

- (a) The name, address and telephone number of the claimant and, if the claimant is a partnership or corporation, similar information for the specific partner or corporate officer charged with the responsibility for the processing of the claim with the Agency;
- (b) The licensed name, address and telephone number of the escrow agent against whom the claim is being made;
- (c) A chronological narrative of the escrow activity on which the claim is being based along with copies of any documents which explain or have a bearing on the claim;
- (d) A statement that the claimant has suffered recoverable damages by reason of the escrow activity of the named escrow agent and that the escrow activity constitutes a violation of one or more of the provisions of ORS 696.505 to 696.585 or constitutes fraud, dishonesty, misrepresentation or concealment of material facts in escrow activity, that the claimant has demanded payment of the damages from the escrow agent and that the named escrow agent has failed to pay those damages;
- (e) Information on any civil or criminal litigation resulting from the escrow activity on which the claim is based including the name and address of any attorneys involved, a copy of the complaint and answer, and any final order or judgment or other form of settlement by which the litigation was resolved. For a claim against an escrow agent for more than \$1,500 in recoverable damages, a copy of a final judgment against the escrow agent in the amount of the claimed recoverable damages is required with the filing; and

(f) If the amount of recoverable damages is \$1,500 or less and such recoverable damages have not been determined by a final court judgment, a full and complete explanation of the dollar amount of recoverable damages being claimed and how that dollar amount was determined.

Stat. Auth.: ORS 183.335, ORS 696.385, ORS 696.541(1), ORS 696.578(3), ORS 696.578(4) & ORS 696.581(6)
 Stats. Implemented: ORS 696.525 & ORS 696.527
 Hist.: REA 3-1988, f. 12-1-88, cert. ef. 1-1-89; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92

863-050-0220

Claim Processing

(1) Except as set forth in section (3) of this rule, upon receipt of a claim by the Agency, the Commissioner shall review the claim and may order an investigation by Agency personnel of the escrow activity set forth in the claim before proceeding with the notice of claim.

(2) The Commissioner may reject a claim without further action if, on the face of the claim form and its supporting documentation or as a result of investigation by Agency personnel, it is determined that:

- (a) The claim is against a person who was not an escrow agent at any time during the occurrence of the escrow activity on which the claim is based;

(b) The activity on which the claim is based is not escrow activity; or

(c) The escrow activity on which the claim is based is not in violation of any of the provisions of ORS 696.505 to 696.585 or does not constitute fraud, dishonesty, misrepresentation or concealment of material facts growing out of escrow activity.

(3) If the claim is for recoverable damages of \$1,500 or less and the claim is supported by a final court judgment setting forth a finding of a violation of any of the provisions of ORS 696.505 to 696.585 or a finding of fraud, dishonesty, misrepresentation or concealment of material facts growing out of escrow activity and ordering the payment of recoverable damages by the escrow agent, the Commissioner may determine that an investigation is not warranted and proceed with the notice of claim.

(4) If at any time during the processing of a claim for recoverable damages of \$1,500 or less the Commissioner finds that the issues involved in the claim have been submitted to a court for determination, or to arbitration, or to any entity authorized by law or the parties to effect a resolution, the Commissioner may discontinue processing the claim pending the outcome of the other proceeding.

(5) Throughout the processing of a claim, the claimant has the responsibility to pursue that claim and to respond in a timely manner to requests from the Commissioner or the Commissioner's authorized representatives for information or documentation. Failure of a claimant to respond to such correspondence, or to provide requested information or documentation within a time limit specified in the correspondence or request, may result in closure of the claim file by the Commissioner without further notice to the claimant.

Stat. Auth.: ORS 183.335, ORS 696.385, ORS 696.541(1), ORS 696.578(3), ORS 696.578(4) & ORS 696.581(6)

Stats. Implemented: ORS 696.525 & ORS 696.527

Hist.: REA 3-1988, f. 12-1-88, cert. ef. 1-1-89; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92

863-050-0225

Notice of Claim

(1) If, based on the verified claim form and any investigation, the Commissioner determines that a claim for recoverable damages of \$1,500 or less is supported by sufficient facts to proceed, notice of claim shall be served on the named escrow agent personally or by registered or certified mail at the escrow agent's last known address of record with the Agency. The notice of claim shall consist of a copy of the claim form with any supporting documentation and a copy of the Agency investigation report, if any. The notice of claim shall notify the named escrow agent that if written exceptions setting forth any specific jurisdictional or factual exceptions to the information in the notice of claim are not filed with the Commissioner within 45 days after the date of mailing of the notice, the claim shall be deemed valid.

