

## Chapter 863 Real Estate Agency

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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, 192 & 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

The Real Estate Agency adopts by reference the Attorney General's Uniform and Model Rules OAR 137-001-0005 through 137-005-0070 bearing the effective date of January 1, 2008.

Stat. Auth.: ORS 183.341, 183.502 & 696.385

Stats. Implemented: ORS 183.341 & 183.502

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; REA 4-2006, f. 12-28-06, cert. ef. 1-1-07; REA 4-2008, f. 9-10-08, cert. ef. 10-1-08

##### 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 & 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 one year 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, 183, 293 & 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; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04

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 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 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, 192 & 696.385  
Stats. Implemented: ORS 192.430 & 192.440  
Hist.: REC 1-1982, f. & ef. 2-3-82; REA 4-1992, f. 6-25-92, cert. ef. 7-1-92

DIVISION 5

CRIMINAL RECORDS CHECK AND CRIMINAL BACKGROUND FITNESS DETERMINATION RULES

863-005-0000

Purpose

These rules control the agency's acquisition of information about a subject individual's criminal history through criminal records checks or other means and its use of that information to determine whether the subject individual is trustworthy and competent to hold a real estate license or registration. The criminal background check is only one portion of the approval process required to obtain a license or registration.

Stat. Auth.: ORS 181.534, 696.022, 696.301, 696.790  
Stats. Implemented: ORS 181.534  
Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

863-005-0005

Definitions

As used in OAR chapter 863, division 5 unless the context requires otherwise, the following definitions apply:

(1) "Agency" means the State of Oregon Real Estate Agency.

(2) "Authorized Designee" means a person authorized by the commissioner to obtain and review criminal offender information and other criminal records information about a subject individual through criminal records checks and other means, and to conduct a criminal background fitness determination in accordance with these rules.

(3) "Conviction" means that a court of law has entered a final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere (no contest) against a subject individual in a criminal case, unless that judgment has been reversed or set aside by a subsequent court decision.

(4) "Criminal Background Clearance" means that, pursuant to a criminal background check, an authorized designee has determined that a subject individual is trustworthy and competent to be a licensee through a criminal background fitness determination.

(5) "Criminal Offender Information" includes:

(a) Records and related data concerning physical description and vital statistics;

(b) Fingerprints received and compiled by the Oregon Department of State Police to identify criminal offenders and alleged offenders;

(c) Records of arrests; and

(d) The nature and disposition of criminal charges, including sentencing, confinement, parole and release records.

(6) "Crime Relevant to a Criminal Background Fitness Determination" means a crime listed or described in OAR 863-005-0030.

(7) "Criminal Records Check and Criminal Background Fitness Determination Rules" or "These Rules" means OAR chapter 863, division 5.

(8) "Criminal Records Check" means any of the following three processes undertaken by the agency to check the criminal history of a subject individual:

(a) A check of criminal offender information and motor vehicle registration and driving records conducted through the Law Enforcement Data System (LEDS) maintained by the Oregon Department of State Police, in accordance with the Department's rules;

(b) A check of Oregon criminal offender information through fingerprint identification and other means conducted by the Oregon Department of State Police at the agency's request (Oregon Criminal Records Check); or

(c) A nationwide check of federal criminal offender information through fingerprint identification and other means conducted by the Oregon Department of State Police through the Federal Bureau

of Investigation or otherwise at the agency's request (Nationwide Criminal Records Check).

(9) "Denied" means that, following a criminal background fitness determination under OAR 863-005-0020, an authorized designee has determined that a subject individual is not trustworthy and competent to hold a license or registration.

(10) "False Statement" means that, in association with an activity governed by these rules, a subject individual either:

(a) Provided the agency with false information about the subject individual's criminal history, including, but not limited to, false information about the individual's identity or conviction record; or

(b) Failed to provide the agency information material to determining the individual's criminal history.

(11) "Fingerprint Card" means a form prescribed by the Oregon Department of State Police and Federal Bureau of Investigation.

(12) "Criminal Background Fitness Determination" means a determination made by an authorized designee pursuant to the process established in OAR 863-005-0020 whether a subject individual is trustworthy and competent to be a licensee or registrant.

(13) "Licensee" means a principal real estate broker, a real estate broker, a real estate property manager as defined in ORS 696.010, or a real estate marketing organization licensed under ORS 696.606. Licensee shall also mean an escrow agent as defined in ORS 696.505(5).

(14) "Other Criminal Records Information" means any information, in addition to criminal offender information, sought or obtained by the agency about a subject individual and used by the agency to determine the individual's criminal history.

(15) "Registrant" means a person registered as a membership camping contract broker or salesperson as provided in ORS 94.980.

(16) "Subject Individual" means an applicant for a license or renewal of a license under ORS 696.020, a real estate marketing organization license under ORS 696.606, an escrow agent license or renewal under ORS 696.511, a membership camping contract broker or salesperson registrant under ORS 94.980 as someone from whom the agency may require fingerprints in order for the agency to conduct a criminal records check.

Stat. Auth.: ORS 181.534, 696.022, 696.790

Stats. Implemented: ORS 181.534

Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

**863-005-0010**

**Criminal Records Check Process**

(1) A subject individual shall complete and sign an agency background check application and an applicant fingerprint card approved by the agency.

(2) Within a reasonable period of time, a subject individual shall provide additional information as requested by the agency to resolve any issue hindering the completion of a criminal records check.

(3) An authorized designee shall request that the Oregon Department of State Police conduct a criminal records check for all new licensee and registrant applications.

(4) An authorized designee may request that the Oregon Department of State Police conduct a criminal background records check for licensee and registrant renewal applications when there is reason to believe that:

(a) A subject individual committed a crime listed in OAR 863-005-0030; or

(b) A factor relevant to a criminal background fitness determination listed in OAR 863-005-0020 was not previously identified.

(5) When an authorized designee requires a criminal record check to be performed under section(3) or (4) of this rule, an authorized designee shall request that the Oregon Department of State Police conduct Oregon and nationwide criminal records checks through fingerprint identification. The authorized designee may also perform a Law Enforcement Data System (LEDS) criminal records check as part of any criminal background fitness determination conducted in regard to a subject individual.

Stat. Auth.: ORS 181.534, 696.022, 696.790

Stats. Implemented: ORS 181.534

Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

**863-005-0020**

**Criminal Background Fitness Determination**

(1) An authorized designee shall make a criminal background fitness determination about a subject individual based on:

(a) Background check application and fingerprint card;

(b) Any criminal records check(s) conducted; and

(c) Any false statements made by the subject individual.

(2) In addition to the information in section (1) of this rule, an authorized designee may obtain any other criminal records information about the subject individual from any source, including law enforcement agencies or courts within or outside of Oregon.

(3) A criminal background fitness determination shall be based on the factors described in section (5) of this rule in relation to information provided by the subject individual under OAR 863-005-0010.

(4) An authorized designee may request to meet with the subject individual to obtain additional criminal offender information necessary to complete a criminal background fitness determination.

(5) An authorized designee shall consider all collected information in determining:

(a) Whether the subject individual has been convicted of, found guilty except for insanity (or a comparable disposition) of, or has a pending indictment for a crime listed in OAR 863-005-0030;

(b) The nature of any crime identified under subsection (a) of this section of the rule;

(c) The facts that support the conviction, a finding of guilty except for insanity, or that a pending indictment or uncompleted diversion exists;

(d) The facts that indicate the subject individual made a false statement;

(e) The relevance, if any, of a crime identified under subsection (a) of this section of the rule or of a false statement made by the subject individual to the specific requirements of the subject individual's license or registration; and

(f) The following intervening circumstances, to the extent that they are relevant to the responsibilities and circumstances of the license or registration for which the criminal background fitness determination is being made:

(A) The passage of time since the commission or alleged commission of a crime identified under subsection (a) of this section of the rule;

(B) The age of the subject individual at the time of the commission or alleged commission of a crime identified under subsection (a) of this section of the rule;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another crime listed in OAR 863-005-0030;

(E) Whether a conviction identified under subsection (a) of this section of the rule has been set aside or pardoned, and the legal effect of setting aside the conviction or pardon;

(F) The disposition of a pending indictment identified under subsection (a) of this section of the rule;

(G) Whether the subject individual:

(i) Has been arrested for or charged with a crime listed under OAR 863-005-0030 within the last five years;

(ii) Is being investigated, or has an outstanding warrant, for a crime listed under OAR 863-005-0030;

(iii) Is currently on probation, parole or another form of post-prison supervision for a crime listed under OAR 863-005-0030;

(iv) Has a deferred sentence or conditional discharge or is participating in a diversion program in connection with a crime listed under OAR 863-005-0030;

(v) Has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed in OAR 863-005-0030 if committed by an adult;

(vi) Has been incarcerated and length of incarceration; and

(vii) Has a history of drug or alcohol abuse which relates to the criminal activity and the history of treatment or rehabilitation for such abuse.

(6) Approval. An authorized designee shall approve a criminal background clearance application if the information described in sections (1) and (2) of this rule shows no credible evidence that the subject individual:

(a) Has been convicted of, has a pending indictment or has been found guilty except for insanity (or comparable disposition) of a crime listed in OAR 863-005-0030;

(b) Has an uncompleted diversion; or

(c) Has made a false or incomplete statement or omitted information; and

(d) No discrepancies exist between the criminal offender information, other criminal records information and information obtained from the subject individual.

(7) Denial. An authorized designee shall not approve a criminal background clearance application if a criminal background fitness determination based on the factors described in section (5) of this rule demonstrates that the subject person is not trustworthy and competent to hold a professional real estate license or registration in a manner that protects the public.

(8) A denial of a criminal background clearance shall become a final order of the agency unless the subject individual appeals the authorized designee's criminal background fitness determination by requesting a contested case hearing as provided by OAR 863-005-0070.

Stat. Auth.: ORS 181.534, 696.022, 696.790

Stats. Implemented: ORS 181.534

Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

**863-005-0030**

**Crimes Relevant to a Criminal Background Fitness Determination**

(1) Permanent Review Crimes:

(a) ORS 162.015, Bribe giving;

(b) ORS 162.025, Bribe receiving;

(c) ORS 162.065, Perjury;

(d) ORS 162.085, Unsworn falsification;

(e) ORS 162.117, Public Investment Fraud

(f) ORS 162.155, Escape II;

(g) ORS 162.165, Escape I;

(h) ORS 162.235, Obstructing governmental or judicial administration;

(i) ORS 162.265, Bribing a witness;

(j) ORS 162.275, Bribe receiving by a witness;

(k) ORS 162.305, Tampering with public records;

(l) ORS 162.325, Hindering prosecution;

(m) ORS 162.355, Simulating legal process;

(n) ORS 162.367, Criminal impersonation of peace officer;

(o) ORS 162.405, Official misconduct II;

(p) ORS 162.415, Official misconduct I;

(q) ORS 162.425, Misuse of confidential information;

(r) ORS 163.005, Criminal homicide;

(s) ORS 163.095, Aggravated murder;

(t) ORS 163.115, Murder;

(u) ORS 163.118, Manslaughter I;

(v) ORS 163.125, Manslaughter II;

(w) ORS 163.145, Criminally negligent homicide;

(x) ORS 163.160, Assault IV;

(y) ORS 163.165, Assault III;

(z) ORS 163.175, Assault II;

(aa) ORS 163.185, Assault I;

(bb) ORS 163.187, Strangulation;

(cc) ORS 163.190, Menacing;

(dd) ORS 163.205, Criminal mistreatment I;

(ee) ORS 163.207, Female genital mutilation;

(ff) ORS 163.208, Assault of Public Safety Officer;

(gg) ORS 163.213, Unlawful use of an electrical stun gun, tear gas, or mace I;

(hh) ORS 163.225, Kidnapping II;

(ii) ORS 163.235, Kidnapping I;

