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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 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; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

863-001-0005

Rules of Procedure

Pursuant to the provisions of ORS 183.341, the Real Estate Agency adopts the Attorney General Model Rules of Procedure under the Administrative Procedure Act bearing the effective date of October 3, 2002.

Stat. Auth.: ORS 181, ORS 183.335, ORS 183.341, ORS 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; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

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 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 15

REAL ESTATE BROKERS

Licensing Rules

863-015-0005

Education

(1) The required courses of study for real estate broker licensing, principal real estate broker licensing and real estate property manager licensing shall be designed pursuant to the Guidelines for Oregon Private Real Estate Schools and Instructional Guidelines and approved by the Commissioner.

(2) The Commissioner may at any time reevaluate an approved course or instructor. If the Commissioner finds there is basis for consideration of revocation of the approved course or the instructor, the Commissioner shall give notice by ordinary mail to the coordinator of that provider or instructor of a hearing on the possible revocation of an approved course at least 20 days prior to the hearing.

(3) The Commissioner may deny approval or withdraw approval of a program, course, or activity, but the decision to deny or withdraw approval may be appealed to the Commissioner within 20 days of the date of mailing the notice of denial or withdrawal

Stat. Auth.: ORS 696.385 & ORS 183.335

Stats. Implemented: ORS 696.020 & ORS 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02

863-015-0010

Application; License Application Form and Content

(1) All applicants for a real estate broker's license, principal real estate broker's license and real estate property manager's license

shall submit a license application in writing on a form prescribed by the Commissioner with all information provided by the applicant and verified by the applicant.

(2) The license application shall contain:

(a) The name and mailing address of the applicant;

(b) If the applicant is to be associated with a principal real estate broker, the name of the principal real estate broker or brokers who will conduct and supervise the professional real estate activity and

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

(3) Every license application shall be accompanied by the license fee prescribed in ORS 696.270. At all periods of the year, the fee for all licenses issued shall be the same as prescribed in ORS 696.270.

Stat. Auth.: ORS 696.385 & ORS 183.335

Stats. Implemented: ORS 696.020 & ORS 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

863-015-0015

Application; Background Check Application and Fingerprint Cards

(1) All applicants for real estate broker, principal real estate broker or real estate property manager licenses shall submit to a background check. The background check application shall be made in writing on a form prescribed by the Commissioner with all information provided by the applicant and verified by the applicant.

(2) The background check application shall include, but is not limited to, the following information:

(a) The name, residence address and telephone number for the applicant;

(b) The date and place of birth of the applicant;

(c) The Social Security Number of the applicant (for identification purposes only);

(d) Whether the applicant has ever been convicted of or is under arrest, investigation or indictment for a felony or misdemeanor; and

(e) Whether the applicant has ever been refused a real estate license or any other occupational or professional license in any other state or country, or whether any real estate license or other occupational or professional license held by the applicant has ever been revoked or suspended or the licensee fined or reprimanded; and

(f) Any other information considered necessary by the Commissioner to evaluate the applicant's trustworthiness and competency to engage in professional real estate activity in a manner that protects the public interest.

(3) As part of any application submitted under section (2) of this rule, the applicant shall submit two completed fingerprint cards on the form prescribed by the Oregon State Police and FBI 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) The background check application, fingerprint cards and processing fee shall be submitted to the Agency prior to issuance of a license.

(5) At the request of an applicant, agency staff designated by the Commissioner may perform the fingerprinting process for such applicant during the Agency's posted hours at the Agency's office upon payment to the Agency of a \$10 fee.

(6) As provided in ORS 181.540, all fingerprint cards, photographs, records, reports and criminal offender information obtained or compiled by the Agency 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.

(7) If the 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 termination of the application.

(8) An applicant who has otherwise qualified for licensing, may not be considered for licensing as a real estate broker, principal real estate broker, or property manager until the background check process and review has been completed including but not limited to receipt by the Agency of criminal offender information from the Oregon State Police, other regulatory or law enforcement agencies, and the FBI. If an individual who has had a successfully completed background check process and review does not successfully complete the remaining portions of the entire licensing application process within twelve months from the date of the successfully completed background check process and review, the successfully completed background check process and review is no longer valid.

Stat. Auth.: ORS 696.385 & ORS 183.335

Stats. Implemented: ORS 696.020 & ORS 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

863-015-0020

Licensing; Examinations

(1) All applicants for a real estate broker's license shall be required to pass a basic written real estate examination to be conducted by the Real Estate Board. The examination shall include subject matter determined by the Board and published in the Agency's *Real Estate License and Examination Information* booklet.

(2) Those applicants licensed as salespersons as of June 30, 2002 shall be required to pass a written real estate examination to be conducted by the Real Estate Board, after July 1, 2002, to be licensed as a principal real estate broker or to engage in professional real estate activity as a sole practitioner. The examination shall include subject matter determined by the Board and published in the Agency's *Real Estate License and Examination Information* booklet.

(3) All applicants for a real estate property manager's license shall be required to pass a written property management examination to be conducted by the Real Estate Board. The examination shall include subject matter determined by the Board and published in the Agency's *Real Estate License and Examination Information* booklet.

(4) To be considered eligible to sit for a licensing examination, the applicant shall apply for the examination on a form prescribed by the Commissioner. The completed application form shall be filed with the Agency on or before the fifth day of the month in which the examination is scheduled. The examination application fee prescribed in ORS 696.270 shall accompany every application for a licensing examination.

(5) 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, or 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.

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

(7) An applicant who fails to appear for a scheduled examination who fails to pass an examination, or who changes an examination date after the scheduling deadline is not entitled to the return of any examination fees previously paid.

(8) If any individual who has completed successfully both the national portion and the state-specific portion of the examination for any real estate license category does not become licensed in that category within one year from the date of the examination, the individual is no longer eligible for the license on the basis of the examination. In order to again qualify, the individual must resubmit to the entire examination. If any individual who has successfully completed one portion of a license examination does not successfully complete the remaining portion within twelve months from the date of the examination of the completed portion, the successfully completed portion of the examination is no longer valid.

(9) The successful passing of the national portion of an examination held in another state may be accepted by the board in lieu of

the national portion of the examination required in this rule, if the license issued as a result of that examination has not been expired for more than one year.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 696.385, 696.425 & ORS 183.335
 Stats. Implemented: ORS 696.020 & ORS 696.022
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02

863-015-0025

Licensing; Generally

(1) Licenses shall be granted only to individuals who are trustworthy and competent to engage in professional real estate activity in such manner as to safeguard the interests of the public and only after satisfactory proof has been presented to the Real Estate Commissioner. As used in this section, "satisfactory proof" includes but is not limited to the fingerprints and the criminal offender information of the applicant. Every applicant for a license as a real estate licensee shall be of the age of 18 years or over.

(2) The Real Estate Commissioner may issue a real estate license to an individual in any one of the following categories for which the licensee is qualified and which authorizes the licensee to perform only the duties described for such category:

(a) **Real estate broker**, which authorizes such individual to engage in professional real estate activity:

(A) As the sole practitioner of a business operated under the licensed name of the individual or under a registered business name with supervision of and control over all clients' funds, clients' trust accounts and the maintenance of adequate records for all professional real estate activity conducted on the broker's behalf; or

(B) As a real estate broker licensed to and working only as the agent of a principal real estate broker; or

(C) With one or more other real estate brokers who engage in professional real estate activity under the same registered business name and who is solely responsible for their own professional real estate activity.

(b) **Principal real estate broker**, which authorizes such individual to engage in professional real estate activity:

(A) In the licensee's own name or under a business name registered with the Commissioner; and

(B) With supervision of and control over all clients' funds, clients' trust accounts and the maintenance of adequate records for all professional real estate activity conducted on the broker's behalf; and

(C) With one or more real estate brokers associated with such individual and acting only as the agent(s) of such individual and who are subject to such individual's close supervision and training; or

(D) With one or more principal real estate brokers under a written agreement detailing the supervision and control of the principal real estate brokers and real estate brokers associated with each principal real estate broker(s); or

(E) Conducting property management activity with one or more real estate property managers associated with such individual who supervises and controls the property management activity.

(c) **Real estate property manager**, which authorizes such individual to engage only in the management of rental real estate:

(A) In such individual's own name or under a registered business name; and

(B) Either as the sole practitioner of a business or associated with a principal real estate broker and acting only as the agent of such broker.

(3) A real estate broker who is operating as an administrative or managerial supervisor for one or more other real estate brokers must be licensed as a principal real estate broker.

(4) Every real estate broker shall either designate the principal real estate broker the real estate broker will be "associated with" as defined in ORS 696.010(2); or designate and register a place of business and/or a business name under which the real estate broker will be conducting professional real estate activity as a sole practitioner. A real estate broker cannot be "associated with" more than one principal broker or real estate business during the same period of time. Whether or not an individual is designated a "real estate broker" or "principal real estate broker" in a real estate business with

more than one licensee shall be a business decision made by the owners of the real estate business.

(5) A principal real estate broker may operate two or more affiliated or subsidiary entities registered at the same time, allowing the principal real estate broker to operate separately through each such affiliated or subsidiary entity. The principal real estate broker must control and supervise the professional real estate activity conducted through each affiliated and subsidiary entity.

(6) A real estate broker associated with a principal real estate broker may have an ownership interest in any real estate business through which the principal real estate broker engages in professional real estate activity, but may not control or supervise the professional real estate activity of any real estate broker in such real estate business.

(7) A nonlicensed person may have an ownership interest in any real estate business. However, a real estate licensee shall not allow a nonlicensed person to control or supervise the professional real estate activity of the licensee.

(8) A real estate business may have two or more principal real estate brokers who share responsibility for the supervision and control of the professional real estate activity conducted through the real estate business, if the principal real estate brokers enter into a written agreement and adopt written office policies identifying the supervisory responsibilities of each principal real estate broker.

(9) An individual shall not act as a real estate broker, principal real estate broker or real estate property manager, or advertise or assume to act as such, without first being licensed. Nothing contained in this chapter shall be construed as authorizing a licensee to perform any service constituting the practice of law.

Stat. Auth.: ORS 696.385 & ORS 183.335
 Stats. Implemented: ORS 696.020 & ORS 696.022
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

863-015-0030

Licensing; Issuance, Terms, Form and Display

(1) Upon satisfactorily passing the examination and upon complying with all other applicable provisions of law and conditions of ORS 696.022 and OAR 863-015-0005 to 863-015-0060, the Commissioner shall grant a license to the successful applicant. The applicant, upon being granted the license, is authorized to conduct the business of a real estate broker, principal real estate broker or real estate property manager, as the case may be, between the issue date of the license and the expiration date of the license, unless the license is inactive or is revoked, surrendered or suspended. No more than one license shall be issued to any licensee at any one time.

(2) A new license or renewal issued on or after July 1, 2002, shall be for the term of not more than 24 months plus the number of days between the actual license issuance date or renewal date and the end of the month of the birth date of the licensee and expires at the end of the licensee's birth month.

(3) The license shall show the name of the licensee, the name in which the licensee conducts business or the registered business name, and the business address. Each license shall have imprinted thereon the seal of the Real Estate Agency and shall contain such other matter as shall be prescribed by the Commissioner.

(4) Each license shall be available for inspection in the licensee's principal place of business. Principal real estate brokers shall make available for inspection in the principal real estate broker's principal place of business the licenses of the real estate licensees who are associated with the principal real estate broker or in the branch office location for real estate licensees who are working at a branch office location.

Stat. Auth.: ORS 696.385 & ORS 183.335
 Stats. Implemented: ORS 696.020 & ORS 696.022
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

863-015-0035

Licensing; Real Estate Broker

(1) To be eligible for issuance of a real estate broker's license, an individual shall:

(a) Be capable of entering into lawful contracts;

(b) Be trustworthy and competent to engage in professional real estate activity to safeguard the interests of the public;

(c) Furnish proof of compliance with the application requirements of OAR 863-015-010 and 863-015-015;

(d) Successfully complete the licensing examination prescribed by the Commissioner under OAR 863-015-0020;

(e) Pay the licensing fees required under ORS 696.270; and

(f) Demonstrate satisfactory evidence of competence in and shall have successfully completed the required courses of study for real estate broker licensing as prescribed by the Commissioner.

(2) 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 shall furnish with the application a certification of active licensing from the licensing agency of the other state.

Stat. Auth.: ORS 696.385 & ORS 183.335

Stats. Implemented: ORS 696.020 & ORS 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02

863-015-0040

Licensing; Principal Real Estate Broker

(1) To be eligible for issuance of a principal real estate broker's license, an individual shall:

(a) Be capable of entering into lawful contracts;

(b) Be trustworthy and competent to engage in professional real estate activity to safeguard the interests of the public;

(c) Furnish proof of compliance with the application requirements of OAR 863-0015-0010 and 863-015-0015;

(d) Pay the licensing fees required under ORS 696.270;

(e) Demonstrate satisfactory evidence of competence in and shall have successfully completed the required course of study for principal real estate broker licensing as prescribed by the Commissioner; and

(f) Furnish proof satisfactory to the Commissioner that the applicant has acquired at least three years of active experience as a real estate licensee prior to the date of the application for issuance of the license; or

(g) Upon petition to the Real Estate Board and at the discretion of the Real Estate Board, furnish proof of compliance that the applicant has real estate related experience equivalent to the requirements of subsection (f) of this section, and details the nature of such experience.