(2) A copy of the notice of claim shall also be served on the named escrow agent's surety, if any, and the surety shall also have the same opportunity as that of the escrow agent to file written exceptions to the notice of claim.

(3) If no written exceptions are received from either the named escrow agent or the surety of the named escrow agent within the allotted time, the Commissioner shall issue an order validating the claim for the amount of recoverable damages, as determined by the Commissioner.

(4) If the facts set forth in the claim or developed in the Agency investigation of the claim indicate the possibility of multiple claimants resulting from the escrow activity of the escrow agent, the Commissioner shall also, on at least two separate dates not more than ten days apart, provide notice by publication in a newspaper of general circulation where the escrow agent was last licensed to engage in escrow activity. This notice will include a statement that a claim has been filed against the escrow agent, general information of the existing claim and the requirement that persons having additional claims must file the claim with the Agency within a date designated in the notice.

Stat. Auth.: ORS 183.335, ORS 696.385, ORS 696.541(1), ORS 696.578(3), ORS 696.578(4) & ORS 696.581(6)

Stats. Implemented: ORS 696.525 & ORS 696.527

Hist.: REA 3-1988, f. 12-1-88, cert. ef. 1-1-89; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92

863-050-0230

Hearing Procedures

(1) If written exceptions are received from the escrow agent or the surety within the time allowed under OAR 863-050-0225 or if the Commissioner so chooses, the Commissioner may schedule a hearing on the validity of the claim. The hearing will be considered a contested case before the Commissioner and will be conducted in accordance with the Oregon Administrative Procedures Act and the Attorney General's Model Rules of Procedure. The Agency is not a party to the hearing but the Commissioner may have Agency personnel testify as to the results of any investigation done by the Agency.

(2) At a hearing, a claimant must prove:

(a) Recoverable damages were suffered by the claimant;

(b) The recoverable damages have been caused by the escrow activity of the named escrow agent which were in violation of ORS 696.505 to 696.585 or constituted fraud, dishonesty, misrepresentation or concealment of material facts; and

(c) The monetary amount of those recoverable damages.

(3) If multiple claims are accepted against the same escrow agent, they may be heard at the same hearing and each claimant must prove the items in section (2) of this rule for each individual claim.

(4) If the named escrow agent or the escrow agent's surety files written exceptions to the notice of claim, evidence to support any exception must be placed into the record at the hearing before the Commissioner to determine the validity of the claim. If no or insufficient evidence on an exception is placed into the record at the hearing, the exception will not be considered in determining the validity of the claim.

(5) At the conclusion of any hearing or following the issuance of a notice of claim on which no exceptions are filed, the Commissioner shall issue an order finding the claim either valid or invalid. To find that a claim is valid, the Commissioner must issue an order with the following findings:

(a) The claim is based on escrow activity by a licensed escrow agent;

(b) The named escrow agent has violated one or more of the provisions of ORS 696.505 to 696.585 or has engaged in fraud, dishonesty, misrepresentation or concealment of material facts, in the conduct of the escrow activity;

(c) The claimant suffered recoverable damages by the actions which resulted in the finding in subsection (5)(b) of this rule;

(d) The named escrow agent has failed to pay the recoverable damages suffered by the claimant;

(e) The dollar amount of the recoverable damages and, if there are multiple claims which exceed the amount of either the statutory deposit or surety bond, the amount of payment of the multiple claims based on a pro rata distribution of the deposit or bond; and

(f) If the escrow agent has made a statutory deposit under ORS 696.527, a final judgment has been entered against the escrow agent based on the findings required in subsections (a), (b), (c) and (e) of this section and the escrow agent has failed to pay the recoverable damages included in the judgment.