(jj) ORS 163.257, Custodial interference I;

(kk) ORS 163.275, Coercion;

(ll) ORS 163.355, Rape III;

(mm) ORS 163.365, Rape II;

(nn) ORS 163.375, Rape I;

(oo) ORS 163.385, Sodomy III;

(pp) ORS 163.395, Sodomy II;

(qq) ORS 163.405, Sodomy I;

(rr) ORS 163.408, Unlawful Sexual penetration II;

(ss) ORS 163.411, Unlawful Sexual penetration I;

(tt) ORS 163.415, Sexual abuse III;

(uu) ORS 163.425, Sexual abuse II;

(vv) ORS 163.427, Sexual abuse I;

(ww) ORS 163.452, Custodial sexual misconduct I;

(xx) ORS 163.454, Custodial sexual misconduct II;

(yy) ORS 163.465, Public indecency;

(zz) ORS 163.476, Unlawfully being in a location where children regularly congregate;

(aaa) ORS 163.479, Unlawful contact with a child;

(bbb) ORS 163.525, Incest;

(ccc) ORS 163.535, Abandonment of a child;

(ddd) ORS 163.537, Buying or selling a person under 18 years of age;

(eee) ORS 163.547, Child neglect I;

(fff) ORS 163.555, Criminal nonsupport;

(ggg) ORS 163.575, Endangering the welfare of a minor;

(hhh) ORS 163.670, Using child in display of sexually explicit conduct;

(iii) ORS 163.684, Encouraging child sexual abuse I;

(jjj) ORS 163.686, Encouraging child sexual abuse II;

(kkk) ORS 163.687, Encouraging child sexual abuse III;

(lll) ORS 163.688, Possession of materials depicting sexually explicit conduct of a child;

(mmm) ORS 163.689, Possession of materials depicting sexually explicit conduct of a child;

(nnn) ORS 163.732, Stalking;

(ooo) ORS 163.750, Violating court's stalking order;

(ppp) ORS 164.045, Theft II;

(qqq) ORS 164.055, Theft I;

(rrr) ORS 164.057, Aggravated theft I;

(sss) ORS 164.075, Theft by extortion;

(ttt) ORS 164.085, Theft by deception;

(uuu) ORS 164.095, Theft by receiving;

(vvv) ORS 164.125, Theft of services;

(www) ORS 164.135, Unauthorized use of a vehicle;

(xxx) ORS 164.162, Mail theft or receipt of stolen mail;

(yyy) ORS 164.170, Laundering a monetary instrument;

(zzz) ORS 164.172, Engaging in a financial transaction in property derived from unlawful activity;

(aaaa) ORS 164.215, Burglary II;

(bbbb) ORS 164.225, Burglary I;

(cccc) ORS 164.235, Possession of burglar's tools or theft device;

(dddd) ORS 164.255, Criminal trespass I;

(eeee) ORS 164.265, Criminal trespass while in possession of firearm;

(ffff) ORS 164.315, Arson II;

(gggg) ORS 164.325, Arson I;

(hhhh) ORS 164.365, Criminal Mischief I;

(iiii) ORS 164.377, Computer crime;

(jjjj) ORS 164.395, Robbery III;

(kkkk) ORS 164.405, Robbery II;

(llll) ORS 164.415, Robbery I;

(mmmm) ORS 164.885, Endangering aircraft;

(nnnn) ORS 165.007, Forgery II;

(oooo) ORS 165.013, Forgery I;

(pppp) ORS 165.017, Criminal possession of a forged instrument II;

(qqqq) ORS 165.022, Criminal possession of a forged instrument I;

(rrrr) ORS 165.032, Criminal possession of a forgery device;

(ssss) ORS 165.042, Fraudulently obtaining a signature;

(tttt) ORS 165.055, Fraudulent use of a credit card;

(uuuu) ORS 165.065, Negotiating a bad check;

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- (vvvv) ORS 165.074, Unlawful factoring of payment card transaction;
- (www) ORS 165.080, Falsifying business records;
- (xxxx) ORS 165.095, Misapplication of entrusted property;
- (yyyy) ORS 165.100, Issuing a false financial statement;
- (zzz) ORS 165.102, Obtaining execution of documents by deception;
- (aaaa) ORS 165.581, Cellular counterfeiting I;
- (bbbb) ORS 165.800, Identity theft;
- (cccc) ORS 165.810, Unlawful possession of a personal identification device;
- (dddd) ORS 165.813, Unlawful possession of fictitious identification;
- (eeee) ORS 166.005, Treason;
- (ffff) ORS 166.015, Riot;
- (gggg) ORS 166.085, Abuse of corpse II;
- (hhhh) ORS 166.087, Abuse of corpse I;
- (iiii) ORS 166.155, Intimidation II;
- (jjjj) ORS 166.165, Intimidation I;
- (kkkk) ORS 166.220, Unlawful use of weapon;
- (llll) ORS 166.270, Possession of weapons by certain felons;
- (mmmm) ORS 166.272, Unlawful possession of machine guns, certain short-barreled firearms and firearm silencers;
- (nnnn) ORS 166.275, Possession of weapons by inmates of institutions;
- (oooo) ORS 166.385, Possession of hoax destructive device;
- (pppp) ORS 166.429, Firearms used in felony;
- (qqqq) ORS 166.720, Racketeering activity unlawful;
- (rrrr) ORS 167.012, Promoting prostitution;
- (ssss) ORS 167.017, Compelling prostitution;
- (tttt) ORS 167.062, Sadomasochistic abuse or sexual conduct in live show;
- (uuuu) ORS 167.065, Furnishing obscene materials to minors;
- (vvvv) ORS 167.070, Sending obscene materials to minors;
- (wwww) ORS 167.075, Exhibiting an obscene performance to a minor;
- (xxxx) ORS 167.080, Displaying obscene materials to minors;
- (yyyy) ORS 167.212, Tampering with drug records;
- (zzzz) ORS 167.262, Adult using minor in commission of controlled substance offense;
- (aaaaa) ORS 167.315, Animal abuse II;
- (bbbbb) ORS 167.320, Animal abuse I;
- (ccccc) ORS 167.322, Aggravated animal abuse I;
- (dddd) ORS 167.333, Sexual assault of animal;
- (eeee) ORS 181.599, Failure to report as sex offender;
- (ffff) ORS 192.852/865, Prohibited obtaining or disclosing of protected information;
- (ggggg) ORS 411.630, Unlawfully obtaining public assistance;
- (hhhhh) ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance);
- (iiiiii) ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits;
- (jjjjj) ORS 471.410, Providing liquor to person under 21 or to intoxicated
- (kkkkk) ORS 475.525, Sale of drug paraphernalia prohibited;
- (lllll) ORS 475.805, Providing hypodermic device to minor prohibited;
- (mmmmm) ORS 475.840, Prohibited acts generally (regarding drug crimes);
- (nnnnn) ORS 475.846, Unlawful manufacture of heroin;
- (ooooo) ORS 475.848, Unlawful manufacture of heroin within 1,000 feet of school;
- (ppppp) ORS 475.850, Unlawful delivery of heroin;
- (qqqqq) ORS 475.852, Unlawful delivery of heroin within 1,000 feet of school;
- (rrrrr) ORS 475.854, Unlawful possession of heroin;
- (sssss) ORS 475.856, Unlawful manufacture of marijuana;
- (ttttt) ORS 475.858, Unlawful manufacture of marijuana within 1,000 feet of school;
- (uuuuu) ORS 475.860, Unlawful delivery of marijuana;
- (vvvvv) ORS 475.862, Unlawful delivery of marijuana within 1,000 feet of school;
- (wwwww) ORS 475.864, Unlawful possession of marijuana;
- (xxxxx) ORS 475.866, Unlawful manufacture of 3,4-methylenedioxymethamphetamine;
- (yyyyy) ORS 475.868, Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;
- (zzzzz) ORS 475.870, Unlawful delivery of 3,4-methylenedioxymethamphetamine;
- (aaaaa) ORS 475.872, Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;
- (bbbbbb) ORS 475.874, Unlawful possession of 3,4-methylenedioxymethamphetamine;
- (ccccc) ORS 475.876, Unlawful manufacture of cocaine;
- (dddddd) ORS 475.878, Unlawful manufacture of cocaine within 1,000 feet of school;
- (eeeeee) ORS 475.880, Unlawful delivery of cocaine;
- (ffffff) ORS 475.882, Unlawful delivery of cocaine within 1,000 feet of school;
- (gggggg) ORS 475.884, Unlawful possession of cocaine;
- (hhhhhh) ORS 475.886, Unlawful manufacture of methamphetamine;
- (iiiiii) ORS 475.888, Unlawful manufacture of methamphetamine within 1,000 feet of school;
- (jjjjjj) ORS 475.890, Unlawful delivery of methamphetamine;
- (kkkkkk) ORS 475.892, Unlawful delivery of methamphetamine within 1,000 feet of school;
- (llllll) ORS 475.894, Unlawful possession of methamphetamine;
- (mmmmmm) ORS 475.904, Penalty for manufacture or delivery of controlled substance within 1,000 feet of school;
- (nnnnnn) ORS 475.906, Penalties for distribution to minors;
- (oooooo) ORS 475.908, Causing another person to ingest a controlled substance;
- (pppppp) ORS 475.910, Application of controlled substance to the body of another person;
- (qqqqqq) ORS 475.914, Prohibited acts for registrants (with the State Board of Pharmacy; regarding felony crimes);
- (rrrrrr) ORS 475.916, Prohibited acts involving records and fraud;
- (ssssss) ORS 475.918, Falsifying drug test results;
- (tttttt) ORS 475.920, Providing drug test falsification equipment
- (uuuuuu) ORS 475.967, Possession of precursor substance with intent to manufacture controlled substance;
- (vvvvvv) ORS 475.975, Unlawful possession and distribution of iodine in its elemental form;
- (wwwwww) ORS 475.976, Unlawful possession and distribution of iodine matrix;
- (xxxxxxx) ORS 475.977, Possessing or disposing of methamphetamine manufacturing waste;
- (yyyyyyy) ORS 677.080, Prohibited acts (regarding the practice of medicine);
- (zzzzzzz) ORS 803.080, Unlawfully publishing certificate of title forms prohibited;
- (aaaaaaaa) ORS 803.230, Forging, altering or unlawfully producing or using title or registration;
- (bbbbbbb) ORS 807.500, Unlawful production of certain documents; affirmative defense;
- (ccccccc) ORS 807.520, False swearing to receive license;
- (ddddddd) ORS 807.530, False application for license;
- (eeeeeee) ORS 807.620, Giving false information to police officer;
- (ffffff) ORS 811.182, Criminal driving while suspended or revoked;
- (ggggggg) ORS 811.540, Fleeing or attempting to elude police officer;
- (hhhhhhh) ORS 811.700, Failure to perform duties of driver when property is damaged;

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(iiiiiii) ORS 811.705, Failure to perform duties of driver to injured persons;

(jjjjjjj) ORS 811.740, False accident report;

(kkkkkkk) ORS 813.010, Driving under the influence of intoxicants (DUI);

(lllllll) ORS 819.300, Possession of a stolen vehicle;

(mmmmmmm) ORS 819.310, Trafficking in stolen vehicles;

(nnnnnnn) ORS 822.605, False swearing relating to regulation of vehicle related businesses;

(oooooooo) ORS 830.035/990, Fleeing or attempting to elude a peace officer (small watercraft);

(ppppppp) ORS 830.053/990, Fraudulent report of theft of boat;

(qqqqqqq) ORS 830.325, Operating boat while under the influence of intoxicating liquor or controlled substance;

(rrrrrrr) ORS 830.475, Duties of operators and witnesses at accidents;

(sssssss) Any federal crime;

(ttttttt) Any unclassified felony defined in Oregon Revised Statutes not listed elsewhere in this rule;

(uuuuuuu) Any other felony under the statutes of Oregon or any other jurisdiction not listed elsewhere in this rule that an authorized designee determines is relevant to performance under the subject individual's license or registration;

(vvvvvvv) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section of the rule pursuant to ORS 161.405, 161.435, or 161.450;

(wwwwwww) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this section of the rule;

(xxxxxxx) Any crime in any other jurisdiction that is the substantial equivalent of any of the Oregon crimes listed in this section of the rule as determined by an authorized designee; or

(yyyyyyy) Any offense that no longer constitutes a crime under Oregon law or the laws of any other jurisdiction, but is the substantial equivalent of any of the crimes listed in this section of the rule as determined by an authorized designee.