(2) Notwithstanding subsections (a) to (g) of section (1), an applicant for a principal real estate broker's license who has graduated from a four-year college or university with a degree in real estate, in a curriculum approved by the Commissioner, who has held an active license as a real estate broker for a period of at least one year may, upon petition to the Real Estate Board, and approval by the Real Estate Board, be issued a principal real estate broker's license.

(3) Notwithstanding subsections (a) to (g) of section (1), an applicant for a principal real estate broker's license who has a two-year community college associate degree in real estate in a curriculum approved by the Commissioner, who has held an active license as a real estate broker for a period of at least two years, who has completed the course of study for principal real estate brokers as required by subsection (1)(e), upon petition to the Real Estate Board, and approval by the Real Estate Board, may be issued a principal real estate broker's license.

(4) If an individual requests that the Real Estate Board exercise its lawful discretion relating to the individual meeting the experience requirement for a principal real estate broker's license under sections (1)(g), (2) or (3), the request must be filed with the Agency no later than the fifth day of the month in which the Real Estate Board meeting is scheduled..

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

Stat. Auth.: ORS 696.385 & ORS 183.335

Stats. Implemented: ORS 696.020 & ORS 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

863-015-0045

Licensing; Property Manager

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

(a) Be capable of entering into lawful contracts;

(b) Be trustworthy and competent to engage in professional real estate activity to safeguard the interests of the public;

(c) Furnish proof of compliance with the requirements of OAR 863-15-010 and 863-015-0015;

(d) Successfully complete the licensing examination prescribed by the Commissioner under OAR 863-015-0020;

(e) Pay the licensing fees required under ORS 696.270; and

(f) Demonstrate satisfactory evidence of competence in and shall have successfully completed the course of study for real estate property manager licensing as prescribed by the Commissioner.

(2) A real estate property manager's license may not be issued to an individual holding an outstanding real estate license unless the individual first surrenders all rights to the outstanding real estate license.

(3) An individual licensed as a real estate property manager may engage only in real estate property management activity. The individual may not offer to, negotiate, attempt to, or engage in the sale, purchase, lease-option, appraisal or exchange of real estate for another individual for compensation. The individual 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. However, the individual 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 for finding or referring an owner, renter or lessee in real estate property management activity.

(4) A real estate property manager licensed as a sole practitioner in the individual's own name or under a business name registered with the Commissioner, is responsible for all property management activity conducted under the property manager's license and for the actions of the property manager's nonlicensed property management employees. A licensed real estate property manager may not authorize an unlicensed individual to supervise that property manager's licensed activity in the manager's absence. Except as provided for in OAR 863-015-0085(1), a property manager may not authorize another real estate licensee to supervise that property manager's licensed activity in the property manager's absence.

(5) A real estate property manager may be associated with another real estate property manager in property management activity, if the property manager applicant submits, as part of the application for licensing, an agreement that the applicant will engage in property management activity only as the agent of another real estate property manager with whom the applicant intends to be associated. The applicant and the real estate property manager with whom the applicant will be associated shall sign the agreement.

(6) A real estate property manager may be associated with a principal real estate broker to engage in property management activity on behalf of the principal real estate broker and under the supervision of that principal real estate broker. However, a principal real estate broker may not authorize a real estate property manager licensee to act in the broker's absence under OAR 863-015-0090.

(7) A temporary real estate property manager licensee qualified under the provisions of Section 3, subsection (1), Chapter 300 Oregon Laws 2001 must complete the prescribed designated property manager course prior to July 1, 2004, pursuant to the provisions of Section 3, subsection (2), Chapter 300 Oregon laws 2001.

Stat. Auth.: ORS 696.385 & ORS 183.335

Stat. Implemented: ORS 696.020 & ORS 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

863-015-0050

Licensing; Renewal

(1) Each real estate broker's license, principal real estate broker's license and real estate property manager's license may be

renewed by the Commissioner upon payment of the renewal fee specified in ORS 696.270 and completion of the renewal application form provided by the Commissioner.

(2) If a licensee fails to renew the licensee's license in the manner set forth in section (1) on or before the expiration date of the license, the license expires. Following such expiration and for a period of one calendar year following such expiration the licensee may renew the license late by paying a late fee in addition to the requirements for renewal in section (1). However, between the day following the expiration date of the license and the effective date of the late renewal of the license, the licensee is considered suspended and may not engage in any professional real estate activity for which a license is required. Any such activity during this time period is unlawful and subject to sanction by the Commissioner under ORS 696.301.

(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 prescribed for other original applicants under ORS Chapter 696 and OAR chapter 863.

(4) To reactivate a license that has been renewed as an inactive license, 30 hours of continuing education are required during the preceding two license years. Only inactive licenses may be renewed on inactive status without completion of continuing education.

Stat. Auth.: ORS 696.385 & ORS 183.335
 Stats. Implemented: ORS 696.020 & ORS 696.022
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02

863-015-0055

Licensing; Continuing Education

(1) **Generally.** To renew an active license, a licensee shall provide evidence of completion during the preceding two license years of at least 30 clock hours of real estate oriented continuing education.

(a) A licensee shall complete fifteen clock-hours of continuing education courses in at least one of the following required topics:

- (A) Trust Accounts;
- (B) Misrepresentation;
- (C) Anti-Trust;
- (D) Rule and Law Update;
- (E) Property Management;
- (F) Commercial Brokerage and Leasing;
- (G) Real Estate Taxation: Federal, State and Local;
- (H) Agency;
- (I) Fair Housing;
- (J) Contracts;
- (K) Evaluation of Property;
- (L) Brokerage Management; or
- (M) Land;
- (N) Business Ethics.

(b) A licensee shall complete the remaining fifteen hours in any of the above required course topics or in other elective real estate oriented continuing education courses.

(c) Courses related to personal skills such as time management, and routine meetings and luncheons shall not be considered real estate oriented continuing education courses.

(d) Courses shall be a minimum of one clock hour in length. A clock-hour is measured in sixty-minute increments, exclusive of meal breaks or rest breaks.

(e) Credit shall not be given for repeating a continuing education course with the same content during a two-year renewal period.

(2) **Certification Generally.** "Certifying licensee" means a principal real estate broker or real estate property manager who certifies on the Agency's license renewal form that a licensee completed the continuing education requirements. "Evidence of completion" as used in ORS 696.174(4) and this rule means the certification on the Agency license renewal form, supplemented by a standard Certificate of Attendance developed by the Real Estate Agency for each course completed by a licensee.

(a) In completing the standard Certificate of Attendance, the certifying licensee shall decide:

(A) Whether a continuing education course meets the continuing education requirements; and

(B) What category in which to classify the course: required topic or elective topic.

(b) A certifying licensee may approve continuing education courses completed outside of Oregon. The number of approved credit hours shall reflect the clock hours of course content related to the practice of real estate in Oregon. Credit hours shall not be approved for courses with content specific to another state or jurisdiction.

(c) The certifying licensee shall retain the Certificate of Attendance in their records as prescribed in OAR 863-015-0260. The certifying licensee shall produce a copy of the Certificate of Attendance upon request by the associated licensee or upon request of the Agency.

(d) Principal real estate brokers, real estate property managers and sole practitioner real estate brokers who are sole practitioners shall self-certify completion of their continuing education requirements, shall retain their Certificate of Attendance as prescribed in OAR 863-015-0260 and shall produce a copy of the Certificate of Attendance upon request of the Agency.

(e) Filing a false Agency license renewal form or Certificate of Attendance shall be prima facie evidence of a violation of ORS 696.301(1), (6), (12), (25), (27), (28) and (31).

(3) **Certification Criteria.** In certifying a continuing education course, the certifying licensee shall consider the totality of the information provided and the content of the class, and may consider additional criteria including, but not limited to:

(a) Evidence of instructor qualifications to teach the course;

(b) A review of the course content to assure it is current and accurate, the learning objectives for the course, and whether the course content fulfills the learning objectives;

(c) Whether means of measuring learning outcome, such as a final examination, are included; and

(d) Whether students have a means of evaluating the course and instructor.

(4) **Advanced Real Estate Practices.** A real estate broker first licensed after July 1, 2002 shall complete a Commissioner-approved course entitled "Advanced Real Estate Practices" prior to the first renewal of the real estate broker's license. A certifying licensee may accept Advanced Real Estate Practices as satisfying the continuing education requirements for a licensee's renewal. The Advanced Real Estate Practices course requirement does not apply to principal brokers, sole practitioner real estate brokers or property managers.

(5) **Alternative Delivery.** "Alternative delivery" means presentation of continuing education material in a method other than classroom lecture, including but not limited to correspondence, and electronic means such as satellite broadcast, videotape, computer disc, and Internet.

(a) Certifying licensees may approve continuing education courses completed through alternative delivery methods.

(b) In addition to the certification criteria in section (3), in determining whether to certify an alternative delivery method course, the certifying licensee may consider:

(A) Whether the course offers operational or electronic security measures;

(B) The ability of the student to interact with an instructor or access other resources to support their learning;

(C) Whether the learning environment and technical requirements are explained to students in advance of the course; and

(D) Whether the course includes a proctored final examination.

(c) In determining the number of credit hours to approve for an alternative delivery course, the certifying licensee may consider:

(A) The number of questions in the examination, with a minimum standard of 10 questions per hour of credit;

(B) The number of pages for Internet, Computer-Based Training, CD-ROM and book courses, with a minimum standard of 10 pages per hour of credit; and

(C) The clock hours elapsed for videocassette, audiotape or teleconference courses.

(6) **Course Sponsors.** Sponsors of continuing education courses may:

(a) State in their advertising that continuing education requirements; e.g., course content, topics and hours, shall be approved by the licensee's principal broker; and

(b) Complete the following information on a Certificate of Attendance:

- (A) Real estate licensee's name;
- (B) Continuing education course title and date of completion;
- (C) Instructor's name and location of course; and
- (D) Method of course delivery and whether a final examination was administered.

Stat. Auth. 696.385 & ORS 183.335
 Stats. Implemented: ORS 696.174 & ORS 696.301
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

**863-015-0060
 Licensing; Limited Licenses**

(1) If the Commissioner has revoked any real estate license, at the Commissioner's sole discretion, the Commissioner may issue a limited license.

(2) The limited license issued may be limited:

- (a) By term;
- (b) To serve as the agent of a particular principal real estate broker, if a real estate broker; or
- (c) By conditions to be observed in the exercise of the privileges granted.

(3) A limited license issued under sections (1) and (2) does not confer any property right in the privileges to be exercised thereunder, and the holder of a limited license may not have the right to renewal of such license. A limited license may be suspended or revoked, or the Commissioner on the grounds set out in ORS 696.301 may reprimand the licensee.

Stat. Auth.: ORS 696.385 & ORS 183.335
 Stats. Implemented: ORS 696.020 & ORS 696.022
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02

**863-015-0065
 Return of License; Inactive 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 principal real estate broker with whom the licensee is associated, remains responsible for the professional real estate activity of the licensee until the licensee's real estate license is received in the Agency's office. If a principal real estate broker voluntarily gives the license to the individual named in the license to return the license to the Agency's office or for any other purpose, the principal real estate broker remains responsible for any subsequent professional real estate activity of the licensee until the license is received in the Agency's office.

(2) If a real estate license has been lost or if the individual named in the license has removed the license from the principal real estate broker's possession without permission from the principal real estate broker, the principal real estate broker may terminate the 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 Agency's office.

(3) Upon receipt by the Commissioner of the returned license, the license is placed on inactive status. For a period of thirty calendar days following such receipt the licensee may reactivate with the same principal real estate broker, become associated with another principal real estate broker or, if qualified, become licensed as a sole practitioner real estate broker or as a principal real estate broker. During such 30-day period, the licensee may reactivate the license by completing the forms prepared by the Commissioner and paying the transfer fee specified in ORS 696.270. After the 30-day period has elapsed, the license may only be reactivated subject to subsection (5)(b) below.

(4) When a real estate license is returned to the Commissioner for any reason, the license is held by the Commissioner as an inactive real estate license. While the licensee's license is on inactive sta-

tus with the Commissioner, the licensee may not engage in any professional real estate activity.

(5) Inactive licenses may be:

(a) Renewed upon payment to the Commissioner of the renewal fee specified in ORS 696.270; or

(b) Reactivated upon application for reactivation and payment to the Commissioner of the fee specified in ORS 696.270; or

(c) Revoked or suspended by the Commissioner for reasons on which the Commissioner would have been authorized to revoke or suspend the licenses if they were active.

(6) The examination required to reactivate a license under ORS 696.235(2)(b) may be taken in the Agency's office during business hours by appointment. Reactivation examinations may also be taken on the same day license examinations are administered following the same procedures required of license examination applicants described in OAR 863-015-0020.

Stat. Auth.: ORS 696.385 & ORS 183.335
 Stats. Implemented: ORS 696.020 & ORS 696.022
 Hist.: REA 1-1991, f. & cert. ef. 11-4-91; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0081; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

**863-015-0070
 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 licensee, shall return the license at once to the Commissioner. A principal 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.

Stat. Auth.: ORS 696.385 & ORS 183.335
 Stats. Implemented: ORS 696.020 & ORS 696.022
 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; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0085

**863-015-0075
 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 OAR 863-015-0065. If the license has otherwise expired prior to the request for reissuance, the license may be renewed within the 30-day period only pursuant to OAR 863-015-0050.