Stat. Auth.: ORS 183 & ORS 696

Stats. Implemented: ORS 696.525 & ORS 696.527

Hist.: REA 3-1988, f. 12-1-88, cert. ef. 1-1-89

863-050-0235

Payment of Validated Claim

(1) The Commissioner shall mail by certified or registered mail any order validating a claim to the named escrow agent within five days after the issuance of such order and instruct the escrow agent to make payment of the amount set forth in the order within 45 days from the date of mailing.

(2) (a) If the named escrow agent does not pay within the 45 days and has a corporate surety bond deposited with the Commissioner under ORS 696.525, the order shall be mailed by certified or registered mail to the surety of the named escrow agent with instructions for payment within 45 days from the date of mailing;

(b) If the surety of the named escrow agent does not make payment within the 45 days, the Commissioner may find that, for failure to pay the validated claim within the required time, the surety

company is no longer satisfactory to the Commissioner under ORS 696.525(1). If the Commissioner finds the surety company is no longer satisfactory under ORS 696.525(1), then the Commissioner shall also provide notice to any escrow agents who have provided a corporate surety bond from such surety company that the surety bond is from a company that is no longer satisfactory to the Commissioner under ORS 696.525(1) and that the escrow agent has 30 days from the date of notice to provide a new corporate surety bond or make deposit in accordance with ORS 696.527. Further, the Commissioner shall also notify the Insurance Division of the Department of Insurance and Finance of the surety's failure to pay a validated claim and request that appropriate action be taken by the Insurance Division;

(c) Nothing in these rules shall preclude the Commissioner from enforcing the terms and conditions of the corporate surety bond through civil litigation.

(3) If the named escrow agent does not pay within the 45 days and has made a statutory deposit under ORS 696.527, the order shall be forwarded to the State Treasurer with authorization to satisfy the amount of recoverable damages included in the judgment identified in the order.

(4) If the named escrow agent does not pay within 45 days and is an escrow agent wavered under ORS 696.527(4), the Commissioner shall issue an immediate order revoking the waiver granted under ORS 696.527(4) and notify the escrow agent that a statutory deposit under ORS 696.527 or a corporate surety bond under ORS 696.525 must be provided to the Commissioner within 30 days of the date of the order. Failure to provide the statutory deposit or corporate surety bond within the 30-day time period will result in the Commissioner issuing an immediate suspension of the escrow agent's license for failure to comply with the statutory bonding requirements. This section is in addition to and not in lieu of other actions which may be available to the Commissioner.

(5) Any escrow agent who does not comply with any of the provisions of OAR 863-050-0205 to 863-050-0235 shall be deemed, prima facie, to have violated ORS 696.535(1)(c) and may be subject to appropriate disciplinary action by the Commissioner.

(6) If multiple claims have been properly filed against an escrow agent and all such claims are not heard at the same hearing, the Commissioner shall not submit any order validating a claim for payment until all claims have been heard. At the conclusion of the last hearing on multiple claims, if the amount of validated claims exceeds the amount of the statutory deposit or the corporate surety bond, payments from the deposit or bond will be made on a pro rata basis.

Stat. Auth.: ORS 183 & ORS 696
Stats. Implemented: ORS 696.525 & ORS 696.527
Hist.: REA 3-1988, f. 12-1-88, cert. ef. 1-1-89

863-050-0240

Fingerprint Requirements for Escrow Licensing

As part of any application submitted under ORS 696.511, the applicant shall submit two completed fingerprint cards on a form prescribed by the Commissioner and an additional fee sufficient to recover the costs of processing the applicant's fingerprint information and securing any criminal offender information pertaining to the applicant.

Stat. Auth.: ORS 183.335, ORS 696.511 & ORS 696.793
Stats. Implemented: ORS 696.511
Hist.: REA 2-1997, f. 6-18-97, cert. ef. 7-1-97; REA 4-1997, f. 11-24-97, cert. ef. 12-1-97

DIVISION 60

CONDOMINIUM SALES

863-060-0015

Condominium Onsite Inspection Expenses

Within a reasonable time after completion of the examination of a condominium under ORS 100.710 for which a developer has advanced a deposit, the commissioner shall account to the developer for the commissioner's onsite inspection expenses. If the expenses incurred by the commissioner exceed the funds deposited by the developer, the commissioner shall bill the developer for the bal-