(2) Ten-Year Review Crimes.

(a) ORS 133.076, Failure to appear on criminal citation;

(b) ORS 162.075, False swearing;

(c) ORS 162.145, Escape III;

(d) ORS 162.175, Unauthorized departure;

(e) ORS 162.185, Supplying contraband;

(f) ORS 162.195, Failure to appear II;

(g) ORS 162.205, Failure to appear I;

(h) ORS 162.247, Interfering with a peace officer or parole & probation officer;

(i) ORS 162.285, Tampering with a witness;

(j) ORS 162.295, Tampering with physical evidence;

(k) ORS 162.315, Resisting arrest;

(l) ORS 162.335, Compounding;

(m) ORS 162.365, Criminal impersonation;

(n) ORS 162.369, Possession of false law enforcement identification card;

(o) ORS 162.375, Initiating a false report;

(p) ORS 162.385, Giving false information to police officer for a citation or arrest warrant;

(q) ORS 163.195, Recklessly endangering another person;

(r) ORS 163.200, Criminal mistreatment II;

(s) ORS 163.212, Unlawful use of an electrical stun gun, tear gas, or mace II;

(t) ORS 163.245, Custodial interference II;

(u) ORS 163.435, Contributing to the sexual delinquency of a minor;

(v) ORS 163.445, Sexual misconduct;

(w) ORS 163.467, Private indecency;

(x) ORS 163.700, Invasion of personal privacy;

(y) ORS 164.043, Theft III;

(z) ORS 164.140, Criminal possession of rented or leased personal property;

(aa) ORS 164.272, Unlawful entry into motor vehicle;

(bb) ORS 164.335, Reckless burning;

(cc) ORS 164.354, Criminal Mischief II;

(dd) ORS 165.037, Criminal simulation;

(ee) ORS 165.070, Possessing fraudulent communications device;

(ff) ORS 165.540, Obtaining contents of communication;

(gg) ORS 165.543, Interception of communications;

(hh) ORS 165.570, Improper use of emergency reporting system;

(ii) ORS 165.572, Interference with making a report;

(jj) ORS 165.577, Cellular counterfeiting III;

(kk) ORS 165.579, Cellular counterfeiting II;

(ll) ORS 165.692, Making false claim for health care payment;

(mm) ORS 166.023, Disorderly conduct I;

(nn) ORS 166.025, Disorderly conduct II;

(oo) ORS 166.065, Harassment;

(pp) ORS 166.076, Abuse of a memorial to the dead;

(qq) ORS 166.116, Interfering with public transportation;

(rr) ORS 166.180, Negligently wounding another;

(ss) ORS 166.190, Pointing firearm at another;

(tt) ORS 166.240, Carrying of concealed weapon;

(uu) ORS 166.250, Unlawful possession of firearms;

(vv) ORS 166.370, Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school;

(ww) ORS 166.382, Possession of destructive device prohibited;

(xx) ORS 166.384, Unlawful manufacture of destructive device;

(yy) ORS 166.470, Limitations and conditions for sales of firearms;

(zz) ORS 166.480, Sale or gift of explosives to children;

(aaa) ORS 166.649, Throwing an object off an overpass II;

(bbb) ORS 166.651, Throwing an object off an overpass I;

(ccc) ORS 166.660, Unlawful paramilitary activity;

(ddd) ORS 167.007, Prostitution;

(eee) ORS 167.090, Publicly displaying nudity or sex for advertising purposes;

(fff) ORS 167.222, Frequenting a place where controlled substances are used;

(ggg) ORS 167.337, Interfering with law enforcement animal;

(hhh) ORS 433.010, Spreading disease (willfully) prohibited;

(iii) ORS 475.900, Commercial drug offense;

(jjj) ORS 475.912, Unlawful delivery of imitation controlled substance;

(kkk) ORS 475.914, Prohibited acts for registrants (with the State Board of Pharmacy; regarding misdemeanor crimes);

(lll) ORS 475.950, Failure to report precursor substance;

(mmm) ORS 475.955, Failure to report missing precursor substances;

(nnn) ORS 475.960, Illegally selling drug equipment;

(ooo) ORS 475.962, Distribution of equipment, solvent, etc., with intent to manufacture controlled substance;

(ppp) ORS 475.965, Providing false information on precursor substances report;

(qqq) ORS 475.979 Unlawful possession of lithium or sodium metal;

(rrr) ORS 807.580, Using invalid license;

(sss) ORS 811.140, Reckless driving;

(ttt) ORS 819.420, Failure to obtain vehicle identification number for vehicle with altered or removed number;

(uuu) ORS 819.430, Trafficking in vehicles with destroyed or altered identification numbers;

(vvv) ORS 830.730/990, False information to peace officer or State Marine Board;

(www) Any unclassified misdemeanor defined in Oregon's or any other jurisdiction's statutes and not listed elsewhere in this rule;

(xxx) Any other misdemeanor under the statutes of Oregon or any other jurisdiction and not listed elsewhere in this rule that an authorized designee determines is relevant to performance of the subject individual's license or registration;

(yyy) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section of the rule pursuant to ORS 161.405, 161.435, or 161.450;

(zzz) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this section of the rule;

(aaaa) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section of the rule as determined by an authorized designee; or

(bbbb) Any offense that no longer constitutes a crime under Oregon law or the laws of another jurisdiction, but is the substantial equivalent of any of the crimes listed in this section of the rule as determined by an authorized designee.

- (3) Five-Year Review Crimes.
  - (a) ORS 164.245, Criminal trespass II;
  - (b) ORS 164.345, Criminal mischief III;
  - (c) ORS 165.805, Misrepresentation of age by a minor;
  - (d) ORS 166.090, Telephonic harassment;
  - (e) ORS 166.416, Providing false information in connection

with a transfer of a firearm;

- (f) ORS 166.425, Unlawful purchase of firearm;
- (g) ORS 418.630, Operating uncertified foster home;
- (h) ORS 685.990, Violations pertaining to naturopathic

medicine;

- (i) ORS 803.070, False statement in application or assignment;
- (j) ORS 803.075, False swearing prohibited;
- (k) ORS 803.375, False application prohibited;
- (l) ORS 803.385, False swearing relating to registration;
- (m) ORS 807.430, Misuse of identification card;
- (n) ORS 807.510, Transfer of documents for purposes of mis-

representation;

- (o) ORS 807.590, Permitting misuse of license;
- (p) ORS 807.600, Using another's license;
- (q) ORS 822.005, Acting as vehicle dealer without certificate;
- (r) ORS 822.045, Crimes relating to conducting a vehicle dealer

business;

(s) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section of the rule pursuant to ORS 161.405, 161.435 or 161.450;

(t) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this section of the rule;

(u) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section of the rule as determined by an authorized designee; or

(v) Any offense that no longer constitutes a crime under Oregon law or the law of another jurisdiction, but is the substantial equivalent of any of the crimes listed in this section of the rule as determined by an authorized designee.

(4) An authorized designee shall evaluate a crime on the basis of Oregon laws and, if applicable, federal laws or the laws of any other jurisdiction in which a criminal records check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the criminal background fitness determination.

(5) A subject individual's criminal background fitness determination shall not be denied under these rules based on the existence or contents of a record that has been expunged pursuant to ORS 419A.260 and 419A.262 or other similar process under the laws of this state or another jurisdiction.

Stat. Auth.: ORS 181.534, 696.022, 696.790

Stats. Implemented: ORS 181.534

Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

**863-005-0040**

**Incomplete Criminal Background Application**

The agency will close an incomplete criminal background application and terminate a criminal background fitness determination without issuing a decision when:

(1) The subject individual submits a written request to withdraw a criminal background application for a new license or registration, or license or registration renewal, or otherwise requests the agency to terminate a criminal records check;

(2) The subject individual does not provide the agency all of the materials and information required under OAR 863-005-0010 within a reasonable period of time;

(3) A subject individual does not respond to an authorized designee's request for additional information within a reasonable period of time; or

(4) The subject individual fails or refuses to cooperate with an authorized designee's attempts to acquire other criminal records information under OAR 863-005-0020.

Stat. Auth.: ORS 181.534, 696.022, 696.790

Stats. Implemented: ORS 181.534

Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

**863-005-0050**

**Notice to Subject Individual of Incomplete Criminal Background Application**

(1) When an authorized designee proposes to close an incomplete criminal background application and terminate a criminal background fitness determination without issuing a decision the authorized designee shall:

(a) Provide written notice via first class mail to the subject individual within 14 calendar days of a decision to terminate the subject individual's criminal background fitness determination due to incompleteness;

(b) State the reason the subject individual's criminal background fitness determination application was found to be incomplete; and

(c) Record on the notice the date the criminal background fitness determination application was terminated and closed due to incompleteness.

(2) A subject individual that receives notice that the agency intends to terminate a criminal background fitness determination due to incompleteness may submit a written request to the agency requesting the agency to continue the fitness determination process. A subject individual's written request to continue the criminal background fitness determination process must be received by the agency within 30 days of the date of the original notice of termination. The request must include all information previously requested by the agency but not provided by the subject individual. If a subject individual fails to submit a written request to continue a fitness determination process within 30 days of receiving the notice described in section (1) of this rule, the subject individual shall be required to submit a new background check application, fingerprint card and fee.

Stat. Auth.: ORS 181.534, 696.022, 696.790

Stats. Implemented: ORS 181.534

Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

**863-005-0060**

**Notice to Subject Individual of Criminal Background Fitness Determination**

(1) An authorized designee shall provide written notice to a subject individual that the agency has completed a requested criminal background fitness determination. The notice shall state the date the agency completed the criminal background fitness determination and the agency's decision to approve or deny a criminal background fitness determination application. If the agency denies a criminal background fitness determination, the notice shall state the reason for the denial based on the factors described in OAR 863-005-0020(5).

(2) The agency shall mail notice of a criminal background fitness determination via first class mail to the address provided by the subject individual on the agency background check application, or to an updated address as provided in writing by the subject individual no later than 14 calendar days after the date the agency has completed a criminal background fitness determination.

Stat. Auth.: ORS 181.534, 696.022, 696.790

Stats. Implemented: ORS 181.534

Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

**863-005-0070**

**Appeals**

(1) A subject individual may not appeal a criminal background fitness determination or a decision to close a criminal background fitness determination for reason of incompleteness.

(2) If a licensing or registration applicant wishes to, they may complete any additional pre-licensing/registration requirements and submit a completed license/registration application together with the required fees. Upon review of a completed license/registration application, the agency shall issue a "notice of intent to deny" that describes the reason for the denial. The notice shall also include information required by OAR 137-003-0505 that describes the subject individual's right to request a contested case hearing to appeal the agency's decision.

(3) Contested case hearings on criminal background fitness determinations shall be closed to non-participants.

(4) A subject individual may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or any other agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation.

(5) Any challenge to any information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or any other agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation must follow the appeal process prescribed by the reporting agency.

(6) If the subject individual successfully challenges the accuracy or completeness of any information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or an agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation that the agency relied on to support a decision to deny a criminal background fitness determination, the subject individual may request the agency to conduct a new criminal records check and re-evaluate the original criminal background fitness determination made under OAR 863-005-0020. The subject individual shall submit a new background check application to the agency within 30 days of the date the Oregon Department of State Police, the Federal Bureau of Investigation, or an agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation issues a corrected criminal background report.