Stat. Auth.: ORS 696.385 & ORS 183.335
 Stats. Implemented: ORS 696.020 & ORS 696.022
 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; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0086

**863-015-0080
 Nonresident License Recognition**

(1) As used in ORS 696.265 and this rule, unless the context requires otherwise:

(a) "Nonresident real estate broker" means an individual residing in another state or country who is licensed by that state or country to transact professional real estate activity and whose license authorizes that individual to employ, engage or otherwise supervise other real estate brokers or salespersons.

(b) "Nonresident real estate salesperson" means an individual residing in another state or country who is licensed by that state or country to transact professional real estate activity.

(c) "Nonresident licensee" means either a nonresident real estate broker or a nonresident real estate salesperson.

(d) "State or country of residence" means, presumptively, the state or country where an individual's resident license is located.

(2) **Nonresident License Recognition.** An individual who is not a resident of Oregon, is actively engaged in professional real estate activity in his or her state or country of residence and has been duly licensed by that state or regulatory agency within that country, may be issued an Oregon nonresident license if:

(a) The state or country of residence of the applicant allows an Oregon real estate broker to be licensed in that state or country under terms and conditions similar to those prescribed in ORS 696.255, 696.265 and OAR; and

(b) The state or country of residence of the applicant is capable of assisting and does assist the Commissioner in the Commissioner's review of real estate transactions and management of rental real estate for enforcement to protect Oregon consumers affected by the professional real estate activity of nonresident licensees.

(3) An applicant for a nonresident license must provide fingerprints and criminal offender information in the same manner as required of a resident licensee under ORS 696.020(5)(b). The nonresident license application must be accompanied by a background check application, fingerprint cards and processing fees as prescribed by OAR 863-015-0015. The applicant must furnish with the nonresident license application proof that the applicant holds a current and valid license issued by the state or country of residence.

(4) An applicant for a nonresident license must sign and file with the Real Estate Agency an affidavit stating that the applicant has reviewed and is familiar with the Oregon Real Estate License Law and the rules and regulations of the Agency and agrees to be bound by those laws, rules and regulations.

(5) For a nonresident real estate salesperson who is a resident of a state requiring salespersons to work under licensed real estate brokers, the license issued by the Real Estate Agency must contain the business name and business address of the broker under whose license the salesperson works. The license issued to such a nonresident real estate salesperson will be mailed to the broker at the broker's business address.

(6) A nonresident real estate licensee who deposits or maintains funds, whether in Oregon or in the state or country of residence, shall assure that trust funds are deposited and maintained in client trust accounts in accordance with ORS 696.241, 696.243, 696.245 and OAR 863-015-0260 and 863-015-0265.

(7) Upon request of the Real Estate Agency, nonresident licensees shall produce in the Agency's office any and all records of professional real estate activity conducted in Oregon. The nonresident licensee, by applying for and accepting the nonresident license, authorizes the Real Estate Agency to inspect and examine any transaction escrow records, trust account records, and other records of professional real estate activity, wherever maintained.

(8) With respect to nonresident real estate salespersons who are residents of a state or country requiring salespersons to work under licensed real estate brokers, all advertising (including business signs, business cards, agreements and other documents) used by those salespersons must contain the name and business address of the nonresident real estate broker.

(9) The Commissioner may suspend or revoke, reprimand, deny a license to or refuse to renew a license to a nonresident real estate licensee upon any of the grounds in ORS 696.301, or upon the ground that the state or country of residence has suspended, revoked, denied or refused to renew the person's license, or has limited the license in any way.

(10) Except as otherwise provided herein, the application for nonresident licenses, fees prescribed by statute and rule, the terms of the licenses, the processing of the license application and renewal, the transfer of the licenses, and all other conditions and requirements of licensure shall be as provided for by the Oregon Real Estate License Law.

(11) **Reciprocity Agreements.** The Commissioner may enter into reciprocity agreements with other states or countries where necessary to permit Oregon real estate licensees to obtain licenses in such other states or countries.

(12) The Commissioner may include in such agreements the terms and conditions prescribed in OAR 863-015-0080, as the Commissioner finds necessary to promote the following:

(13) Nonresident licenses granted under reciprocity agreements shall remain in force, unless suspended or revoked by the Commissioner or for failure to pay the biennial renewal fees, only so long as the reciprocity agreement remains in effect between Oregon and the other state or country. In the event the non-resident licensee subsequently becomes a resident of Oregon, such person shall be able to obtain, upon filing of the proper application and other requisite documents together with the applicable fees, the equivalent resident license in Oregon. Application must be made within one year after becoming a resident.

Stat. Auth.: ORS 696.265, 696.385 & ORS 183.335

Stats. Implemented: ORS 696.255 & ORS 696.265

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

863-015-0085

Authorization to Control Broker's Business

(1) A sole practitioner real estate broker, property manager or principal real estate broker, for a period not to exceed 90 days, may authorize another sole practitioner real estate broker, property manager or principal real estate broker to control and supervise the professional real estate activity conducted by or through the authorizing licensee during the absence of the authorizing licensee. Both the authorizing sole practitioner real estate broker, property manager or principal real estate broker and the licensee authorized to act in the absence of the authorizing sole practitioner real estate broker, property manager or principal real estate broker shall have joint responsibility for all professional real estate activity and property management activity conducted during the authorizing sole practitioner real estate broker, property manager or principal real estate broker's absence.

(2) A copy of the written authorization, signed by the authorizing sole practitioner real estate broker, property manager or principal real estate broker and the licensee accepting supervisory responsibility under section (1), shall be filed with the Commissioner prior to the effective date of such authorization. The Commissioner may allow a later filing for good cause shown.

(3) Except as authorized under sections (1) and (2) to cover an absence of a sole practitioner real estate broker, property manager or principal real estate broker, a licensee shall not control or supervise the professional real estate activities of any licensee.

Stat. Auth.: ORS 696.385 & ORS 183.335

Stats. Implemented: ORS 696.026

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

863-015-0095

Business Name Registration

(1) Before conducting business in a name other than the real estate licensee's legal name, the principal real estate broker or sole practitioner real estate broker or property manager shall register the business name. For the purposes of this rule, "business name" includes, but is not limited to, an assumed name or the name of a business entity such as a corporation, partnership, limited liability company, or other business entity recognized by law.

(2) To use or register a business name, the real estate licensee shall provide the Commissioner with all of the following:

(a) The business name in which the licensee wishes to conduct business, or

(b) Written authority by which the licensee is authorized to use the business name.

(c) A statement from the Oregon Secretary of State that the business name, if an assumed name, is distinguishable from all other registered names on the active records of the Secretary of State Business Registry.

(3) Business names registered with the Agency do not expire and need not be renewed by the licensee. Any change in the business name registered with the Agency shall be treated as the registration of a new business name and the change in business name shall be

registered with the Agency together with the fee prescribed in ORS 696.270.

(4) Upon the transfer of the right to use a business name that is registered with the Agency, the licensee acquiring the right to use the name shall file a change of business name registration with the Agency together with the fee prescribed in ORS 696.270. A licensee shall notify the Agency in writing of the termination of the use of a business name by the licensee.

(5) A business name registration shall be void upon receipt at the Agency of the notice of termination of the use of a business name. A business name registration shall be void when no licensees are affiliated with the registered business name. A business name registration may be reactivated within one year from the voiding of a registration without paying the fee set forth in ORS 696.270.

Stat. Auth.: ORS 696.026, ORS 696.385 & ORS 183.335

Stats. Implemented: ORS 696.026

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

863-015-0100

Branch Office Registration

(1) Before a principal real estate broker, property manager or a sole practitioner real estate broker engages in professional real estate activity from a branch office, the principal real estate broker, property manager or sole practitioner real estate broker must register the branch office location with the Commissioner by supplying the street and mailing addresses of the branch office location to the Commissioner, together with the fee prescribed in ORS 696.270. In addition, and where applicable, the principal real estate broker shall provide a statement to the Commissioner in a form acceptable to the Commissioner that the principal real estate broker will supervise and control the professional real estate activity conducted from the registered branch office location.

(2) For the purposes of ORS 696.270, a branch office location is not subject to renewal.

Stat. Auth.: ORS 696.385 & ORS 183.335

Stats. Implemented: ORS 696.026 & ORS 696.200

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

General Rules

863-015-0120

Definitions

As used in OAR 863-015-005 to 863-015-275 and 863-025-005 to 863-025-0070 unless the context requires otherwise:

(1) "Affiliated with" means "associated with" as defined in Sec. (2) of ORS 696.010.

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

(3) "Agency relationship" means a relationship in which a real estate licensee represents another individual in a real estate listing agreement or a real estate transaction.

(4) "Clients' Trust Account" or "Client Trust Account" means an account in any 'bank' as defined in ORS 696.010(3) and which is subject to the provisions of ORS 696.241.

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

(6) "Day" or "days" means each calendar day, including Mondays, Tuesdays, Wednesdays, Thursdays, Fridays, Saturdays, Sundays and legal holidays under ORS 187.010. The term "banking day" means 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.

(7) "First contact with a represented party" means contacts in person, by telephone, over the Internet or the World Wide Web, or by electronic mail, electronic bulletin board or similar electronic method with an individual who is represented by a real estate licensee or can reasonably be assumed from the circumstances to be represented or seeking representation.

(8) "Licensed Name" means the name of a real estate licensee as it appears on the current, valid real estate license issued to the licensee pursuant to ORS 696.020.

(9) "Real Estate Activity", "Professional Real Estate Activity" and "Real Estate Business" mean "professional real estate activity" as defined in section (13) of ORS 696.010.

(10) "Real Estate Broker" means a "real estate broker," as defined in ORS 696.010(15) and includes a temporary associate broker as defined in section (13) of this rule, real estate property manager as defined in ORS 696.010(17), and a principal real estate broker as defined in ORS 696.010(12), unless the context requires otherwise.

(11) "Real Estate Licensee" and "Licensee" mean a "real estate licensee", as defined in section (16) of ORS 696.010 and includes a temporary associate broker as defined in section (13) of this rule, unless the context requires otherwise.

(12) "Sole Practitioner" means a real estate broker who is not associated with a principal real estate broker, who does not employ other real estate brokers and who engages in professional real estate activity under the licensed name of the individual or under a registered business name.

(13) "Temporary Associate Broker" means a former real estate salesperson engaged in professional real estate activity as a licensee working as the agent of and associated with a principal real estate broker until such time as that individual holds or is qualified to hold a real estate broker license.

(14) "Timely" means as soon as is practical under the particular circumstances.

Stat. Auth.: ORS 696.385 & ORS 183.335

Stats. Implemented: ORS 696.010

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

863-015-0125

Advertising

(1) As used in this rule, "advertising" and "advertisement" 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, including, without limitation, advertising activity conducted by mail, telephone, the Internet, the World Wide Web, E-mail, electronic bulletin board or other similar electronic common carrier systems, business cards, signs, billboards and telephonic greetings or answering machine messages.

(2) A real estate property manager as defined in OAR 863-025-0010(3), and any attorney, engineer or member of another profession who also holds a real estate broker's license, shall comply with ORS 696.200(4) and this rule

(3) Except as authorized under section (10) of this rule, all advertising must be done in the principal real estate broker's, sole practitioner real estate broker's or property manager's licensed or registered business name.

(4) If a real estate broker or property manager is associated with a principal real estate broker:

(a) Advertising may include the name of the real estate broker or property manager associated with the principal real estate broker. However, in no case shall the advertising imply that the real estate broker or property manager associated with the principal real estate broker is the person responsible for the operation of the real estate brokerage;

(b) Advertising may contain the direct telephone numbers or other contact information of the real estate broker or property manager associated with the principal real estate broker. However, the advertising shall also include the name and telephone number of the principal real estate broker's company or firm;

(c) The principal real estate 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 principal real estate broker remains responsible for all advertising done under the broker's real estate license;

(d) All advertising shall be under the direct supervision of the principal real estate broker or branch office manager and the principal real estate broker or branch office manager shall review and approve all advertising prior to use; and

(e) Real estate brokers and property managers associated with a principal real estate broker shall make the advertising immediately available to the principal real estate broker or branch office manager prior to use.

(5) **Content.** Advertising by a licensee:

(a) Shall identify the licensee as a real estate broker or property manager. The advertising may include additional designations such as “agent,” “broker” or a trade association name which serves clearly to identify the advertiser as a real estate licensee.;

(b) Shall be truthful and not deceptive or misleading

(c) Shall not use any words that state or imply that he or she is qualified or has a level of expertise other than as currently maintained by the licensee;

(6) A licensee shall only advertise, display and distribute, electronically or otherwise, information about properties that are listed for sale, lease, or exchange with the real estate broker or with the licensee’s principal real estate broker, unless the licensee has first secured written permission of the owner(s)’ authorized agent. Authorization pursuant to this subsection may be written or, if participating in a cooperative service, may be set forth in the rules of the cooperative service agreement and the advertising must be in accordance with the terms of the permission granted. The licensee shall not alter any informational part of a listing of any property that is not listed for sale, lease, or exchange with the real estate broker or with the licensee’s principal real estate broker. However, this is not intended to restrict the format of display or modifications where the modified information is not inaccurate or misleading.

(7) **Private Transactions Advertising.** Advertising by real estate licensees for the rental or lease of property owned by the licensee or for the sale, exchange, lease option or purchase of real estate in their personal transactions is subject to this rule. However, sections (3) and (4) of this rule do not apply to advertising by a real estate licensee, if:

(a) Such property is not listed with the licensee’s principal real estate broker; and

(b) The licensee’s principal real estate broker does not require said advertising to be conducted in the name of the principal real estate broker’s company or firm.

(8) **Signage.** A licensee shall comply with ORS 696.200 and the following:

(a) The business sign required under ORS 696.200 at the designated main office or each branch office shall be located:

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

(ii) 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) 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.

(c) Upon ceasing to engage in professional real estate activity at a main office or branch office location, the principal real estate broker in the case of the main office and the branch office manager in the case of the branch office, shall remove all signs or other identifying information that would show the location as a business location for a real estate broker.

(9) **Internet Advertising.** All Internet advertising by a licensee shall comply with sections (3), (4), (5) and (6) and the following:

(a) When engaged in ongoing electronic exchange of information with a client or customer who has already been given the information required by section (5), a licensee need not provide the information in each exchange;

(b) A licensee may provide the real estate business information required by section (5) by providing a clearly identified link to their real estate business’s homepage;

(c) Licensee entities, advertising or marketing real property on a site on the Internet that is either owned or controlled by the licensee, shall periodically review the advertising and marketing information on the site to assure that it is current and not misleading. Whether information is current within the meaning of this rule

shall depend upon whether more current information was reasonably available to the advertising entity;

(d) Visual enhancement of photographs shall be considered misleading if the enhancement materially changes the appearance of the property or changes or deletes significant features thereof;

(e) Whenever information on properties listed by other licensees is displayed or distributed on a licensee’s site, the site shall disclose when the information was downloaded, or how often, or that information displayed or distributed is information currently available from another identified source.

(f) A licensee may not use any “meta-tag” or other coding or programming means to intentionally misdirect Internet traffic from another licensee’s site to their own site.

(g) A licensee providing virtual tours featuring the inside of homes shall have the express written permission of the owner and shall have a virtual tour policy designed to protect, to the extent possible, the privacy of the client and prevent misuse of the information by the general public.

(h) Licensees operating Virtual Office Websites shall only display those listings for which they have obtained authorization pursuant to section (6).

(10) A real estate licensee may use the letters “P.C.” as a Professional Corporation designation in their advertising, even though their licensed name does not include the “P.C.” designation, if:

(a) The professional corporation is only for the professional real estate activity of a real estate licensee; and

(b) The professional corporation for the real estate licensee has been duly created under ORS Chapter 58.

Stat. Auth.: ORS 696.385 & ORS 183.335

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

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

863-015-0130

Listing Agreements

(1) A real estate licensee who obtains a listing shall, at the time of securing such listing, give the individual 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 individual signing the listing to notify the real estate broker of the individual’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 individuals enter into activity to deprive an original listing broker of a commission.

Stat. Auth.: ORS 696.385 & ORS 183.335

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; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0015

863-015-0135

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 individual signing the offer or counter-offer a true, legible copy thereof.

(2) A real estate licensee shall promptly tender to the offeror or 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 seller to the written offer or counter-offer signed by the seller or his designee, shall be maintained by the licensee in the file created under OAR 863-015-0255 for the offer or transaction and if the offer is

rejected by the seller, a true copy shall be provided to the purchaser.

(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 an 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 payable within a stated time subsequent to seller's acceptance. In absence of a written agreement to the contrary, the note should be made payable to the seller.

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

Stat. Auth.: ORS 696.385 & ORS 183.335

Stats. Implemented: ORS 696.280

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; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0020; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

863-015-0140

Broker's Supervision

(1) Except as authorized by a principal real estate broker under OAR 863-015-0085 to cover an absence of the principal real estate broker, no real estate broker shall control or supervise the professional real estate activities of any real estate broker.

(2) A principal real estate broker shall not permit the use of the broker's license to enable other real estate licensees 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.

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

(4) Any branch office of a real estate broker shall be registered 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 sole practitioner real estate broker or principal real estate broker licensee under ORS 696.200(3).

(5) For purposes of ORS 696.200, principal place of business shall include any branch office registered by a principal real estate broker to the extent that the license of any real estate broker acting as agent for the principal real estate broker will be displayed in the branch office to which the real estate broker is assigned.

(6) The principal real estate broker shall directly supervise the licensees associated with the brokerage in the fulfillment of their duties and obligations to their respective clients, under a written company policy established pursuant to OAR 863-015-0220. The principal real estate broker shall review each document of agreement generated in a transaction within seven (7) banking days after it has been accepted, rejected or withdrawn. If the document or agreement originates in a branch office, it may be reviewed by the real estate broker who is the manager of the branch office under ORS 696.200(3). At the time of review, the principal real estate broker or branch office manager shall initial and date the document in writing.

(7) For those real estate brokers affiliated with a principal real estate broker who have acquired at least three years of active experience as a real estate broker, a principal real estate broker may delineate by written company policy the degree of direct principal broker supervision over the affiliated real estate broker. However, the

principal real estate broker shall still review agreements pursuant to section (6).

Stat. Auth.: ORS 696

Stats. Implemented: ORS 696.301(29) & ORS 696.200,

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; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0043; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

863-015-0145

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. Any advertising by the licensee shall comply with OAR 863-015-0125(7).

(2) Transactions described in section (1) of this rule of a principal 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 a real estate broker associated with a principal real estate broker must be conducted under the supervision of and all documents and funds transmitted through the licensee's principal real estate broker.

(4) If at any time 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 documents concerning the matter in the manner required of a real estate broker under OAR 863-015-0255.

(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 an owner 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. As used in this rule, "owner" means an individual having an ownership interest equaling more than five percent of the total ownership interest in the legal entity.

Stat. Auth.: ORS 183.335 & ORS 696.385

Stats. Implemented: ORS 696.015, 696.020(2), 696.241, 696.280 & 696.301(1)(6)(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; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0046; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

863-015-0150

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

Stat. Auth.: ORS 183.335 & ORS 696.385

Stats. Implemented: ORS 696.301(4), (29)

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; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0060

863-015-0155

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 183.335 & ORS 696.385
 Stats. Implemented: ORS 696.015 & 696.301(31)
 Hist.: REC 10, f. 8-27-59; REC 3-1978, f. 6-15-78, ef. 7-1-78; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered to 863-010-0090

863-015-0160

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 or incapacitated sole practitioner or sole principal real estate broker, the person may only close or terminate the transactions which are in various stages of completion or termination at the death or incapacity of the broker. The activities authorized under the temporary license include, but are not limited to:

- (a) Termination of all listings and buyer’s service agreements 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 participating real estate brokers entitled to commissions resulting from the transactions; and
- (e) Disbursement of earnest moneys or other funds according to any outstanding earnest money receipt or other agreement.

(2) The holder of a temporary license shall not enter into any new listing or sale agreements or in any way conduct professional real estate activity for others who are not principals in a current contract.

(3) The holder of a temporary license issued under ORS 696.205 is subject to the Oregon Real Estate License Law and OAR 863-015-0005 to 863-015-0275 while engaging in professional real estate activity under the terms of the temporary license.

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; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0092

863-015-0165

Finders Fee

Under ORS 696.290, a “finders fee” is compensation given to an individual 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; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0093

863-015-0175

Report of Litigation Involving Licensees

(1) A real estate licensee shall notify the Commissioner of any adverse decision, judgment or award resulting from any suit or action or arbitration proceeding, civil or criminal, in which the licensee was named as a party and against whom allegations concerning conduct or professional real estate activity on the licensee’s own account or on behalf of others is asserted including but not limited to those activities which reflect adversely on the trustworthy and competent requirements of ORS Chapter 696 and OAR Chapter 863. Any adverse decision, judgment or award or any settlement accepted by the Small Claims Department of any Circuit Court is not 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 a copy of the adverse decision, judgment or award and, in the case of a criminal conviction, a copy of the sentencing order. If any such judgment, award or decision is appealed, each subsequent decision of any appellate court is subject to the notification requirements of this section.

(3) The notification required by section (1) of this rule shall be made within twenty days after receipt of written notification of an adverse judgment, award, decision or settlement described in section (1) of this rule. Notification shall be made under this rule whether or not the decision is appealed.

(4) Arbitration proceedings between licensees concerning the resolution of a commission payment dispute are not subject to the notification required by section (1) of this rule.

Stat. Auth.: ORS 696
 Stats. Implemented: ORS 696.301(26), (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; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0120; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

863-015-0180

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 OAR 863-015-0065(4);
- (2) Suspended for failure to renew under OAR 863-015-0050(2); or
- (3) Suspended or revoked by Order of the Real Estate Commissioner under ORS 696.301.

Stat. Auth.: ORS 100 & ORS 696
 Stats. Implemented: ORS 696.022, 696.174, 696.301 & 696.990(4), (5)
 Hist.: REA 1-1990, f. & cert. ef. 4-18-90; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0130

863-015-0185

Earnest Money Disbursement — Revocation — Buyer’s 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 asserts 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 in 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) 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
- (d) The buyer has provided the broker with a written release form and may provide 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 section (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 client trust account and credited to the buyer have been collected and are available for disbursement by the broker. The broker may not use any client trust account funds deposited and credited to any other person in making such a disbursement to the buyer.

(3) For the purposes of ORS 105.475 under section (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.

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; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0250; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

863-015-0190

Competitive Market Analyses; Letter Opinions; Lending Collateral Analysis; Default Collateral Analysis

(1) Real estate licensees can provide competitive market analyses and letter opinions 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.

(4) Real estate licensees can provide a "lending collateral analysis" or "default collateral analysis", if the analysis is used only for the internal purposes of a financial institution and, in the case of a "lending collateral analysis, that any loan transaction at issue is less than \$250,000.

(a) "Lending collateral analysis" means a real property market analysis where the purpose of the analysis is for use by a lending institution in support of a loan application.

(b) "Default collateral analysis" means a real property market analysis where the purpose of the analysis is for use by a lending institution in considering its actions with respect to a loan in default.

(5) If a real estate broker completes a lending collateral analysis or default collateral analysis on a property in which the real estate broker or principal real estate broker has either a current, active listing agreement or is representing the buyer or seller in a pending transaction, the real estate broker shall disclose to the buyer and seller the real estate broker's relationships with the lending institution.

Stat. Auth.: ORS 183.335 & ORS 696.385
 Stats. Implemented: 696.010(8), (10)
 Hist.: REA 4-1997, f. 11-24-97, cert. ef. 12-1-97; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0270

863-015-0195

Licensed Personal Assistants

(1) A real estate broker who is eligible for a principal broker's license and activates a principal broker's license under OAR 863-015-040 may enter into written agreements with one or more licensed personal assistants under the following conditions:

(a) The real estate broker enters into a written agreement with the principal real estate broker(s) with whom the broker is associated, specifying supervision and control of the licensed personal assistant(s). The written office policies of the real estate business shall specify the supervision and control of licensed personal assistants;

(b) Once the real estate broker obtains a principal real estate broker license, the licensed personal assistants, pursuant to the agreement between the real estate broker and the principal real estate bro-

ker, work under the direct supervision and control of the real estate broker; and

(c) Compensation in the form of commissions, salary or otherwise may be made by the principal real estate broker with whom the licensed personal assistant has a personal assistant agreement provided, however, the licensed personal assistant's principal real estate broker has authorized in writing such payments.

(2) A written agreement between a real estate broker and a licensed personal assistant shall include the following:

- (a) The name of the real estate business;
- (b) The parties to the agreement;
- (c) The duration of the agreement and a provision for its termination;
- (d) The employment status of the licensed personal assistant;
- (e) The name of the principal real estate broker(s) with whom the licensed personal assistant is associated and reference to the written office policies and agreements establishing supervision and control of the licensed personal assistant;
- (f) The duties and responsibilities of the licensed personal assistant, including any limitations on their ability to represent clients on behalf of the broker.
- (g) The manner and means by which the licensed personal assistant is to be compensated, including reference to any principal real estate broker authorization necessary.

(3) A licensed personal assistant shall, in all instances, have the same agency relationships with clients as the real estate broker with whom they have a licensed personal assistant agreement.

(4) A person who is issued a real estate brokers license on July 1, 2002 and who has one or more licensed personal assistants on July 2, 2002, shall obtain a principal real estate broker's license not later than September 30, 2002. A person who is issued a temporary associate real estate brokers license on July 1, 2002 and who has one or more licensed personal assistants on July 2, 2002, shall obtain a principal real estate broker's license not later than January 2, 2004. If a person fails to become licensed as a principal real estate broker prior to the expiration of the period prescribed in this section, the person may not employ a licensed personal assistant unless a principal real estate broker's license is issued subsequently to the person.

Stat. Auth.: ORS 696.385 & ORS 183.335
 Stats. Implemented: ORS 696.028
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02

863-015-0200

Agency Relationships

(1) Unless the parties expressly agree to a different relationship not otherwise prohibited by law, the types of agency relationships a real estate licensee may establish in a real estate transaction are limited to the following:

- (a) An agency relationship between a real estate licensee and the seller exclusively;
- (b) An agency relationship between a real estate licensee and the buyer exclusively;
- (c) A disclosed limited agency relationship where one or more real estate licensees associated with the same principal broker represent both the seller and the buyer in the same real estate transaction;
- (d) A disclosed limited agency relationship where real estate licensees associated with the same principal broker are designated to represent, respectively, the buyer exclusively and the seller exclusively;
- (e) A disclosed limited agency relationship where one or more real estate licensees associated with the same principal broker represent more than one buyer in the same real estate transaction.