Stat. Auth.: ORS 181.534, 696.022, 696.790  
Stats. Implemented: ORS 181.534  
Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

**863-005-0080  
Recordkeeping and Confidentiality**

(1) An authorized designee shall maintain all documents on a criminal background fitness determination or the closing of a criminal background fitness determination due to incompleteness in accordance with applicable archive retention requirements.

(2) Records the agency receives from the Oregon Department of State Police resulting from a criminal records check, including but not limited to Law Enforcement Data System (LEDS) reports and state or federal criminal offender information originating with the Oregon Department of State Police or the Federal Bureau of Investigation, are confidential pursuant to ORS 181.534.

(3) Within the agency, only an authorized designee shall have access to records the agency receives from the Oregon Department of State Police resulting from a criminal records check.

(4) An authorized designee shall maintain and disclose any records received from the Oregon Department of State Police resulting from a criminal records check in accordance with applicable requirements and restrictions in ORS chapter 181 and other applicable federal and state laws, rules adopted by the Oregon Department of State Police in OAR chapter 257, division 15, these rules, and any written agreement between the agency and the Oregon Department of State Police.

(5) If a fingerprint-based criminal records check was conducted on a subject individual, the agency shall permit that subject individual to inspect the state and federal criminal offender information, unless prohibited by state or federal law.

(6) If a subject individual with a right to inspect criminal offender information under section (5) of this rule requests, the agency shall provide the subject individual with a copy of the individual's own

state and federal criminal offender information, unless prohibited by state or federal law.

(7) In addition to the records described in section (2) of this rule, the agency shall treat all records received or created under these rules that concern a subject individual's criminal history as confidential pursuant to ORS 181.534.

(8) Within the agency, only an authorized designee shall have access to the records identified under section (7) of this rule.

Stat. Auth.: ORS 181.534, 696.022, 696.790  
Stats. Implemented: ORS 181.534  
Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

**863-005-0090  
Fees**

The agency shall charge a fee for acquiring criminal offender information to make a criminal background fitness determination, including re-evaluations of criminal background determinations made pursuant to OAR 863-005-0070. The fee shall not exceed the fee(s) charged the agency by the Oregon Department of State Police and the Federal Bureau of Investigation.

Stat. Auth.: ORS 181.534, 696.022, 696.790  
Stats. Implemented: ORS 181.534  
Hist.: REA 3-2008, f. 6-12-08, cert. ef. 7-1-08

**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) One completed fingerprint card for each principal person 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.: 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; REA 4-1997, f. 11-24-97, cert. ef. 12-1-97; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

**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.: 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

**863-010-0630**

**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; and

(3) Processing of each fingerprint card and criminal history check: \$40.00.

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; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2005(Temp), f. 6-9-05, cert. ef. 7-1-05 thru 12-26-05; Suspended by REA 3-2005(Temp), f. 7-18-05, cert. ef. 7-22-05 thru 12-26-05; Administrative correction 1-20-06

**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 & 183.335  
 Stats. Implemented: ORS 696.020 & 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 & 183.335  
 Stats. Implemented: ORS 696.020 & 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) Applicants for real estate broker, principal real estate broker or real estate property manager licenses shall submit to a background check, except applicants who are currently licensed as a real

estate broker, principal real estate broker or real estate property manager or who are eligible for renewal of such licenses. 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;
- (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 one completed fingerprint card 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 card and processing fee shall be submitted to the Agency prior to issuance of a license.

(5) 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.

(6) 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.

(7) 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.

(8) An applicant for a license pursuant to OAR 863-015-0080(2) may be issued a license following submission of a background check application and fingerprint card and prior to receipt by the Agency of criminal offender information from the Oregon State Police, other regulatory or law enforcement agencies, and the FBI. Such license shall be subject to successful completion of the background check process and review.

Stat. Auth.: ORS 696.385 & 183.335  
 Stats. Implemented: ORS 696.020 & 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; REA 4-2003(Temp), f. 12-18-03, cert. ef. 1-1-04 thru 6-29-04; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

**863-015-0020  
 Licensing; Examinations**

(1) In addition to any other licensing eligibility requirements, a license applicant is required to pass a real estate examination that shall include subject matter determined by the Board and published

in the *Agency's Real Estate License and Examination Information booklet*.

(2) An applicant may apply for an examination whether or not the Agency has completed the processing of the applicant's fingerprint card and background check, or has received documentation on the applicant's licensing educational courses; however, an applicant shall not be considered for a license until the Agency has completed such processing and review.

(3) All applicants for a real estate broker's license shall be required to pass a real estate broker examination, consisting of a national portion and a state portion.

(4) Beginning July 1, 2002, a real estate licensee who was licensed as a salesperson as of June 30, 2002 shall be required to pass a written real estate broker examination, in order to be licensed as a principal real estate broker or to conduct professional real estate activity as a sole practitioner.

(5) All applicants for a real estate property manager's license shall be required to pass a property manager examination.

(6) An applicant shall apply for an examination by submitting to the Agency:

(a) An Agency-approved license examination application form; and

(b) An examination application fee under ORS 696.270(1).

(7) If a real estate license has not been active for two or more consecutive years, prior to application for reactivation of such license under 863-015-0065, the licensee shall apply for a reactivation examination by submitting to the Agency:

(a) An Agency-approved license reactivation examination application form; and

(b) An examination application fee under ORS 696.270(1).

(8) Examination fees are not refundable if an applicant:

(a) Fails to appear for a scheduled examination;

(b) Fails to cancel or reschedule an examination appointment at least two business days prior to the appointment; or

(c) Fails to pass an examination.

(9) If an applicant for a real estate broker license examination passes both the national portion and the state portion of an examination, but is not issued a license within one year from the date of the examination:

(a) The applicant is no longer qualified for the license on the basis of the examination; and

(b) The applicant must reapply for the examination under section (6) of this rule.

(10) An applicant for the real estate broker examination who passes only the national or state portion of a license examination must pass the remaining portion within twelve months from the examination date of the portion that was passed in order to be qualified for a license on the basis of the examination.

(11) In lieu of the national portion of the real estate broker examination required in this rule, the board may accept an applicant's passing results of the national portion of a broker examination taken in another state if:

(a) The examination was taken after November 1, 1973 and the license issued as a result of that examination has not been expired for more than one year; or

(b) The examination was taken within the 12 months prior to the date the application and required forms and fees are received in the Agency's office; and

(c) The applicant provides the Agency with the applicant's certified license history from the state where such examination was taken.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 696.385, 696.425 & 183.335

Stats. Implemented: ORS 696.020, 696.022 & 696.425

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 3-2004, f. 4-28-04, cert. ef. 5-3-04; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2005(Temp), f. 6-9-05, cert. ef. 7-1-05 thru 12-26-05; Administrative correction 1-20-06; REA 2-2007(Temp), f. & cert. ef. 3-21-07 thru 9-16-07; REA 4-2007, f. & cert. ef. 9-26-07

**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 real estate licensee and acting only as the agent of such licensee.

(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 profession-

al 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 & 183.335  
Stats. Implemented: ORS 696.020 & 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; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04

863-015-0030

License Issue, Term, Form and Inspection

(1) The Agency shall issue a real estate license to an applicant after determination that the applicant meets the license requirements under ORS 696.022 and 696.790, including fingerprinting and background check, examination, coursework, experience, and upon actual receipt by the Agency of:

(a) The license application form required under OAR 863-015-0010; and

(b) Payment of fees under ORS 696.270.

(2) A licensee is authorized to engage in professional real estate activities allowed for that license under ORS Chapter 696 and OAR Chapter 863 from the date the license is issued until the license expires, becomes inactive, or is revoked, surrendered or suspended.

(3) A licensee may hold only one Oregon real estate license at any time.

(4) The license expiration date shall be the last day of the month of a licensee’s birth month.

(5) Beginning July 1, 2002, the term of a license issued or renewed is not more than 24 months plus the number of days between the date the license is issued or renewed and the last day of the month of the licensee’s birth month.

(6) The license issued by the Agency shall include:

(a) The name of the licensee;

(b) The license number, effective date and expiration date;

(c) The name under which the licensee conducts business or the registered business name;

(d) The licensee’s business address;

(e) The seal of the Real Estate Agency; and

(f) Any other information the Agency deems appropriate.

Stat. Auth.: ORS 696.385 & 183.335  
Stats. Implemented: ORS 696.020 & 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; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2007(Temp), f. & cert. ef. 3-21-07 thru 9-16-07; REA 4-2007, f. & cert. ef. 9-26-07

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 863-015-0010 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 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.

(3) A temporary associate broker licensee qualified under the provisions of Sec. 2, subsection(5), Chapter 300 Oregon Laws 2001 shall successfully complete the Associate Broker Transition Course (the “ABTC”) prior to June 30, 2005. Proof of successful completion shall be received by the Agency no later than July 15, 2005. Failure to comply with this subsection shall result in cancellation of the license through administrative action. At the Commissioner’s discretion, the Commissioner may vacate an administrative action for failure to comply with this subsection, if a licensee who successfully completed the course prior to June 30, 2005, submits the proof of completion before the Commissioner issues a final order.

Stat. Auth.: ORS 696.385 & 183.335  
Stats. Implemented: ORS 696.020 & 696.022  
Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

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 863-015-0010 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 & 183.335  
 Stats. Implemented: ORS 696.020 & 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; REA 2-2005(Temp), f. 6-9-05, cert. ef. 7-1-05 thru 12-26-05; Administrative correction 1-20-06

**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 863-015-0010 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 863-015-0085.

Stat. Auth.: ORS 696.385 & 183.335  
 Stats. Implemented: ORS 696.020 & 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; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2005(Temp), f. 6-9-05, cert. ef. 7-1-05 thru 12-26-05; Administrative correction 1-20-06

**863-015-0050**

**Licensing; Renewal**

(1) An active real estate license may be renewed for the term prescribed in OAR 863-015-0030 upon receipt by the Agency of:

- (a) The renewal fee under ORS 696.270(3); and
- (b) An Agency-approved renewal application form that includes certification that the licensee met the real estate continuing education renewal requirements under OAR 863-015-0055.

(2) An inactive real estate license may be renewed for the term prescribed in OAR 863-015-0030, and will retain an inactive status, upon actual receipt by the Agency of:

- (a) The renewal fee under ORS 696.270(3); and
  - (b) An agency-approved renewal application form.
- (3) A real estate license expires if a licensee fails to renew the license on or before the expiration date of the license and a real estate licensee may not engage in any professional real estate activity during the period a license is expired.

(4) For purposes of sections (5) and (6) of this rule, an expired license will retain the status of expired during the period from expiration to renewal.

(5) For a period of one calendar year following expiration of an active license, the licensee may renew the license for the term prescribed in section (7) of this rule and change from expired to active status upon receipt by the Agency of:

- (a) The renewal fee under ORS 696.270(3);
- (b) A late fee under ORS 696.270(10); and
- (c) An Agency-approved renewal application form that includes certification that the licensee met the real estate continuing education renewal requirements under OAR 863-015-0055.

(6) For a period of one calendar year following expiration of an inactive license, the licensee may renew the license for the term prescribed in section (7) and change from expired to inactive status upon actual receipt by the Agency of:

- (a) The renewal fee under ORS 696.270(3);
- (b) A late fee under ORS 696.270(10); and
- (c) An Agency-approved renewal application form.

(7) A license that is renewed under section (5) or (6) of this rule expires two years from the date of the original expiration date.

(8) A real estate license that has expired for more than one year may not be renewed and the former licensee must reapply and meet all licensing qualifications and pass examinations required of new license applicants.

(9) A license may not be renewed if it is surrendered, suspended or revoked.