(2) Unless the parties expressly agree to a different relationship not otherwise prohibited by law:

- (a) A licensee representing a seller by written agreement or course of conduct establishes an agency relationship under sections (1)(a) or (d) above;
- (b) A licensee representing a buyer by written agreement or course of conduct establishes an agency relationship under sections (1)(b) or (d) above;

(c) A licensee representing both a buyer and a seller or two or more buyers in the same real estate transaction is a disclosed limited agent of both the buyer and seller or all buyers under sections (1)(c) or (e) above,.

(3) When an agency relationship is formed between a real estate licensee and a client under section (2) above, the following apply:

(a) The principal broker with whom the licensee is associated is the agent of the client;

(b) In a real estate transaction in which different real estate licensees associated with the same principal broker establish agency relationships with different parties to the real estate transaction, the principal broker shall be the only disclosed limited agent of both parties.

(c) In a real estate transaction in which one or more real estate licensees associated with the same principal broker establish agency relationships with more than one party to the real estate transaction, those licensees and the principal broker shall be the only disclosed limited agents of those parties.

(4) Except as provided in sections (2) and (3) above, licensees affiliated with the same real estate business are not agents of all clients of the real estate business.

(5) Payment, or promise of payment, of a real estate commission or other fee does not by itself create an agency relationship.

(6) A principal real estate broker acting as a disclosed limited agent under section (3)(b) above, shall do each of the following:

(a) Supervise the licensees associated with the principal broker in fulfillment of their duties and obligations to their respective clients;

(b) Avoid advocating on behalf of either the seller or the buyer; and

(c) Avoid disclosing or utilizing, without permission, confidential information of any client with whom the principal broker has an agency relationship.

(7) Real estate licensees associated with a principal broker who is acting as a disclosed limited agent under section (3)(b) above, shall do both of the following:

(a) Serve as the agent of only the party or parties in the transaction with whom the real estate licensee has established an agency relationship; and

(b) Fulfill the duties owed to the respective client as set forth in the ORS 696.815 and as agreed in a disclosed limited agency agreement entered into pursuant to OAR 863-015-0210.

(8) All real estate licensees associated with a principal broker who are acting as disclosed limited agents under section (2)(c) above, shall refrain from disclosing or utilizing any confidential information relating to the other party that has been acquired as a result of the licensee's association with the principal broker, unless authorized to do so by that party.

(9) Nothing in this rule prohibits licensees from disclosing or utilizing factual, non-confidential information relating to all parties to a transaction in order to fulfill a licensee's duties to the client under ORS 696.815.

(10) If a principal real estate broker acting as a disclosed limited agent under section (3)(b) above, determines that confidential information of one principal to a transaction has become known to another client in the transaction as the result of a violation of sections (6)(c) or (7)(b) above, the principal broker shall promptly and fully disclose the violation to the affected client in writing.

(11) Affirmative duties under ORS 696.805 and 696.810, where appropriate, apply to the agents, principal, other principals and the principals' agents but do not create fiduciary, or other similar, duties inconsistent with the actual legal relationship between an agent and other principals to a transaction or that principals' agents.

Stat. Auth.: ORS 696.385 & ORS 183.335

Stats. Implemented: ORS 696.805, ORS 696.810 & ORS 696.815

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02

863-015-0205

Disclosed Limited Agency

(1) Licensees shall establish the agency relationships described in OAR 863-015-0200(1)(c) to (e) only by written agreement. Such agreements shall meet all the requirements of OAR 863-015-0210.

(2) A disclosed limited agency relationship shall exist when a single licensee undertakes by written agreement or conduct to represent more than one party to a real estate transaction. For the purpose of this rule, two or more buyers shall be considered involved in the same real estate transaction when all have submitted offers on the same real property.

(3) Except as provided for in section (5), a disclosed limited agency relationship shall exist when two or more licensees supervised by the same principal broker undertake by written agreement or conduct to represent more than one party to a real estate transaction. Notwithstanding the other provisions of this rule, individual agents may be designated to represent the buyer exclusively or the seller exclusively as described in OAR 863-015-0200(1)(c), (d) and (e).

(4) The following conditions shall apply to the agency relationship described in OAR 863-015-0200(1)(c), (d) and (e):

(a) The principal broker with whom the licensee is associated shall have a written policy as required by OAR 863-015-0220 and established procedures to assure that a licensee who represents one client will not have access to and will not obtain confidential information concerning another client involved in the same transaction;

(b) In situations where a real estate business has two or more principal brokers, each principal broker shall be the disclosed limited agent of all clients in the transaction unless each of the following conditions are met:

(A) The principal brokers have entered into a written agreement and have written office policies dividing control and supervision responsibilities and have individually complied with subsection (a) above. Principal brokers may comply with subsection (a) above by holding open records of real estate activity in different offices or by otherwise initiating procedures that secure open records in such a way as to prevent licensees representing different parties to the same transaction from accessing or obtaining confidential information concerning another party to the transaction;

(B) The licensees designated to represent the seller exclusively and the buyer exclusively are associated with the same principal broker. If the principal broker has an existing agency relationship with one party to the transaction (either as a seller's agent or buyer's agent), the principal broker, pursuant to the requirements of OAR 863-015-0210, shall act as the disclosed limited agent of both parties and another licensee shall be designated to represent the other party exclusively.

(C) Each client to the transaction has signed a disclosed limited agency agreement that indicates which principal broker will act as the disclosed limited agent in the transaction.

(5) If principal brokers have entered into a written agreement and have written office policies dividing control and supervision responsibilities and have individually complied with subsection (4)(a) above by holding open records of real estate activity in different offices or by otherwise initiating procedures that secure open records in such a way as to prevent licensees representing different parties to the same transaction from accessing or obtaining confidential information concerning another principal in the transaction, then a transaction involving agents associated with different principal brokers is not a disclosed limited agency transaction.

Stat. Auth.: ORS 696.385 & ORS 183.335

Stats. Implemented: ORS 696.805, ORS 696.810 & ORS 696.815

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02

863-015-0210

Disclosed Limited Agency Agreement

(1) Disclosed limited agency agreements required by ORS 696.815 shall be in writing, signed and dated by the parties to be bound or by their duly appointed real estate agents.

(2) Each disclosed limited agency agreement shall contain the following:

(a) The name of the real estate business within which the representation will take place;

(b) Identification of any existing listing or service agreement between the parties to the disclosed limited agency agreement;

(c) The name(s) of the licensee(s), including the principal real estate broker, who will represent the client;

(d) A plain language description of the requirements of ORS 696.815;

(e) Full disclosure of the duties and responsibilities of an agent who represents more than one party to a real estate transaction. This requirement can be met by providing the client with a copy of the initial agency disclosure pamphlet required by ORS 696.820, discussing the portion of the pamphlet entitled "Duties and Responsibilities of an Agent Who Represents More than One Party to a Transaction" with the client and incorporating the pamphlet into the disclosed limited agency agreement by reference;

(f) Consent and agreement between the parties to the disclosed limited agency agreement regarding representation of the client in future transactions.

(3) Use of a disclosed limited agency agreement for sellers in substantially the following form shall be deemed prima facie evidence of compliance with OAR 863-015-0210(1) and (2):

Property Address _____
 Addendum to Listing Agreement Dated _____
 Real Estate Firm _____
DISCLOSED LIMITED AGENCY AGREEMENT FOR SELLER
 The Parties to this Disclosed Limited Agency Agreement are:
 Listing Agent (print) _____
 Listing Agent's Principal Broker (print) _____
 Seller (print) _____
 Seller (print) _____

The Parties to this Agreement understand that Oregon law allows a single real estate agent to act as a disclosed limited agent — to represent both the seller and the buyer in the same real estate transaction, or multiple buyers who want to purchase the same property. It is also understood that when different agents associated with the same principal broker (the broker who directly supervises the other agents) establish agency relationships with the buyer and seller in a real estate transaction, the agents' principal broker shall be the only broker acting as a disclosed limited agent representing both seller and buyer. The other agents shall continue to represent only the party with whom they have an established agency relationship, unless all parties agree otherwise in writing.

In consideration of the above understanding, and the mutual promises and benefits exchanged here and in the Listing Agreement, the Parties now agree as follows:

1. Seller acknowledge they have received the initial agency disclosure pamphlet required by ORS 696.820 and have read and discussed with the Listing Agent that part of the pamphlet entitled "Duties and Responsibilities of an Agent Who Represents More than One Party to A Transaction." The initial agency disclosure pamphlet is hereby incorporated into this Disclosed Limited Agency Agreement by reference.

2. Seller, having discussed with the Listing Agent the duties and responsibilities of an agent who represents more than one party to a transaction, consent and agree as follows:

(A) The Listing Agent and the Listing Agent's Principal Broker, in addition to representing Seller, may represent one or more buyers in a transaction involving the listed property;

(B) In a transaction involving the listed property where the buyer is represented by an agent who works in the same real estate business as the Listing Agent and who is supervised by the Listing Agent's Principal Broker, the Principal Broker may represent both Seller and Buyer. In such a situation, the Listing Agent will continue to represent only the Seller and the other agent will represent only the Buyer, consistent with the applicable duties and responsibilities as set out in the initial agency disclosure pamphlet; and

(C) In all other cases, the Listing Agent and the Listing Agent's Principal Broker shall represent Seller exclusively.

Seller signature _____
 Date _____
 Seller signature _____
 Date _____
 Listing Agent signature _____
 Date _____
 (On their own and on behalf of Principal Broker)
 Broker initial and review date _____

(4) Use of a disclosed limited agency agreement for buyers in substantially the following form shall be deemed prima facie evidence of compliance with sections (1) and (2).

Property Address _____
 Addendum to Buyer Service Agreement Dated _____
 Real Estate Firm _____

DISCLOSED LIMITED AGENCY AGREEMENT FOR BUYER
 The Parties to this Disclosed Limited Agency Agreement are:

Buyer's Agent (print) _____
 Buyer's Agent's Principal Broker (print) _____
 Buyer (print) _____
 Buyer (print) _____

The Parties to this Agreement understand that Oregon law allows a single real estate agent to act as a disclosed limited agent — to represent both the seller and the buyer in the same real estate transaction, or multiple buyers who want to purchase the same property. It is also understood that when different agents associated with the same principal broker (the broker who directly supervises the other agents) establish agency relationships with the buyer and seller in a real estate transaction, the agents' principal broker shall be the only broker acting as a disclosed limited agent representing both seller and buyer. The other agents shall continue to represent only the party with whom they have an established agency relationship, unless all parties agree otherwise in writing.

In consideration of the above understanding, and the mutual promises and benefits exchanged here and, if applicable, in the Buyer Service Agreement, the Parties now agree as follows:

1. Buyer(s) acknowledge they have received the initial agency disclosure pamphlet required by ORS 696.820 and have read and discussed with the Buyers Agent that part of the pamphlet entitled "Duties and Responsibilities of an Agent Who Represents More than One Party to A Transaction." The initial agency disclosure pamphlet is hereby incorporated into this Disclosed Limited Agency Agreement by reference.

2. Buyer(s), having discussed with Buyers Agent the duties and responsibilities of an agent who represents more than one party to a transaction, consent and agree as follows:

(A) Buyers Agent and the Buyers Agent's Principal Broker, in addition to representing Buyer, may represent the seller or another buyer in any transaction involving Buyer;

(B) In a transaction where the seller is represented by an agent who works in the same real estate business as the Buyers Agent and who is supervised by the Buyers Agent's Principal Broker, the Principal Broker may represent both seller and Buyer. In such a situation, the Buyers Agent will continue to represent only the Buyer and the other agent will represent only the Seller, consistent with the applicable duties and responsibilities set out in the initial agency disclosure pamphlet;

(C) In all other cases, the Buyers Agent and the Buyers Agent's Principal Broker shall represent Buyer exclusively.

Buyer signature _____
 Date _____
 Buyer signature _____
 Date _____
 Buyer's Agent signature _____
 Date _____
 (On their own and on behalf of Principal Broker)
 Broker initial and review date _____
 Stat. Auth.: ORS 696.385 & ORS 183.335
 Stat. Implemented: ORS 696.805, ORS 696.810 & ORS 696.815
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02

**863-015-0215
 Initial Agency Disclosure Pamphlet**

(1) An agent shall provide a copy of the Initial Agency Disclosure Pamphlet provided for in section (4) of this rule at first contact with each represented party to a real property transaction, including but not limited to contacts in-person, by telephone, over the Internet or World Wide Web, or by electronic mail, electronic bulletin board or a similar electronic method.

(2) An agent need not provide a copy of the Initial Agency Disclosure Pamphlet to a party who has, or may be reasonably assumed to have, already received a copy of the pamphlet from another agent.

(3) "First contact with a represented party" means contact with a person who is represented by a real estate licensee or can reasonably be assumed from the circumstances to be represented or seeking representation.

(4) The Initial Agency Disclosure Pamphlet shall be printed in substantially the following form:

**OREGON REAL ESTATE AGENCY
 DISCLOSURE PAMPHLET
 (OAR 863-015-215(4))**

This pamphlet describes agency relationships and the duties and responsibilities of real estate licensees in Oregon. This pamphlet is informational only and neither the pamphlet nor its delivery to you may be construed to be evidence of intent to create an agency relationship.