Stat. Auth.: ORS 696.385 & 183.335  
 Stats. Implemented: ORS 696.020 & 696.022  
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2007(Temp), f. & cert. ef. 3-21-07 thru 9-16-07; REA 4-2007, f. & cert. ef. 9-26-07

**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 active renewal of the real estate broker's license or prior to the first license reactivation following an inactive first renewal. 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.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.174 & 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; REA 1-2004(Temp), f. & cert. ef. 1-15-04 thru 6-25-04; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04

**863-015-0060**

**Licensing; Limited Licenses**

(1) If the Commissioner issues a limited license, 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.

(2) 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 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2005(Temp), f. 6-9-05, cert. ef. 7-1-05 thru 12-26-05; Suspended by REA 3-2005(Temp), f. 7-18-05, cert. ef. 7-22-05 thru 12-26-05; Administrative correction 1-20-06

**863-015-0061**

**Affiliated and Subsidiary Organizations**

(1) Affiliated organizations are two or more organizations whose controlling ownership interests are owned by the same licensee, licensees, entity or entities.

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

(3) Affiliated or subsidiary business organizations may use the same principal broker, provided that proof is submitted satisfactory to the commissioner that the principal real estate broker or brokers

involved actually manages and controls each affiliated and subsidiary organization.

Stat. Auth.: ORS 696.385 & 183.335  
 Stats. Implemented: ORS 696.020 & 696.022  
 Hist.: REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

**863-010-0062**

**Mailing Address; Address Change; Service of Notice**

(1) Each real estate licensee shall maintain on file with the agency a current mailing address. The agency shall send all forms of written communication, including notices, to the current mailing address.

(2) Each real estate licensee shall notify the agency of a change in current mailing address. Change of address notification must be in writing within 10 calendar days from the change of address. A forwarding address shall be effective as a "current mailing address" when the agency receives notice of the forwarding address by the United States Postal Service.

(3) Notice by mail, whether registered, certified or regular, to the real estate licensee's current mailing address on file with the agency shall constitute service.

(4) Subsections (1) through (3) of this section apply regardless of license status including, but not limited to all licenses on active, inactive, expired and suspended status.

Stat. Auth.: ORS 696.385 & 183.335  
 Stats. Implemented: ORS 696.020 & 696.022  
 Hist.: REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

**863-015-0063**

**Transfer of Real Estate License; Responsibility of Principal Broker; Authority to Use Registered Business Name**

(1) In addition to the definitions in ORS 696.010 and OAR 863-015-0120, as used in this rule:

(a) "Authorized licensee" means a licensee who has authority over the use of a registered business name.

(b) "License transfer form" means a completed and signed Agency-approved form:

(A) Transferring a real estate broker license to a receiving principal broker in order to become associated with the receiving principal broker; or

(B) Authorizing a real estate licensee to use a registered business name to conduct professional real estate activity.

(c) "Sending principal broker" means the principal real estate broker with whom an active real estate broker license is associated prior to the transfer of the license.

(d) "Receiving principal broker" means the principal real estate broker with whom an active real estate broker license will be associated after the transfer of the license.

(2) A license transfer form shall include and the licensee shall provide:

(a) The name, mailing address, and license number of the licensee who is transferring the license or documenting the authorized use of a registered business name;

(b) The current status of the license, whether active or inactive;

(c) If the real estate broker is associated with a sending principal broker, certification that the real estate broker provided written notice of the transfer to the sending principal broker, and that such notice was provided prior to the time the transfer form is submitted to the Agency, including:

(A) The date of personal service of such notice; or

(B) The date a certified letter was delivered by the post office to the address of the sending principal broker;

(d) If the form is used to authorize use of a different registered business name, certification that the licensee provided written notice of such change to the authorized licensee for the current registered business name, and that such notice was provided on a date prior to the date the license transfer form is submitted to the Agency, including:

(A) The date of personal service of such notice; or

(B) The date a certified letter was delivered to the address of the authorized licensee;

(e) If applicable, the registered business name, street address and registered business name identification number, of the receiving principal broker;

(f) If applicable, the street address, registered business name identification number, and the registered business name under which the real estate licensee will be authorized to conduct professional real estate activity; and

(g) The name, license number, telephone number, date and signature of the receiving broker or authorized licensee.

(3) The Agency shall transfer the license of an active real estate broker associated with a sending principal broker to a receiving principal broker upon actual receipt by the Agency of:

(a) A license transfer form; and

(b) Payment of a transfer fee in ORS 696.270(7).

(4) The Agency shall transfer the license of an active sole practitioner, principal real estate broker or property manager to a receiving principal broker upon actual receipt by the Agency of:

(a) A license transfer form; and

(b) Payment of a transfer fee in ORS 696.270(7).

(5) The Agency shall transfer the license of an inactive real estate licensee, who has been inactive for a period of 30 days or less, to a receiving principal broker upon actual receipt by the Agency of:

(a) A license transfer form; and

(b) Payment of a transfer fee in ORS 696.270(7).

(6) The Agency shall change a real estate license category at the time the license is transferred under sections (4) and (5) of this rule, and not require the payment of a fee for the change of license category, upon actual receipt by the Agency of:

(a) A license transfer form;

(b) Payment of a transfer fee in ORS 696.270(7); and

(c) An Agency-approved form to change the license category.

(7) A principal real estate broker with whom a licensee is associated remains responsible for the professional real estate activity of the licensee until actual receipt by the Agency of:

(a) The licensee's real estate license;

(b) An Agency-approved form submitted by the principal real estate broker terminating the relationship with the licensee under OAR 863-015-0065;

(c) An Agency-approved form submitted by the licensee terminating the relationship with the principal real estate broker under OAR 863-015-0065; or

(d) A license transfer form and fee.

(8) If a principal real estate broker with whom a real estate broker is associated voluntarily gives the license to the real estate broker named in the license, the principal real estate broker remains responsible for any subsequent professional real estate activity of the licensee until actual receipt by the Agency of:

(a) The licensee's real estate license;

(b) An Agency-approved form submitted by the principal real estate broker terminating the relationship with the licensee under OAR 863-015-0065;

(c) An Agency-approved form submitted by the licensee terminating the relationship with the principal real estate broker under OAR 863-015-0065; or

(d) A license transfer form and fee.

(9) The Agency shall document the registered business name under which a real estate licensee is authorized to conduct professional real estate activity upon actual receipt by the Agency of:

(a) A license transfer form; and

(b) Payment of a transfer fee in ORS 696.270(7).

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 4-2007, f. & cert. ef. 9-26-07

**863-015-0065**

**Inactive License; Change License Status to Active; Change License Category; Reactivation of License**

(1) A real estate licensee whose license is on inactive status may not engage in professional real estate activity.

(2) The commissioner may reprimand, suspend, revoke or impose a civil penalty against an inactive licensee who engages in professional real estate activity under ORS 696.301.

(3) An active real estate license shall be changed to inactive license status upon actual receipt by the Agency of:

(a) The license;

(b) A request by the licensee to change the license status to inactive, submitted on an Agency-approved form; or

(c) An Agency-approved form submitted by the licensee terminating the relationship with the principal real estate broker under OAR 863-015-0065.

(4) The Agency shall change the status of an active real estate broker who is associated with a principal real estate broker, to inactive status upon actual receipt by the Agency of:

(a) The real estate broker license, submitted by the licensee;

(b) The real estate broker license, submitted by the principal real estate broker; or

(c) An Agency-approved form, submitted by the principal real estate broker, terminating the principal real estate broker's relationship with the real estate broker.

(5) An inactive real estate licensee may renew such license under OAR 863-0015-0050.

(6) For a period of 30 days following the inactivation of a real estate broker license, the licensee may change such license status from inactive to active and transfer the real estate broker license to a principal real estate broker under the provision in OAR 863-015-0064.

(7) Except as provided in section (8) of this rule, for a period of 30 days following the inactivation of a real estate license, the licensee may change such license category to an active sole practitioner or active principal real estate broker only if the licensee is qualified for such licenses and the licensee submits to the Agency:

(a) An Agency-approved application form to change license category to a sole practitioner or principal real estate broker and change license status to active; and

(b) A license transfer form under OAR 863-015-0064, if applicable; and

(c) Payment of the transfer fee in ORS 696.270(7).

(8) If the licensee under section (7) of this rule is changing license category to a principal real estate broker and has never been licensed as a principal real estate broker, the licensee must submit to the Agency:

(a) An Agency-approved broker license application form; and

(b) The licensing fee under ORS 696.270(2).

(9) If a license has not been on active status for two or more consecutive years, prior to application for reactivation of such license under section (10) and (11) of this rule:

(a) The licensee shall submit to the Agency:

(A) An application for licensing reactivation examination; and

(B) Payment of the examination fee in ORS 696.270(1); and

(b) The licensee must pass the reactivation examination.

(10) After the 30-day period specified in sections (6) and (7) of this rule, and subject to the examination requirements in section (9) of this rule, a licensee may only change the license status from inactive to active by submitting to the Agency:

(a) An application for license reactivation; and

(b) Payment of the reactivation fee in ORS 696.270(9)

(11) Subject to the examination requirements in section (9) of this rule, if an inactive licensee renews a license and maintains inactive status under section (5) of this rule, the licensee may, within 60 days of the date of renewal, change the license status to active by submitting to the Agency:

(a) An Agency-approved application for license reactivation that includes certification that the licensee met the real estate continuing education renewal requirements under OAR 863-015-0055; and

(b) Payment of amount of the active renewal fee in ORS 696.270(3) less the amount of the inactive renewal fee in ORS 696.270(8) already paid by the licensee.

(12) The change of license status, transfer or change of license category under section (6) and (7) of this rule, or the reactivation of a license under sections (10) and (11) of this rule are effective upon actual receipt by the Agency of all required forms and fees.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 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; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA

2-2007(Temp), f. & cert. ef. 3-21-07 thru 9-16-07; REA 4-2007, f. & cert. ef. 9-26-07

**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 & 183.335

Stats. Implemented: ORS 696.020 & 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**

(1) 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.

(2) The reissuance of a license under subsection (1) is effective for licensing purposes on the first business day after all required forms and fees are received in the Agency's office.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 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; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

**863-015-0076**

**Application; Signature Requirements**

(1) Subject to ORS 84.001 to 84.061, the Agency may accept any electronic or facsimile signature created, generated, sent, communicated, received or stored regarding licensing documents including, but not limited to, Background Check Applications, Examination Applications, License Applications, License Change forms and License Surrender Forms.

(2) The Agency may require submission of an original signature on any document, at the Commissioner's discretion.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

**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 and 696.265; 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 696.022(5)(b). The nonresident license application must be accompanied by a background check application, fingerprint card and processing fees as prescribed by OAR 863-015-0015. The applicant must furnish with the nonresident license application proof that the applicant holds an active and valid license issued by the state or country of residence.

(4) An applicant for a license under subsection (2) may be issued a license following submission of a background check application and fingerprint cards and prior to receipt by the Agency of criminal offender information from the Oregon State Police, other regulatory or law enforcement agencies, and the FBI. Such license shall be subject to successful completion of the background check process and review.

(5) 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.

(6) 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.

(7) 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(2) through (9), 696.243, 696.245 and relevant Oregon Administrative Rules Chapter 863.

(8) 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.

(9) 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.

(10) 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.

(11) Except as otherwise provided in reciprocity agreements entered into pursuant to subsection (12) below, or except as provided at the discretion of the Real Estate Commissioner, 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.

(12) **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.

(13) The Commissioner may include in such agreements the terms and conditions prescribed in OAR 863-015-0080(2) to (11), and additional terms and conditions at the Commissioner’s discretion.

(14) 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 & 183.335  
 Stats. Implemented: ORS 696.255 & 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; REA 4-2003(Temp), f. 12-18-03, cert. ef. 1-1-04 thru 6-29-04; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

**863-015-0085  
 Authorization to Control Broker’s Business**

(1)(a) A sole practitioner real estate broker or principal real estate broker, for a period not to exceed 90 days, may authorize another sole practitioner real estate broker, real estate broker 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, real estate broker or principal real estate broker authorized to act in the absence of the authorizing sole practitioner real estate broker or principal real estate broker shall have joint responsibility for all professional real estate activity conducted during the authorizing sole practitioner real estate broker or principal real estate broker’s absence.

(b) A property manager for a period not to exceed 90 days, may authorize another property manager to control and supervise the property management activity conducted by or through the authorizing property manager during the absence of the authorizing property manager. Both the authorizing property manager and the property manager authorized to act in the absence of the authorizing property manager shall have joint responsibility for all property management activity conducted during the authorizing property manager’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 & 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; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04

**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, 696.385 & 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 & 183.335

Stats. Implemented: ORS 696.026 & 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 & 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” include all forms of representation, promotion and solicitation disseminated in any manner and by any means for any purpose related to professional real estate activity, including, without limitation, advertising by mail; telephone, cellular telephone, and telephonic advertising; the Internet, E-mail, electronic bulletin board and other similar electronic systems; and business cards, signs, lawn signs, and billboards.

(2) Advertising by a licensee, in process and in substance, must:

(a) Be identifiable as advertising of a real estate licensee;

(b) Be truthful and not deceptive or misleading;

(c) Not state or imply that the real estate broker or property manager associated with a principal real estate broker is the person responsible for operating the real estate brokerage or is a sole practitioner or principal broker;

(d) Not state or imply that the licensee is qualified or has a level of expertise other than as currently maintained by the licensee; and

(e) Be done only with the written permission of the property owner(s) or owner(s’) authorized agent.

(3) Advertising that includes the licensee’s name must:

(a) Use the licensee’s licensed name; or

(b) Use a common derivative of the licensee’s first name and the licensee’s licensed last name.

(4) The licensed name or registered business name of the principal real estate broker, sole practitioner real estate broker, or property manager must be prominently displayed, immediately noticeable, and conspicuous in all advertising.

(5) Except as provided in section (8) of this rule, a real estate broker must:

(a) Submit proposed advertising to the licensee's principal broker for review and receive the principal broker's approval before publicly releasing any advertisement; and

(b) Keep a record of the principal broker's approval and make it available to the agency upon request.

(6) Except as provided in section (8) of this rule, a principal real estate broker:

(a) Is responsible for all advertising approved by the principal broker that states the principal real estate broker's licensed name or registered business name; and

(b) Must review all advertising of a real estate broker or a property manager who is associated with the principal real estate broker.

(7) A principal real estate broker may delegate direct supervisory authority and responsibility for advertising originating in a branch office to the principal broker who manages the branch office if such delegation is in writing.

(8) A licensee associated with a principal real estate broker may advertise property owned by the licensee for sale, exchange, or lease option without approval of the principal real estate broker, if:

(a) The property is not listed for sale, exchange, or lease option with the principal broker;

(b) The advertising states that the property owner is a real estate licensee; and

(c) The advertising complies with all applicable other applicable provisions of ORS chapter 696 and its implementing rules.

(9) Advertising in electronic media and by electronic communication, including but not limited to the Internet, web pages, E-mail, E-mail discussion groups, blogs, and bulletin boards is subject to the following requirements:

(a) Advertising must comply with all other requirements of this rule;

(b) Advertising by a licensee must include on its first page:

(A) The licensee's licensed name as required in section (3) of this rule;

(B) The licensed name or registered business name of the principal real estate broker, sole practitioner real estate broker, or property manager; and

(C) A statement that the licensee is licensed in the State of Oregon.

(c) Sponsored links, which are paid advertisements located on a search engine results page, are exempt from the requirements contained in subsection (b) of this section if the first page following the link complies with subsection (b).

(d) E-mail from a licensee is exempt from the requirements of subsection (b) of this section if the licensee's initial communication contained the information required by subsection (a).

(10) No advertising may guarantee future profits from any real estate activity.

(11) A licensee may use the term "team" or "group" to advertise if:

(a) The use of the term does not constitute the unlawful use of a trade name and is not deceptively similar to a name under which any other person is lawfully doing business;

(b) The team or group includes at least one real estate licensee;

(c) The licensee members of the team or group are associated with the same principal broker or property manager;

(d) The licensee members of the team or group use each licensee's licensed name as required under section (3) of this rule;

(e) If any non-licensed individuals are named in the advertising, the advertising must clearly state which individuals are real estate licensees and which ones are not; and

(f) The advertising complies with all other applicable provisions of ORS chapter 696 and its implementing rules.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.301(1), (4)

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; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 3-2006(Temp), f. 12-28-06, cert. ef. 1-1-07 thru 6-29-07; REA 3-2007, f. & cert. ef. 6-29-07; REA 1-2008(Temp), f. & cert. ef. 1-18-08 thru 7-16-08; REA 2-2008, f. 6-12-08, cert. ef. 7-1-08

**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 & 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 & 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) & 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 & 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 & 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 & 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, any administrative or Oregon State Bar proceeding in which the licensee was named as a party and against whom allegations concerning any 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 administrative proceeding determination of the Oregon Real Estate Agency or 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, or decision 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; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

**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) Expired 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 & 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; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04

**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 & 696.385

Stats. Implemented: ORS 105.465 - 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

**863-015-0186**

**Clients’ Trust Accounts — Disbursal of Disputed Funds**

(1) A sole practitioner or principal real estate broker may disburse disputed funds in a Clients’ Trust Account using the procedures in Sections 3 through 7 of this rule or may disburse funds in a Clients’ Trust Account under the terms of a lawful contractual agreement, by law, or under the provisions of chapter 696, chapter 105, OAR 863-015-0185 or 863-025-0025.

(2) For purposes of ORS 696.241(10) and this rule, “disputed funds” are funds in a Clients’ Trust Account delivered by a person to a sole practitioner or principal real estate broker pursuant to a written contract and the parties to such contract dispute the disbursal of the funds.

(3) As soon as practicable after receipt of a demand by one of the parties for the disbursal of funds in a Clients’ Trust Account, the sole practitioner or principal real estate broker must deliver written notice to all parties that a demand has been made for disbursal of the funds and that such funds may be disbursed to the party who delivered the funds within 20 calendar days of the date of the demand.

(4) The written notice in section (3) of this rule must include substantially the following information:

(a) A party has made a demand for disbursal of funds and the sole practitioner or principal real estate broker may disburse such funds from the Clients’ Trust Account to the party who delivered the funds unless:

(A) The parties enter into a written agreement regarding disbursal of the funds and deliver such agreement to the sole practitioner

or principal real estate broker within 20 calendar days of the date of the demand for disbursal; or

(B) A party provides proof to the sole practitioner or principal real estate broker that the party has filed a legal claim to such funds within 20 calendar days of the date of the demand for disbursal;

(b) The sole practitioner or principal real estate broker has no legal authority to resolve questions of law or fact regarding disputed funds in a Clients' Trust Account;

(c) The disbursal of the funds from the Clients' Trust Account to the party who delivered the funds will end the responsibility of the sole practitioner or principal real estate broker to account for the funds but will not affect any right or claim a person may have to such funds; and

(d) Both parties may wish to seek legal advice on the matter.

(5) Regardless of whether a party disputes the disbursal of funds as outlined in section (4) of this rule, if the parties have not entered into a written agreement regarding such disbursal or if a party has failed to provide proof of filing a legal claim, the sole practitioner or principal real estate broker may disburse the disputed funds to the person who delivered the funds within 20 calendar days of the date of the demand for disbursal.

(6) Nothing in this rule shall prevent a sole practitioner or principal real estate broker from disbursing such funds pursuant to:

(a) The terms of the original contract between the parties;

(b) Any subsequent agreement between the parties regarding the disbursal of funds provided to the sole practitioner or principal real estate broker within 20 calendar days of the demand for disbursal; or

(c) The requirements of law.

(7) Nothing in this rule shall prevent the broker from filing an action to interplead the disputed funds.

(8) Real estate licensees with property management Clients' Trust Accounts must review and follow the requirements for handling client funds under the Residential Landlord and Tenant statutes in ORS Chapter 90. For any other non-real estate sales transaction disputes, the sole practitioner or principal real estate broker must review the terms of the written contract for handling disputed funds.

Stat. Auth.: ORS 696.385 & ORS 183.335

Stats. Implemented: ORS 696.241 & ORS 696.396

696.810, 696.990 & 696.800 - 696.855

Hist.: REA 4-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-29-06; REA 1-2006, f. 6-29-06, cert. ef. 6-30-06

**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 & 696.385

Stats. Implemented: ORS 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 broker, 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.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.028

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

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 informa-

tion 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.

(12)(a) The Final Agency Acknowledgement of the agency relationships described in this section and required by ORS 696.845 shall be printed in substantially the following form:

FINAL AGENCY ACKNOWLEDGEMENT

Both Buyer and Seller acknowledge having received the Oregon Real Estate Agency Disclosure Pamphlet, and hereby acknowledge and consent to the following agency relationships in this transaction:

(1) \_\_\_\_\_ (Name of Selling Licensee) of \_\_\_\_\_ (Name of Real Estate Firm) is the agent of (check one)  The Buyer exclusively.  The Seller exclusively (Seller Agent)".  Both the Buyer and the Seller ("Disclosed Limited Agency").

(2) \_\_\_\_\_ (Name of Listing Licensee) of \_\_\_\_\_ (Name of Real Estate Firm) is the agent of (check one)  The Seller exclusively.  Both the Buyer and the Seller ("Disclosed Limited Agency").

(3) If both parties are each represented by one or more licensees in the same real estate firm, and the licensees are supervised by the same principal broker in that real estate firm, Buyer and Seller acknowledge that said principal broker shall become the disclosed limited agent for both Buyer and Seller as more fully explained in the disclosed Limited Agency Agreements that have been reviewed and signed by Buyer, Seller and Licensee(s). Buyer shall sign this acknowledgment at the time of signing this Agreement before submission to Seller. Seller shall sign this acknowledgment at the time this Agreement is first submitted to Seller, even if this Agreement will be rejected or a counter offer will be made. Sellers signature to this Final Agency Acknowledgment shall not constitute acceptance of the Agreement or any terms therein.

ACKNOWLEDGED

Buyer: \_\_\_\_\_ Print \_\_\_\_\_ Dated: \_\_\_\_\_

Buyer: \_\_\_\_\_ Print \_\_\_\_\_ Dated: \_\_\_\_\_

Seller: \_\_\_\_\_ Print \_\_\_\_\_ Dated: \_\_\_\_\_

Seller: \_\_\_\_\_ Print \_\_\_\_\_ Dated: \_\_\_\_\_

(b) If incorporated as a part of a preprinted agreement, the Final Agency Acknowledgement required by subsection (a) shall appear at the top of the first page of the preprinted agreement, separate and apart from the sale agreement and shall be signed separately from the sale agreement. If the Final Agency Acknowledgement required by subsection (a) is not included within a preprinted agreement, the Final Agency Acknowledgement shall also include the property address or legal description of the subject property, a reference to the attached sale agreement, and shall include separate signature lines for buyers and sellers.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.805, 696.810 & 696.815

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 4-2003(Temp), f. 12-18-03, cert. ef. 1-1-04 thur 6-29-04; REA 3-2004, f. 4-28-04 cert. cr. 5-3-04

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 & 183.335  
 Stats. Implemented:ORS 696.805, 696.810 & 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 & 183.335

Stat. Implemented: ORS 696.805, 696.810 & 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: [Form not included. See ED. NOTE.]

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 696.385, 696.820 & 183.335

Stats. Implemented: ORS 696.805, 696.810 & 696.815

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

**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 & 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

**863-015-0225**

**Investigation of Licensees: Procedures and Reporting**

(1) The agency shall use the methods and procedures in this rule to investigate complaints that allege grounds for discipline under ORS 696.301.