Real Estate Agency Relationships

An "agency" relationship is a voluntary legal relationship in which a real estate licensee (the "agent") agrees to act on behalf of a buyer or a seller (the "client") in a real estate transaction. Oregon law provides for three

types of agency relationships between real estate agents and their clients:
Seller's Agent — Represents the seller only;
Buyer's Agent — Represents the buyer only;
Disclosed Limited Agent — Represents both the buyer and seller, or multiple buyers who want to purchase the same property. This can be done only with the written permission of both clients.
The actual agency relationships between the seller, buyer and their agents in a real estate transaction must be acknowledged at the time an offer to purchase is made. Please read this pamphlet carefully before entering into an agency relationship with a real estate agent.

Duties and Responsibilities of an Agent Who Represents Only the Seller or Only the Buyer

Under a written listing agreement to sell property, an agent represents only the seller unless the seller agrees in writing to allow the agent to also represent the buyer. An agent who agrees to represent a buyer acts only as the buyer's agent unless the buyer agrees in writing to allow the agent to also represent the seller. An agent who represents only the seller or only the buyer owes the following affirmative duties to their client, other parties and their agents involved in a real estate transaction:

1. To exercise reasonable care and diligence;
2. To deal honestly and in good faith;
3. To present all written offers, notices and other communications in a timely manner whether or not the seller's property is subject to a contract for sale or the buyer is already a party to a contract to purchase;
4. To disclose material facts known by the agent and not apparent or readily ascertainable to a party;
5. To account in a timely manner for money and property received from or on behalf of the client;
6. To be loyal to their client by not taking action that is adverse or detrimental to the client's interest in a transaction;
7. To disclose in a timely manner to the client any conflict of interest, existing or contemplated;
8. To advise the client to seek expert advice on matters related to the transactions that are beyond the agent's expertise;
9. To maintain confidential information from or about the client except under subpoena or court order, even after termination of the agency relationship; and
10. When representing a seller, to make a continuous, good faith effort to find a buyer for the property, except that a seller's agent is not required to seek additional offers to purchase the property while the property is subject to a contract for sale. When representing a buyer, to make a continuous, good faith effort to find property for the buyer, except that a buyer's agent is not required to seek additional properties for the buyer while the buyer is subject to a contract for purchase or to show properties for which there is no written agreement to pay compensation to the buyer's agent. None of these affirmative duties of an agent may be waived, except #10, which can only be waived by written agreement between client and agent.

Under Oregon law, a seller's agent may show properties owned by another seller to a prospective buyer and may list competing properties for sale without breaching any affirmative duty to the seller. Similarly, a buyer's agent may show properties in which the buyer is interested to other prospective buyers without breaching any affirmative duty to the buyer. Unless agreed to in writing, an agent has no duty to investigate matters that are outside the scope of the agent's expertise.

Duties and Responsibilities of an Agent Who Represents More than One Client in a Transaction

One agent may represent both the seller and the buyer in the same transaction, or multiple buyers who want to purchase the same property only under a written "Disclosed Limited Agency" agreement, signed by the seller, buyer(s) and their agent.
 When different agents associated with the same real estate firm establish agency relationships with different parties to the same transaction, only the principal broker (the broker who supervises the other agents) will act as a Disclosed Limited Agent for both the buyer and seller. The other agents continue to represent only the party with whom the agent already has an established agency relationship unless all parties agree otherwise in writing. The supervising principal broker and the agents representing either the seller or the buyer have the following duties to their clients:

1. To disclose a conflict of interest in writing to all parties;
2. To take no action that is adverse or detrimental to either party's interest in the transaction; and
3. To obey the lawful instruction of both parties.

An agent acting under a Disclosed Limited Agency agreement has the same duties to the client as when representing only a seller or only a buyer, except that the agent may not, without written permission, disclose any of the following:

1. That the seller will accept a lower price or less favorable terms than the listing price or terms;
2. That the buyer will pay a greater price or more favorable terms than the offering price or terms; or

3. In transactions involving one-to-four residential units only, information regarding the real property transaction including, but not limited to, price, terms, financial qualifications or motivation to buy or sell. No matter whom they represent, an agent must disclose information the agent knows or should know that failure to disclose would constitute fraudulent misrepresentation. Unless agreed to in writing, an agent acting under a Disclosed Limited Agency agreement has no duty to investigate matters that are outside the scope of the agent's expertise.
You are encouraged to discuss the above information with the agent delivering this pamphlet to you. If you intend for that agent, or any other Oregon real estate agent, to represent you as a Seller's Agent, Buyer's Agent, or Disclosed Limited Agent, you should have a specific discussion with him/her about the nature and scope of the agency relationship. Whether you are a buyer or seller, you cannot make a licensee your agent without their knowledge and consent, and an agent cannot make you their client without your knowledge and consent.
 Stat. Auth.: ORS 696.385, ORS 696.820 & ORS 183.335
 Stats. Implemented: ORS 696.805, ORS 696.810 & ORS 696.815
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02

863-015-0220 Written Company Policy

(1) Each real estate business shall develop and maintain a written company policy that sets forth the types of relationships real estate licensees associated with the business may establish. The policy shall include:

- (a) Provisions on how licensees associated with the business will comply with the agency relationships set forth in OAR 863-015-0200;
- (b) Procedures to ensure the protection of confidential information;
- (c) Provisions regarding the supervision and control of licensees associated with the business in the fulfillment of their duties and obligations to their respective clients including but not limited to the requirements of OAR 863-015-0205;
- (d) Provisions regarding the supervision of licensed personal assistants employed by the brokerage or employed by licensees associated with the brokerage;

(2) The development and maintenance of a policy under this section shall not relieve a licensee from liability for the failure to maintain confidential information.
 Stat. Auth.: ORS 696.385 & ORS 183.335
 Stats. Implemented: ORS 696.028, 696.805, 696.810, 696.815 & 696.820
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02

Records Rules

863-015-0250 Records; Professional Real Estate Activity

(1) Complete and adequate records of professional real estate activity shall include complete, legible and permanent copies of all documents required by law or voluntarily generated during a real estate transaction, including offers whether accepted or closed, by or through brokers or principal brokers to client including, but not limited to, the following:

- (a) A copy of any written agreement creating an agency relationship between a real estate broker or principal real estate broker and a client. Such agreement shall evidence the signature of the parties.
- (b) A copy of any written acknowledgment of an agency relationship between a real estate broker or principal real estate broker and a client. Such agreement shall evidence the signature of the parties.
- (c) A copy of any written agreement for the listing, sale, purchase, rental, lease, lease option or exchange of real property generated by a real estate broker or principal real estate broker while engaging in professional real estate activity. Such agreements shall evidence the signature of the parties.
- (d) A copy of any receipt issued by a real estate broker or principal real estate broker to evidence acceptance of funds or documents.
- (e) A copy of any vouchers or bills or obligations paid by the real estate broker or principal real estate broker for the account of a client or customer.

(f) A copy of any other written document falling within the scope of the agency relationship provided to, or received by, a client through a real estate broker or principal real estate broker during the term of an agency relationship.

(g) All financial records as required in OAR 863-015-0255 and 863-015-0275.

(2) In any real estate transaction in which a principal real estate broker or real estate broker who is a sole practitioner, performed the closing, the real estate broker or principal real estate broker shall retain a copy of any closing statement showing a receipts, disbursements and adjustments, which shall evidence the signature of the seller(s) and the buyer(s).

(3) The records shall include a consecutively numbered file for each offer or transaction that involves the actual sale, purchase, lease option or exchange of real property.

Stat. Auth.: ORS 696.385 & ORS 183.335

Stats. Implemented: ORS 696.280

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02

863-015-0255

Records: Client Trust Account Requirements

(1) The retention and storage of records described in this rule shall comply with OAR 863-015-0250, 863-015-0260 and 863-015-0270. However, where separate general business and/or trust accounts are maintained at branch offices, the financial records described in this rule may be maintained and located either at the main office of the real estate broker or, if the principal real estate broker or branch office manager conducts the real estate business from that branch office, at that branch office. For the purposes of this rule, real estate broker shall include a sole practitioner real estate broker or principal real estate broker.

(2) A real estate broker who is not a sole practitioner, shall promptly transmit to the real estate broker's principal 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. In the absence of specific written company policy or written agreement of the parties to the contrary, the affiliated broker shall promptly tender to the principal real estate broker all earnest monies and not deposit the earnest money directly with escrow.

(3) If a real estate broker receives a check as earnest money in a transaction, the real estate broker may hold the check undeposited until the offer is accepted or rejected, provided that the written sale agreement states that the check is being held undeposited by the real estate 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 real estate broker under ORS 696.241 or shall be transmitted to a neutral escrow depository located within this state prior to the close of the third banking day following mutual acceptance of the offer or a subsequent counter offer. The real estate broker shall track the earnest money deposit from the buyer to the real estate broker to the escrow depository.

(4) All other funds, whether in the form of money, checks, drafts, or warrants belonging to others and accepted by any real estate broker 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 real estate broker shall retain a copy of each executed Client Trust Account Deposit Agreement. The real estate broker shall account for all funds received.

(5) All funds received under sections (2) and (3) are subject to the following:

(a) The real estate broker shall account for all funds received;

(b) The real estate broker shall maintain a copy of any check received; and

(c) The real estate broker shall maintain a dated, acknowledged receipt for any check returned to the offeror.

(6) A real estate broker shall not commingle funds received under this rule with personal funds of the real estate broker.

(7) 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.

(8) A real estate broker shall maintain a complete ledger account and record all funds received in the broker's professional real estate activity. This ledger account shall show from whom the funds were received, the date of the receipt, the place of deposit, and, when the transaction has been completed or the offer has failed, the final disposition of the funds.

(9) If a real estate licensee is a principal in an offer or transaction, all earnest money or other deposits shall be handled as provided in OAR 863-015-0145.

(10) 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.

(11) A real estate broker shall record and track the transfer of promissory notes and other forms of consideration by a ledger account or by other means including, but not limited to, written proof of transmittal or receipt retained in the real estate broker's offer or transaction file. The real estate broker shall record the transfer of other documents by written proof of transmittal or receipt retained in the real estate broker's offer or transaction file.

(12) 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 real estate 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 real estate 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 real estate broker into the real estate 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 real estate broker and not commingling of real estate broker's funds with clients' trust funds;

(e) A real estate 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.

(13) All funds deposited into a clients' trust account established under ORS 696.241 and not disbursed or transferred to a neutral escrow depository pursuant to the sale agreement may only be disbursed:

(a) To individuals, as directed by order of court of competent jurisdiction;

(b) To individuals, as directed in writing by one or more principals; or

(c) To the court, upon filing by the real estate broker of an interpleader action for disputed earnest money funds.

(14) Any funds being held as specified in the rule and not disbursed pursuant to paragraph (13) of this rule, shall be subject to ORS 98.302 to 98.436.

(15) A real estate broker shall not utilize any form of debit card issued by financial institutions on Client Trust Accounts.

Stat. Auth.: ORS 696.385 & ORS 183.335

Stats. Implemented: ORS 696.221, 696.241, 696.280 & 696.301(10)

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

863-015-0260

Records: Records Retention

(1) Real estate brokers shall maintain and store complete and accurate records of professional real estate activity pursuant to ORS 696.280 and as follows:

(a) Records, including any items generated through E-mail or other electronic means, shall be maintained and stored at the broker's office for a period of two years following the date of the creation of the record;

(b) Pursuant to written company policy, real estate brokers associated with a principal real estate broker may maintain and store records of professional real estate activity at the main office of the principal real estate broker.

(c) Pursuant to written company policy, records of professional real estate activity originating at a branch office may be maintained and stored at either that branch office or at the main office of the principal real estate broker.

(d) A real estate broker may store records of professional real estate activity that were created at least two years prior to transfer to off-site storage in a single location other than the broker's office, main office of the principal real estate broker or branch office, for a period of six years following the date of the creation of the record, if the real estate broker first:

(A) Notifies the Commissioner in writing of the intended removal of such records, includes 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 real estate broker shall notify the Commissioner of any change in the contact or means of access within ten days after such change occurs.

(2) A real estate broker shall maintain at the broker's office a means of viewing copies of documents or records. A real estate broker shall provide, at the real estate broker's expense, a paper copy of any document or record requested by the Agency.

(3) A real estate broker or property manager may use electronic image storage media to retain and store copies of all listings, deposit receipts, canceled checks, client trust account records and other documents executed by him or her or obtained by him or her in connection with any professional real estate activity transaction, when the following requirements are satisfied:

(a) The electronic image storage shall be nonerasable "write once, read many" ("WORM") that does not allow changes to the stored document or record.

(b) The stored document or record is made or preserved as part of and in the regular course of business.

(c) The original record from which the stored document or record was copied was made or prepared by the broker or property manager or the broker's or property manager's employees at or near the time of the act, condition or event reflected in the record.

(d) The custodian of the record is able to identify the stored document or record, the mode of its preparation, and the mode of storing it on the electronic image storage.

(e) The electronic image storage media contains a reliable indexing system that provides ready access to a desired document or record, appropriate quality control of the storage process to ensure the quality of imaged documents or records, and date ordered arrangement of stored documents or records to assure a consistent and logical flow of paperwork to preclude unnecessary search time.