(a) The commissioner or an agency manager shall review the complaint to determine whether there are reasonable grounds to believe that a violation of ORS 696.007 to 696.995, or any rule promulgated thereunder, may have occurred that constitutes grounds for discipline under ORS 696.301. Reasonable grounds means a reasonable belief in facts or circumstances which, if true, would in law constitute a violation.

(b) If the commissioner or an agency manager determines there are reasonable grounds to believe a violation may have occurred, an investigation will be initiated. The individual assigned to investigate the complaint shall gather all relevant facts in an objective, impartial and unbiased manner. The investigative report must contain all facts discovered during the investigation, including facts which may be exculpatory or mitigating.

(c) The individual assigned to investigate the complaint will promptly notify the commissioner or an agency manager if a licensee fails or refuses to cooperate in an investigation.

(d) An investigative interview may be electronically recorded if the person to be interviewed consents to the recording and states such consent on the recording.

(e) The individual assigned to investigate the complaint may not communicate with a licensee or a member of the public about the findings of the investigation, whether a violation may have occurred based on the facts, or whether the agency will initiate administrative action against a licensee.

(f) Individuals assigned to investigate complaints shall not solicit complaints against any licensee.

(g) The scope of an investigation shall be limited to the conduct or transaction(s) that formed the basis initiating the investigation. However, if there are reasonable grounds to believe that additional violations may have occurred that would result in reprimand, suspension, revocation or license denial, the commissioner or an agency manager may expand the scope of the investigation or authorize additional investigations.

(2) The investigation report shall be written in an objective manner and may not contain any conclusions about whether a violation has occurred or any recommendation regarding discipline.

(3) An agency manager will review the investigation report and file and determine whether the evidence supports charging a person under investigation with a violation of ORS 696.007 to 696.995, or any rule promulgated thereunder. The agency shall not assert, propose to stipulate to, or issue a contested case notice alleging a violation of said statutes and rules without reasonable grounds as defined in section (1)(a) of this rule.

Stat. Auth.: ORS 696.385 & ORS 183.335

Stats. Implemented: ORS 696.396

Hist.: REA 4-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-29-06; REA 1-2006, f. 6-29-06, cert. ef. 6-30-06

**863-015-0230**

**Progressive Discipline of Licensees**

(1) The goal of progressive discipline is to correct a licensee's inappropriate behavior, deter the licensee from repeating the conduct, and educate the licensee to improve compliance with applicable statutes and rules. Progressive discipline means the process taken by the agency, which may include using increasingly severe steps or

measures when a licensee fails to correct inappropriate behavior or exhibits subsequent instances of inappropriate behavior.

(2) The commissioner may evaluate all relevant factors to determine whether to issue a non-disciplinary educational letter of advice, or to discipline a licensee through reprimand, suspension or revocation under ORS 696.301, including but not limited to:

- (a) The nature of the violation;
- (b) The harm caused, if any;
- (c) Whether the conduct was inadvertent or intentional;
- (d) The licensee's experience and education;
- (e) Whether the licensee's conduct is substantially similar to conduct or an act for which the licensee was disciplined previously;
- (f) Any mitigating or aggravating circumstances;
- (g) The licensee's cooperation with the investigation;
- (h) Any agency hearing orders addressing similar circumstances; and
- (i) The licensee's volume of transactions.

(3) The commissioner may issue a non-disciplinary educational letter of advice to a licensee which includes, but is not limited to the following statements:

- (a) The commissioner has determined not to pursue disciplinary action against the licensee; and
- (b) The letter is the result of an investigation and closes the investigation; and
- (c) The letter is not disciplinary in nature and will not appear in the agency's disciplinary records; and
- (d) The purpose of the letter is to educate the licensee; and
- (e) The letter will be expunged from the agency's records six years from the date of issuance.

(4) A reprimand is the maximum disciplinary action the commissioner may issue against a licensee if the licensee has committed an act or conduct that constitutes grounds for discipline under ORS 696.301 and such act or conduct does not

- (a) Result in significant damage or injury;
- (b) Exhibit incompetence in the performance of professional real estate activity;
- (c) Exhibit dishonesty or fraudulent conduct; or
- (d) Repeat conduct or an act that is substantially similar to conduct or an act for which the real estate licensee was disciplined previously.

(5) The commissioner may impose suspension or revocation only if the licensee has committed an act that constitutes grounds for discipline under ORS 696.301 and such act also meets the requirements of ORS 696.396(2)(c).

Stat. Auth.: ORS 696.385 & 2005 OL, Ch. 393  
 Stats. Implemented: ORS 696.241, 696.396  
 Hist.: REA 4-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-29-06; REA 1-2006, f. 6-29-06, cert. ef. 6-30-06

**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 & 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.

## Chapter 863 Real Estate Agency

(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 & 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 for a period of six 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, and 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.

(c) A real estate broker may store records of professional real estate activity in a single location other than the broker's office, main office of the principal real estate broker or branch office, in which the records are readily available for inspection, 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 & 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; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

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; REA 2-2006(Temp), f. 9-11-06, cert. ef. 9-15-06 thru 3-12-07; REA 1-2007, f. & cert. ef. 3-12-07

**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 & 696.385

Stats. Implemented: ORS 696.241(5) & 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

**863-015-0275**

**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 & 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 and Purpose**

(1) OAR 863-025-0010 to 863-025-0080 apply to the activities of a real estate property manager in the management of rental real estate.

(2) The purposes of OAR 863-025-0010 to 863-025-0080 are:

(a) To specify requirements for the management of rental real estate as defined in ORS 696.010(9);

(b) To protect owners and tenants of rental real estate; and

(c) To make the real estate property manager responsible for establishing a system of recordkeeping that

(A) Provides the Agency with access to the records of the real estate property manager; and

(B) Complies with OAR 863-025-0010 to 863-025-0080 and ORS Chapter 696.

(3) The goal of the Agency is to encourage real estate property managers to comply with the applicable statutes and rules through education and, if necessary, through the use of progressive discipline as defined in OAR 863-015-0230.

(4) Section (3) of this rule does not limit the Agency's authority to reprimand, suspend or revoke a real estate property manager license under ORS 696.301.

Stat. Auth.: ORS 183.335 & 696.385

**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 863-025-0080, unless the context requires otherwise:

(1) "Bank account" means an account in this state established by a property manager for receiving, holding and disbursing trust funds in a bank as defined in ORS 696.010(3).

(2) "Clients' Trust Account" means a bank account labeled as "Clients' Trust Account" on all bank records and checks that is established and maintained by a property manager, acting on behalf of an owner under a property management agreement, for depositing, holding and disbursing funds received by the property manager on behalf of an owner, including application fees and application screening fees.

(3) "Employee" means a non-licensed individual employed by a property manager for wages or a salary.

(4) "Identifying code" means a unique series of letters and/or numbers assigned by a property manager to a property management agreement at the time the agreement is signed by the parties and used on all transactions and records to reference the agreement.

(5) "Owner" means a person or persons who own rental real estate that is managed by a property manager.

(6) "Property manager" means a real estate licensee authorized to engage in management of rental real estate as defined in ORS 696.010(9).

(7) "Records" and "property management records" mean a complete and adequate documentation of the management of rental real estate.

(8) "Security Deposit" means a conditionally refundable payment or deposit of money, however designated, the primary function of which is to secure the performance of a rental agreement or any part of a rental agreement.

(9) "Security Deposits Account" means a clients' trust account labeled as "Clients' Trust Account—Security Deposits" on all bank records and checks that is established and maintained by a property manager, acting in a fiduciary capacity on behalf of an owner under a property management agreement, for depositing, holding and disbursing security deposit funds.

(10) "Sufficient funds" or "sufficient credit balance" means an amount of funds on an owner's ledger or a tenant's ledger that is enough to meet the amount of a planned disbursement from a clients' trust account or a security deposits account but which shall not include any security deposits in a clients' trust account that are required to be held pending a termination of a rental agreement. Only funds belonging to the owner or tenant on whose behalf the disbursement is planned may be considered in determining if there are sufficient funds or a sufficient credit balance.

Stat. Auth.: ORS 183.335 & 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; REA 1-2007, f. & cert. ef. 3-12-07

**863-025-0015**

**Agency Relationships; Disclosures; Written Company Policy**

(1) Each property manager shall develop, maintain and follow written policies for persons and activities under this rule.

(2) Each policy shall state the effective date of the policy.

(3) Policies must specify the duties, responsibilities, supervision and authority, including any authority to handle funds in a clients' trust account or security deposits account, for the following persons:

(a) A licensed property manager employed by the property manager, including any authority to negotiate tenant rental and lease agreements;

(b) An active real estate licensee engaged in the management of rental real estate under the supervision and control of a principal broker, including any authority to sign property management agree-

ments under OAR 863-025-0020(6) and tenant rental and lease agreements under OAR 863-025-0045(2); and

(c) An employee of the property manager, including any authority to:

(A) Negotiate tenant rental or lease agreements under OAR 863-025-0045(2);

(B) Check applicant or tenant references, including credit references;

(C) Physically maintain the real estate of an owner;

(D) Conduct tenant relations;

(E) Collect rent and other payments;

(F) Supervise premise managers; or

(G) Discuss financial matters relating to management of the real estate with the owner; and

(d) Contractors.

(4) Policies must include provisions that ensure the protection and confidentiality of the owner’s financial information, except as required under subpoena or court order or by applicable law, and except as permitted by the owner, even after the termination of the property management agreement.

(5) Policies must include provisions that specify the production and maintenance of all reports, records and documents required under this division.

(6) The following delegations of the property manager’s authority must be in writing, dated and signed by the property manager, and kept with written policies:

(a) Negotiate and sign property manager agreements under OAR 863-025-0020(6);

(b) Review and approve reconciliations and receive and disburse funds under OAR 863-025-0025(21); and

(c) Review, approve and accept tenant rental and lease agreements under OAR 863-025-0045(2).

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.361

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 1-2007, f. & cert. ef. 3-12-07

863-025-0020

Property Management Agreements

(1) A property manager shall not engage in the management of rental real estate without a written property management agreement between the owner and the property manager.

(2) A property management agreement shall include, but not be limited to:

(a) The address or legal description of the owner’s rental real estate;

(b) The duties and responsibilities of the property manager and the owner;

(c) The authority and powers given by the owner to the property manager;

(d) The term of the agreement and the method for termination;

(e) The terms and conditions of the agreement;

(f) The management fees, application fees, screening fees, rebates, discounts, overrides and any other form of compensation to be received by the property manager for management of rental real estate including when such compensation shall be earned and when it shall be paid;

(g) A description of the monthly statements of accounting the property manager shall provide to the owner;

(h) The disposition of the records of the management of the owner’s rental real estate after termination of the agreement;

(i) Disclosures of the use of any employees or a business in which the property manager has a pecuniary interest, that will perform work on the property;

(j) A statement that the property manager shall disclose to the owner in writing and in a timely manner, any use of employees or a business in which the property manager has a pecuniary interest, to perform work on the property;

(k) An identifying code;

(L) Signatures of the property manager or other person authorized in section (5) of this rule and the owner; and

(m) The date of the agreement.

(3) If the property manager and owner agree to any of the following terms, such provisions must be included in the property management agreement:

(a) Payment of a referral fee, rent credit or other compensation to a tenant as allowed under ORS 696.290(2);

(b) Placement of trust funds received by a property manager in a federally insured interest-bearing clients’ trust account or security deposits account as allowed under ORS 696.241(5), including provisions specifying to whom the interest earnings inure; and

(A) If the interest earnings inure to the benefit of the owner, when such interest earnings will be disbursed; and

(B) If the interest earnings inure to the benefit of the property manager, that such interest shall be disbursed to the property manager within three banking days from the date earned as provided in OAR 863-0025-0025(7).