(f) At least once each month, the real estate broker shall back up any data that is stored in the computerized system necessary to produce the records. The back up data shall be retained for no less than 60 days and shall be made available to the Commissioner or to the Commissioner's authorized representatives on demand.

Stat. Auth.: ORS 696.385 & ORS 183.335
 Stats. Implemented: ORS 696.280
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

863-015-0265

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) In a transaction subject to ORS 696.241(5), money belonging to others shall not be invested in any type of account or security or certificate of deposit, which has a fixed term for maturity or imposes any fee or penalty for withdrawal prior to maturity unless the written consent of all parties to the transaction has been secured. An arrangement may be made with a depository to deposit a sufficient amount of the broker's funds to maintain such account and such arrangement is not a commingling of trust funds with a licensee's personal funds under OAR 863-010-0025(3).

Stat. Auth.: ORS 183.335 & 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; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0026

863-015-0270

Storage of Documents

(1) Active records shall be stored in compliance with OAR 863-015-0250 and 863-015-0260. After two years, 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.

(2) As used in section (1) of this rule, "inactive records" means records of transactions completed or terminated at least two years prior to transfer to off-site storage and any other records that originated or were created prior to transfer to off-site storage.

Stat. Auth.: ORS 183.335 & ORS 696.385
 Stats. Implemented: 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; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0040

863-015-0275

Records; Reconciliation

A real estate broker shall reconcile all clients' trust accounts at least once each month, as of the date ending balance on bank statements. The reconciled bank balance of the account shall 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 shall also equal the balance shown in the check register for the account or the journal of receipts and disbursements for the account. The broker shall date and sign the reconciliation upon its completion and shall preserve the bank statements and monthly reconciliations for each client's trust account in logical sequence.

Stat. Auth.: ORS 183.335 & ORS 696.385
 Stats. Implemented: 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; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0245

DIVISION 25

PROPERTY MANAGEMENT

863-025-0005

Application

OAR 863-025-0010 to 863-025-0070 apply to the activities of a property manager in the property management of residential and non-residential real estate. For purposes of this rule, “residential real estate” means real property that constitutes “dwelling units” and “premises”, as those terms are defined by ORS 90.100 and “non-residential real estate” means real estate other than residential real estate.

Stat. Auth.: ORS 183.335 & ORS 696.385

Stats. Implemented: ORS 696.361

Hist.: REA 3-1987, f. 12-3-87, ef. 1-1-88; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0207

863-025-0010

Definitions

In addition to the definitions used in ORS 696.010 and 863-015-0120, as used in OAR 863-025-0015 to 863-025-0070, unless the context requires otherwise:

(1) “Clients’ Trust Account” means an account in any ‘bank’ as defined in ORS 696.010(3) and which is subject to the provisions of ORS 696.241.

(2) “Identifying Code” means a code assigned by the property manager to the property management agreement at the time of signing. The identifying code may contain letters and/or numbers.

(3) “Property Manager” means a real estate broker engaged in the management of rental real estate associated with and under the supervision of a principal real estate broker, a sole practitioner real estate broker engaged in the management of rental real estate, a principal real estate broker engaged in the management of rental real estate and a real estate property manager described in ORS 696.010(17). Unless the context requires otherwise, any reference to “property manager” also includes nonlicensed employees engaging in the management of rental real estate under the supervision and control of a principal real estate broker and nonlicensed employees engaging in the management of rental real estate under the supervision and control of a real estate property manager described in ORS 696.010(17).

(4) “Property Management Activity” means the “management of rental real estate” as defined in ORS 696.010(11).

(5) “Records” and “property management records” mean a complete and adequate documentation of property management activities.

Stat. Auth.: ORS 183.335 & ORS 696.385

Stats. Implemented: ORS 696.361

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

863-025-0015

Agency Relationships; Disclosures; Written Company Policy

(1) For the purposes of this rule, a property manager owes an owner the following affirmative duties:

(a) To exercise reasonable care and diligence;

(b) To deal honestly and in good faith;

(c) To account in a timely manner for funds received or disbursed on behalf of the owner;

(d) To be loyal to the owner by not taking action that is adverse or detrimental to the owner’s interest;

(e) To disclose in writing and in a timely manner to the owner any use of employees, or a business, in which the property manager has a pecuniary interest, to perform work on the owner’s managed property;

(f) To advise the owner to seek expert advice on matters related to property management that are beyond the licensee’s expertise;

(g) To maintain as confidential financial information obtained from, or about, the owner, except under subpoena or court order or as otherwise required by applicable law and except as permitted by the owner, even after the termination of the property management agreement.

(2) Each property manager shall develop and maintain a written company policy. The written company policy shall include:

(a) Provisions regarding the duties and responsibilities of the property manager, licensees of the property manager and any employees of the property manager;

(b) Any provisions regarding the written authorizations as allowed under OAR 863-025-0020 or 863-025-0045;

(c) Procedures to ensure the protection and confidentiality of the owner’s financial information;

(d) Provisions regarding the supervision of the property manager’s employees and contractor’s;

(e) Provisions regarding the production and maintenance of all reports, records and documents required under this subsection.

Stat. Auth.: ORS 183.335, ORS 696.385

Stats. Implemented: ORS 696.361

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02

863-025-0020

Property Management Agreements

(1) All property management activity conducted by a property manager shall be done in the actual licensed name or actual registered business name of the property manager.

(2) A property manager shall 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 shall clearly and fully specify:

(a) 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;

(b) The terms and conditions of the agreement;

(c) The management fees, rebates, discounts, overrides and any other form of compensation to be received by the property manager for property management activity;

(d) The disposition of the required records of the property management for the owner after compliance with OAR 863-025-0070;

(e) The authority and powers given by the owner to the property manager under the agreement;

(f) The disclosures required pursuant to OAR 863-025-0015(1)(e); and

(g) An Identifying Code .

(3) 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.

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

(5) Only a property manager or a real estate broker may negotiate and sign a property management agreement made in the course of the property manager’s property management activity.

(6) An employee of a property manager acting for the property manager as a resident manager or otherwise, may not negotiate or sign a property management agreement with a property owner.

(7) The original, executed copy of a property management agreement shall be filed and maintained by the property manager pursuant to ORS 696.280 and OAR 863-025-0035.

(8) If a real estate broker engaging in property management activity for an owner is authorized to represent an owner for the purchase, sale, lease-option or exchange of the real property managed by the broker, the authorization shall be signed and dated by the owner and disclose the compensation to be paid by the owner for that professional real estate activity. The authorization may be part of a property management agreement document but shall be distinguishable from the agreement and shall be signed and dated separately by the owner.

Stat. Auth.: ORS 183.335 & ORS 696.385

Stats. Implemented: ORS 696.361 & ORS 696.280

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

863-025-0025

Property Management Client Trust Account Requirements

(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, labeled "Clients' Trust Account — Property Management". All funds accepted by any property manager by or on behalf of tenants under a property management agreement shall be placed in a clients' trust account. A property manager shall be an authorized signer on each client's 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 pre-numbered and bear the words "Clients' Trust Account — Property Management" 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 the property manager.

(2) A property manager accepting security deposits on behalf of an owner shall establish a separate clients' trust account labeled "Clients' Trust Account — Property Management — Security Deposits". When the Property Management Agreement and the applicable lease or rental agreement provide that the security deposit shall be transferred to the owner, the funds may be deposited in the Clients' Trust Account — Property Management for the property (instead of the Clients' Trust Account — Property Management — Security Deposits), and then disbursed to the owner in the accounting period in which they are received.

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

(a) A property manager shall not execute or issue a check from the clients' trust account prior to the existence of a sufficient credit balance to cover the check in the owner's ledger or tenant's ledger account against which the check is executed or issued.

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

(c) A property manager may transfer funds between the owners' ledger account of two or more different owners only with a prior written and dated agreement signed by the affected owners who are authorizing the transfer. The agreement shall 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 shall have a separate agreement for each transfer between owners. The transfer shall 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 shall give to each owner a separate monthly accounting on the transfer or include the accounting in the regular monthly report to the owner. 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;

(d) A property manager may only transfer funds between two or more ledger accounts maintained for the same owner with the prior written approval of the owner. The owner's prior approval may be granted as a part of the property management agreement. At the time of the transfer the property manager shall 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;

(e) A property manager shall 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 the tenant's conditionally refundable deposits being held at the time of the withdrawal, payment or transfer of funds.

(f) If sufficient funds are available, a property manager shall withdraw earned management fees from the appropriate client's trust account at least once each month, unless otherwise provided in the owner's property management agreement. The records journal or register and ledger entries for payment of fees from the client trust account shall include the date, the amount of the management fees withdrawn, the check number, the owners ledger account number or identifying owner code. Property management fees are considered earned and may be withdrawn when the monthly or other periodic cycle represented by the fees being withdrawn has been completed. The monthly cycle can begin and end on a stipulated date every month, as long as the date is consistent from month to month.

(g) No disbursement from a clients' trust account shall 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 written verification of when funds are received or disbursed by wire or electronic transfer. A property manager shall 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 shall demonstrate that 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.

(i) A property manager shall not utilize any form of debit card issued by financial institutions on Client Trust Accounts.

(4) 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.

(5) **Reconciliation — Property Management.** A property manager shall prepare and reconcile all property management clients' trust accounts at least once each month. The property manager shall preserve the bank statements and monthly reconciliations and file the bank statements and monthly reconciliations in monthly sequence. The total of the balances of the individual owners' ledgers shall equal the balance as shown in the check register or record of receipts and disbursements and shall also equal the reconciled bank balance of the property management client trust account. The property manager must date and sign the reconciliation upon its' completion.

(6) **Reconciliation — Security Deposits.** A property manager shall reconcile all tenant security deposit client trust accounts at least once each month, as of the last day of the month. The property manager shall preserve the bank statements and monthly reconciliations and file the bank statements and monthly reconciliations in monthly sequence. The total of the balances of the individual tenant security deposit liabilities shall equal the balance as shown in the check register or record of receipts and disbursements and shall also equal the reconciled bank balance of the security deposit client trust account. The property manager must date and sign the reconciliation upon its' completion.

(7) **Reconciliation — Authority.** A principal real estate broker may authorize, in writing, another licensee associated with the principal real estate broker and who is employed in a supervisory capacity by the principal real estate broker to review and approve the reconciliation of the Clients' Trust Account and to sign checks authorizing disbursements from the Clients' Trust Account. In case of such authorization, the property manager or principal real estate broker remains responsible for the Clients' Trust Account. The property manager or principal real estate broker shall produce the written authorization at the request of the Commissioner or the Commissioner's authorized representative.

(8) **Interest Bearing Accounts.** Funds received by a property manager may be placed by the property manager in a federally insured interest-bearing client trust bank account, but only with the

prior written approval of all parties having an interest in the trust funds. The earnings of such interest-bearing account shall not inure to the benefit of the property manager, unless expressly approved in writing before deposit of the trust funds by all parties having an interest in the trust funds. 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. The property manager's interest in or receipt of any of the interest earnings is not a commingling of trust funds with a licensee's personal funds under ORS 696.301(10). Use of interest-bearing Clients' Trust Accounts for the deposit of funds received under a property management agreement is subject to ORS 696.241(5).

(9) Checks used to disburse funds from a Clients' Trust Account — Property Management shall comply with OAR 863-025-0025(3)(b) and bear the words "Clients' Trust Account — Property Management" upon the face thereof. A property manager shall account for all checks, including voided checks, as a part of the records maintained by the property manager.

(10) A property manager shall record the transfer of any funds from a clients trust account by a Clients' Trust Account check or by written proof of transmittal or receipt retained in the property manager's records. The property manager shall record the transfer of other documents by written proof of transmittal or receipt retained in the property manager's records. With the written consent of an owner, a property manager may transfer funds electronically via the Internet or ACH software from a client's trust account to a bank account maintained by the owner and a property manager may make payments electronically to a vendor's account for expenses relating to the owner's property. If the software program used for the transfer does not automatically update the owner's ledger, the property manager shall manually record the transfer in the owner's ledger. At the time the transfer is made, the property manager shall print and preserve a hard copy of the electronic record of the transfer.

(11) With the written consent of an owner, a property manager may use a bank lockbox process in which the bank collects payments from tenants, creates an electronic record of the transaction and deposits the payments into the appropriate account following the instructions of the property manager. The property manager is responsible for determining that the lockbox process and lockbox software program provide controls adequate to ensure the security of the funds and to provide an accurate accounting for them. For the purposes of this section, the bank will be considered an agent of the property manager. The software program for the lockbox process must permit monthly reconciliations of the accounts into which the deposits are made and printing of daily deposit records for the period of time required for retention of other records.

Stat. Auth.: ORS 183.335 & ORS 696.385
 Stats. Implemented: ORS 696.241, ORS 696.280 & ORS 696.361
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

**863-025-0030
 Tenant Security Deposits**

(1) Except as provided in OAR 863-025-0025, all tenants' security deposits received by a property manager shall be deposited and maintained in one or more clients' trust accounts labeled "Clients' Trust Account — Property Management — Security Deposits". All tenants' security deposits shall be maintained 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 security 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 security 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.

(2) If such security deposits are received as part of a larger check containing funds other than security deposits, the property manager may deposit the check into a non-interest bearing clients' trust account of the property manager. However, the portion of the funds constituting security deposits shall be deposited into the "Clients' Trust Account — Property Management — Security Deposits" account within three (3) banking days after receipt of the check by the property manager.

(3) When a Clients' Trust Account — Property Management is established for a single property and the Property Management Agreement and the applicable lease or rental agreement provide that the security deposit shall be transferred to the owner, the funds may be deposited in the Clients' Trust Account for the property (instead of the Clients' Trust Account — Property Management — Security Deposits), and then disbursed to the owner in the accounting period in which they are received.

Stat. Auth.: ORS 183.335 & ORS 696.385
 Stats. Implemented: ORS 696.241, ORS 696.280 & ORS 696.361
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

**863-025-0035
 Records; Generally**

(1) A property manager shall maintain within this state records of all property management activity. A record of property management activity will be considered complete and adequate if it contains, at least, the following:

- (a) An original, executed Property Management Agreement maintained for each owner which shall comply with all provisions of OAR 863-025-0020.
- (b) Client Trust Account records maintained for all funds handled by a property manager on behalf of an owner or owners. The Client Trust Account shall comply with ORS 696.241, OAR 863-025-0025 and 863-025-0030.
- (c) An Owner's Ledger maintained for each property management agreement. The Owner's Ledger shall comply with OAR 863-025-0055.
- (d) A Record of Receipts and Disbursements maintained for each property management agreement. The Record of Receipts and Disbursements shall comply with OAR 863-025-0040.
- (e) Tenant Agreements maintained for each property management agreement. Tenant Agreements shall comply with OAR 863-025-0045.
- (f) A Tenant's Ledger maintained for each tenant of real property managed by the property manager. A Tenant's Ledger shall comply with all provisions of OAR 863-025-0050.
- (g) A record of cash receipts. The record of cash receipts shall comply with OAR 863-025-0060.
- (h) Records of the reconciliation of each client's trust account. The record of monthly reconciliations shall comply with OAR 863-025-0025.

(i) A record of deposits. The record of deposits shall comply with OAR 863-025-0065.

(2) When a property manager uses a computerized system for the production and maintenance of records and reports required in the property manager's licensed activity:

- (a) The computerized system shall, at a minimum, be capable of printing out any record or report required. At the time of any required reconciliation, the property manager shall print out the Record of Receipts and Disbursements, owner's and tenant's ledgers and all supporting data. The property manager shall preserve and file such printed documents pursuant to section (3) below.
- (b) At least once each month, the property manager shall 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) Posting of owner ledgers, record of receipts and disbursements, tenant ledgers and manipulation of information and documents shall be maintained in a format that will readily enable tracing and reconciliation.

(3) A property manager shall maintain and store required records of property management activity pursuant to ORS 696.280 and as follows:

(a) Legible copies of all agreements, records and supporting data shall be filed and maintained by the property manager in the property manager's licensed business location for a period of six years following the date on which such agreement or document is superseded, is terminated or has expired.

(b) A property manager may store inactive records required to be maintained under OAR 863-025-0020 to 863-025-0065 in a single location other than the property manager's licensed business location 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 contact or means of access within ten days after such change occurs.

(c) As used in this rule, "inactive records" means:

(A) Materials that were received or created at least two years prior to transfer to off-site storage; and

(B) Agreements that were superseded, terminated or had expired at least two years prior to the transfer to off-site storage.

Stat. Auth.: ORS 183.335 & ORS 696.385

Stats. Implemented: ORS 696.280 & ORS 696.361

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

863-025-0040

Record of Receipts and Disbursements

(1) A property manager shall prepare and maintain, at least monthly, a chronological record of receipts and disbursements or a check register for each client's trust account in which the manager must record each receipt of funds and each disbursement of client trust account funds made by the manager under a property management agreement. If a property manager maintains a separate client's trust account for a property management agreement involving only one owner, the property manager may maintain either a Record of Receipts and Disbursements or an owner's Ledger.

(2) When there is more than one property in a client trust account, each entry for a receipt or a disbursement shall be identified with the applicable owner's identifying number or code assigned by the property manager to the corresponding property management agreement with the owner and shall set forth the following information:

(a) Date of deposit;

(b) Amount of deposit and identify from whom deposit received;

(c) Date of each related disbursement;

(d) Check number of each related disbursement;

(e) Amount and identity of payee for each related disbursement;

(f) If applicable, the dates and amounts of interest earned and credited to the account; and

(g) A balance after posting each entry.

(h) A written record of the running daily balance shall be made available to the Commissioner or to the Commissioner's authorized representatives on demand.

(3) Upon any activity, the property manager shall post the record of receipts and disbursements or the check register and each owner's ledger account showing all receipts and disbursements made by the property manager in accordance with the property management agreement for an owner since the last posting of the record, register or account.

(4) In maintaining a chronological running balance for each record of receipts and disbursements, the property manager may aggregate receipts and disbursements affecting the balance of the record on a daily basis. The property manager may adjust the balance in the record reflecting the change in the balance from the aggregated

individual receipts and disbursements. If the property manager posts the record using an aggregated total of receipts and disbursements, the property manager shall maintain account detail in another report 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 record detail as required records of the property manager's licensed activity.

(5) A property manager shall retain all paid bills and receipts explaining the amount of and purpose for the receipt or disbursement entered in the record of receipts and disbursements.

Stat. Auth.: ORS 183.335 & ORS 696.385

Stats. Implemented: ORS 696.280 & ORS 696.361

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02

863-025-0045

Tenant Agreements

(1) 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 90.240.

(2) The original, executed tenant's rental or lease agreements generated by the property manager on behalf of the owner and any tenant's rental or lease agreements or received by the property manager shall be filed and maintained by the property manager in the manager's main office while such agreements are effective and for a period of six years following the date on which such agreements are superseded, terminated or have expired. The property manager shall file and maintain legible copies of all tenant's rental or lease agreements for the time period required by these rules.

(3) Each tenant rental or lease agreement prepared by a property manager for residential real estate shall contain, in addition to and not in lieu of any applicable requirements of the Residential Landlord and Tenant Act the following:

(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 principal real estate broker, the name of the real estate licensee acting for the principal real estate broker in executing the agreement;

(b) The mailing address or unit number 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, conditionally refundable security deposits, and any fees or other charges.

(4) A property manager shall review each tenant's rental or lease agreement generated by the property manager 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, as permitted by the property management agreement. 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.

Stat. Auth.: ORS 183.335 & ORS 696.385

Stats. Implemented: ORS 696.280 & ORS 696.361

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02

863-025-0050

Tenant's Ledger

(1) Except as provided in section (3), a property manager shall prepare and maintain at least one tenant's ledger for each tenant or individual from whom the property 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 property manager. A tenant's ledger shall be identified by tenant and the property including, but not limited to, the mailing address of the rental unit or the applicable unit number or designation.

(2) The balances of tenant's security deposits in individual tenant's ledgers shall be used in the monthly reconciliation of the Clients' Trust Account — Property Management — Security Deposits as described in OAR 863-025-0025.

(3) 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, a property manager shall prepare and maintain a separate tenants' ledger.

(4) The property manager shall post a tenant's ledger 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 security 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;

(5) If a property manager receives a check from a prospective tenant for rent, tenant's security 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 property manager's client 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.

Stat. Auth.: ORS 183.335 & ORS 696.385
 Stats. Implemented: ORS 696.280 & ORS 696.361
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

**863-025-0055
 Owner's Ledger**

(1) A property manager shall prepare and maintain at least one separate owner's ledger for each property management agreement, for all monies received and disbursed.

(2) All owner ledgers shall be identified with the same identifying number or code assigned by the property manager to the corresponding property management agreement with the owner and each entry shall set forth the following information:

- (a) Date of deposit;
- (b) Amount of deposit and identify from whom deposit received
- (c) Date of each related disbursement;
- (d) Check number of each related disbursement;
- (e) Amount and identify of payee for each related disbursement;
- (f) If applicable, the dates and amounts of interest earned and credited to the account; and
- (g) A balance after posting each entry.

(h) A record of the running daily balance shall be made available to the Commissioner or to the Commissioner's authorized representatives on demand.

(3) Upon any activity, the property manager shall post each owner's ledger account with an entry for each receipt and disbursement of funds made in accordance with the property management agreement.

(4) A property manager shall report in writing to each owner any change in the owner's ledger. 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 these rules, the property manager shall set forth such information separately.

(5) A property manager shall retain all paid bills and receipts explaining the amount of and purpose for the receipt or disbursement entered in the owner's ledger.

Stat. Auth.: ORS 183.335 & ORS 696.385
 Stats. Implemented: ORS 696.280 & ORS 696.361
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02

**863-025-0060
 Cash Receipts**

A property manager shall 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 amounts of the funds, the reason for payment of the funds received, the Identifying Code 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 property manager's records.

Stat. Auth.: ORS 183.335 & ORS 696.385
 Stats. Implemented: ORS 696.280 & ORS 696.361
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02

**863-025-0065
 Deposits**

(1) All funds, whether in the form of money, checks, or money orders belonging to others and accepted by any property manager while engaged in property management 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 Clients' Trust Account established by the property manager under ORS 696.241. The property manager shall account for all funds received.

(2) Any person employed by the property manager shall promptly transmit to the property manager any money, checks, money orders, or other consideration and any documents received while engaged in property management activity.

(3) A property manager shall not deposit any funds received from others in the property manager's personal account or commingle the funds received from others with personal funds of the property manager.

(4) Except as provided in 863-025-0050 and 863-025-0025(g), every deposit made under ORS 696.241, shall be made with deposit slips identifying each entry by a written notation of the owner's identifying code assigned to the property management agreement.

(5) A property manager shall maintain in the licensed business location a complete record of all funds or other consideration received in the property manager's property management activity. This record shall show from whom the funds or other consideration was received, the date of the receipt, the place and date of deposit, and, the final disposition of the funds or other consideration.

Stat. Auth.: ORS 183.335 & ORS 696.385
 Stats. Implemented: ORS 696.280 & ORS 696.361
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

**863-025-0070
 Termination, Transfer of Property Management**

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

(1) Shall terminate the property management activity conducted pursuant to the agreement in the manner provided by the terms of the agreement;

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

(3) Shall provide the owner not later than 60 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) Shall immediately notify each such tenant for whom the property manager hold a security deposit that the security 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;

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

(7) Shall 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 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.

(9) Shall transfer and assign by agreement the interest of the property manager in rental or lease agreements, if any, to the owner or to a new property manager.

Stat. Auth.: ORS 183.335 & ORS 696.385
 Stats. Implemented: ORS 696.280 & ORS 696.361
 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; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0225

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. Implmeneted: 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) 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.

(2) 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 purchas-

er 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.

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; REA 2-2003, f. 6-30-03, cert. ef. 7-1-03

863-030-0065

Presales of Timeshare Plans

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.

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 ; REA 2-2003, f. 6-30-03, cert. ef. 7-1-03

863-030-0075

Exchange Programs

(1) A seller or developer who offers an exchange program to a purchaser in conjunction with a timeshare plan shall be responsible for the delivery of the exchange program information, if the offer is made in conjunction with and at the time of the purchase of a timeshare interest. An exchange company offering an exchange program directly to purchasers on its own behalf shall be responsible for the delivery of the exchange program information. The accuracy of the exchange program information is the responsibility of the exchange company and not the buyer or developer. The exchange program information provided to a purchaser shall include the written information required under subsection (2) of ORS 94.826, and the following: The names and addresses of all the officers and directors of the exchange company.

(a) 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;

(b) 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;

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

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

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

(f) The number of timeshare accommodations in each timeshare plan which are available for occupancy and which qualify for participation in the exchange program.

(g) The number of currently enrolled purchasers and owners at each timeshare plan participating in the exchange program.

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

(2) 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.

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; REA 2-2003, f. 6-30-03, cert. ef. 7-1-03

863-030-0080

Promotional Programs

In conjunction with the filing required by OAR 863-030-0060, the developer shall maintain and store an outline of any promotional program prepared by the developer for the sale of the timeshare plan, for a period of two years following the date of the initial use of the promotional program 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.

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; REA 2-2003, f. 6-30-03, cert. ef. 7-1-03

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.

Stat. Auth.: ORS 94 & ORS 696

Stats. Implemented: ORS 94.959

Hist.: REA 6-1987, f. 12-3-87, ef. 1-1-88; REA 2-2003, f. 6-30-03, cert. ef. 7-1-03

863-040-0040

Membership Camping Contract Salesperson Registration and Renewal

(1) 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.

(2) 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 processing of the applicant's fingerprint information and securing any criminal offender information pertaining to the applicant.

(3) 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; REA 2-2003, f. 6-30-03, cert. ef. 7-1-03

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, 696.385, 696.541(1), 696.578(3)&(4) & 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, 696.385, 696.541(1), 696.578(3)&(4) & 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, 696.385, 696.541(1), 696.578(3)&(4) & 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, 696.385, 696.541(1), 696.578(3)&(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 con-

duct 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, 696.385, 696.541(1), 696.578(3)&(4) & 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, 696.385, 696.541(1), 696.578(3)&(4) & 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, 696.385, 696.541(1), 696.578(3)&(4) & 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, 696.385, 696.541(1), 696.578(3)&(4) & 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, 696.385, 696.541(1), 696.578(3)&(4) & 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, 696.385, 696.541(1), 696.578(3)&(4) & 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, 696.385, 696.541(1), 696.578(3)&(4) & 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