(4) Any amendment or addendum to the property management agreement must be in writing and include the identifying code, the date of the amendment, the signature of the property manager and the signatures of all owners who signed the initial property management agreement.

(5) Only a principal real estate broker or real estate broker may enter into an agreement, which must be separate from the property management agreement, authorizing the real estate broker to represent an owner in the purchase, sale, lease-option or exchange of the rental real estate that shall include:

(a) The scope of the professional real estate activity;

(b) The term of the agreement;

(c) The compensation to be paid by the owner to the broker;

(d) Signatures of the real estate broker and the owner; and

(e) The date of the separate agreement.

(6) A property manager must negotiate and sign a property management agreement, except that a principal real estate broker engaging in the management of rental real estate may delegate such authority under OAR 863-025-0015(6) to a real estate licensee under the supervision and control of the principal real estate broker.

(7) The property manager shall promptly deliver a legible copy of the fully executed property management agreement, and any addenda or amendments, to the owner.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.361 & 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; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 1-2007, f. & cert. ef. 3-12-07

863-025-0025

Property Management Client Trust Account Requirements

(1) A property manager shall open and maintain at least one clients’ trust account as defined in OAR 863-025-0010.

(2) Only the following funds may be held in a clients’ trust account:

(a) Funds received by the property manager on behalf of an owner; and

(b) Interest earned, but only if the account is a federally insured interest-bearing account and the property management agreement complies with OAR 863-025-0020(3)(b).

(3) Except as provided in section (6) of this rule, a property manager who receives security deposits on behalf of an owner shall open and maintain a security deposits account as defined in OAR 863-025-0010, that is separate from the property manager’s clients’ trust account.

(4) Except as provided in section (6) of this rule and OAR 863-025-0030, a property manager who receives a security deposit on behalf of an owner shall deposit the security deposit into the property manager’s security deposits account within five banking days after receipt.

(5) Only the following funds may be held in a security deposits account:

(a) Security deposits as defined in OAR 863-0025-0010; and

(b) Interest earned, but only if the account is a federally insured interest-bearing account and the property management agreement complies with OAR 863-025-0020(3)(b).

(6) When a property management agreement and a corresponding lease or rental agreement provide that the security deposit shall be transferred to and held by the owner, the security deposit funds shall be deposited in the clients' trust account and disbursed to the owner in the month in which they are received.

(7) If interest earned in a clients' trust account under section (2)(b) of this rule or in a security deposits account under section (5)(b) of this rule inures to the benefit of the property manager, such interest must be disbursed to the property manager within three banking days of the date the interest is earned.

(8) Funds in a clients' trust account or security deposit account may not be deposited, held or disbursed by an owner.

(9) A property manager shall be an authorized signer on each client's trust account and any security deposits account and is solely responsible for the receipts and disbursements on each bank account.

(10) A property manager shall maintain and account for all checks used for a clients' trust account or security deposits account, including but not limited to voided checks. All such checks shall:

(a) Include the account number;

(b) Be pre-numbered or, if checks are computer-generated, must be numbered consecutively;

(c) If the account is a clients' trust account, include the words "clients' trust account," but may include additional identifying language; and

(d) If the account is a security deposits account, include the words "clients' trust account—security deposits," but may include additional identifying language.

(11) A property manager shall not disburse funds from a clients' trust account or security deposits account unless there are sufficient funds, as defined in OAR 863-025-0010, in the ledger account against which the disbursement is made.

(12) A property manager may only transfer funds from an owners' ledger account to one or more different owners' ledger accounts if:

(a) Each of the affected owners authorizing the transfer have signed and dated an agreement authorizing such transfer that is separate from any property management agreements;

(b) At the time of the transfer, the property manager enters 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 or destination of the transferred funds, as appropriate; and

(c) The property manager gives each owner a separate monthly accounting on the transfer or includes the accounting of the transfer activity in the regular monthly report to the owner.

(13) A property manager may only transfer funds between two or more owner's ledger accounts maintained for the same owner if:

(a) The owner has given the property manager prior written approval in the property management agreement or in an addendum to the agreement; and

(b) At the time of the transfer, the property manager enters the transfer information in each of the owner's affected ledger accounts including, but not limited to, the amount of the transfer, date of the transfer and the source or destination of the transferred funds, as appropriate.

(14) A property manager shall disburse earned management fees from the client's trust account at least once each month, unless a different schedule of disbursement is specified in the property management agreement and only if sufficient funds are available.

(15) The monthly cycle for a clients' trust account or security deposits account may begin and end on a stipulated date every month, if the date is consistent from month to month.

(16) A property manager shall not disburse funds from a clients' trust account or security deposits account based upon a wire or electronic funds transfer deposited into the 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.

(17) Upon request by the commissioner or an authorized representative of the commissioner, a property manager shall demonstrate that a sufficient credit balance, as defined in OAR 863-025-0010, existed in a ledger account at the time of a disbursement is made from a clients' trust account or security deposits account by producing financial records showing that such disbursement did not involve the use of any other owner's or tenant's trust funds.

(18) A property manager shall not utilize any form of debit card issued by financial institutions on a client trust account or security deposits account.

(19) A property manager shall reconcile each clients' trust account at least once a month and property managers with more than one clients' trust account may reconcile these accounts on different dates if the reconciliations maintain an adequate audit trail; and

(a) The property manager shall preserve and file the bank statements and monthly reconciliations in monthly sequence;

(b) The reconciliation shall demonstrate that the following balances are equal, and if not equal, the reconciliation shall contain full and complete explanations for any discrepancies:

(A) The reconciled bank balance of the clients' trust account;

(B) The balance in the check register or the record of receipts and disbursements;

(C) The total of all positive owners' ledgers; and

(c) The property manager shall date and sign the completed reconciliation.

(20) A property manager shall reconcile each security deposits account at least once a month and property managers with more than one security deposits account may reconcile these accounts on different dates if the reconciliations maintain an adequate audit trail; and

(a) The property manager shall preserve and file the bank statements and monthly reconciliations in monthly sequence;

(b) The reconciliation shall demonstrate that the following balances are equal, and if not equal, the reconciliation shall contain full and complete explanations for any discrepancies:

(A) The reconciled bank balance of the security deposits account;

(B) The balance in the check register or the record of receipts and disbursements;

(C) The total of all positive tenants' ledgers; and

(c) The property manager shall date and sign the completed reconciliation.

(21) A property manager may delegate the property manager's authority to review and approve reconciliations and to receive and disburse funds for a clients' trust account or security deposits account to another person if the property manager complies with the provisions of OAR 863-025-0015; however, the property manager remains solely responsible for all funds and transactions.

(22) Security deposits received by a property manager may be placed in a federally insured interest-bearing security deposits account only if:

(a) The property management agreement includes a provision for such an account under OAR 863-025-0020(3)(b);

(b) The tenant or tenants whose security deposits are deposited into such account have provided written approval for such an account; and

(c) The provisions in subsections (a) and (b) of this rule specify to whom and under what circumstances the interest earnings shall accrue and be disbursed.

(23) The property manager's interest in or disbursement to the property manager of interest earnings from a clients' trust account or security deposits account is not a commingling of trust funds with a licensee's personal funds.

(24) A property manager shall record the transfer of any funds from a clients' trust account or security deposits account by a check, 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. A property manager may transfer funds electronically via the Internet or Automated Clearing House (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.

(25) 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 clients' trust account by following the written instructions of the property manager only if the lockbox process is authorized in a property management agreement and:

(a) 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;

(b) For the purposes of this rule, the bank is considered an agent of the property manager; and

(c) 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 & 696.385  
 Stats. Implemented: ORS 696.241, 696.280 & 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; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2006(Temp), f. 9-11-06, cert. ef. 9-15-06 thru 3-12-07; REA 1-2007, f. & cert. ef. 3-12-07

**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 a security deposits account as defined in OAR 863-025-0010. All tenants' security deposits shall be maintained until:

(a) 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;

(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;

(c) 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

(d) The transfer of the tenant's deposit to the owner, 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 a security deposit is received as part of a larger check containing funds other than security deposits, the property manager may deposit the check into a clients' trust account of the property manager. However, the portion of the funds constituting security deposits shall be deposited into the security deposits account within three (3) banking days after deposit of the check containing the security deposit.

(3) When a clients' trust account 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 and then disbursed to the owner in the month in which they are received and upon availability of the funds.

Stat. Auth.: ORS 183.335 & 696.385  
 Stats. Implemented: ORS 696.241, 696.280 & 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; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 1-2007, f. & cert. ef. 3-12-07

**863-025-0035**

**Records; Required Records; Maintenance; Production**

(1) The property manager's records of the management of rental real estate will be considered complete and adequate if they contain, at least, the following:

(a) A legible copy of each executed property management agreement, and legible copies of any executed amendments to that agreement;

(b) Client trust account and security deposit account records;

(c) An owner's ledger maintained for each property management agreement;

(d) A record of receipts and disbursements maintained for each property management agreement;

(e) A legible copy of each tenant agreement;

(f) A tenant's ledger maintained for each tenant;

(g) A record of all cash receipts;

(h) Records of the reconciliation of each clients' trust account and security deposits account;

(i) A property manager shall maintain all cancelled checks with the bank statements to which the checks pertain; and

(j) A record of all deposits for each clients' trust account and security deposits account.

(2) If a property manager uses a computerized system for creating, maintaining and producing required records and reports:

(a) The property manager shall back up any data that is stored in the computerized system at least once every month; and

(b) 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 all records required under section (1) of this rule for a period of six years following the date on which such agreement or document is superseded, terminated, has expired or otherwise ceased to be used in the management of rental real estate.

(4) A property manager may maintain all records under section (1) of this rule within this state at a 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 and states the address of the location and the date the records will be relocated; and

(b) Provides written authorization to the Commissioner to inspect such records at the new location which includes the name and telephone number of any necessary contact person and the means of gaining access to the records.

(5) A property manager shall produce records required under section (1) of this rule for inspection by the Agency as follows:

(a) When the Agency makes a request for production of property management records, the property manager shall provide such records within no less than five business days; and

(b) If the Agency has reasonable grounds to believe that funds of an owner or tenant may be missing or misappropriated or that the property manager is engaging in fraudulent activity, any records demanded or requested by the Agency must be provided to the Agency immediately; and

(c) Failure to produce such records within the timelines stated in subsection (a) or (b) of this rule is a violation of ORS 696.301.

Stat. Auth.: ORS 183.335 & 696.385  
 Stats. Implemented: ORS 696.280 & 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; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2006(Temp), f. 9-11-06, cert. ef. 9-15-06 thru 3-12-07; REA 1-2007, f. & cert. ef. 3-12-07

**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 identi-

fied with the applicable owner's identifying 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 record of the daily balance shall be made available to the Commissioner or to the Commissioner's authorized representatives.

(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 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) Notwithstanding OAR 863-025-0025, a negative balance in a Client Trust Account may occur during the course of the day if, except in the case of a check returned for insufficient funds, the account is not negative at the close of the day.

(6) 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.

(7) A property manager may engage in electronic banking transactions, including the use of the Internet or by telephone, if a record of the transaction, sufficient to establish an audit trail, is created and maintained by:

- (a) Printing a copy of the Internet transaction that includes the date, time, and nature of the transaction; or
- (b) Making a written notation of the telephone transaction including the date, time, and nature of the transaction; or
- (c) Creating an electronic document that readily relates to the transaction containing the information in (a) or (b) of this section.

Stat. Auth.: ORS 183.335 & 696.385  
 Stats. Implemented: ORS 696.280 & 696.361  
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2006(Temp), f. 9-11-06, cert. ef. 9-15-06 thru 3-12-07; REA 1-2007, f. & cert. ef. 3-12-07

**863-025-0045  
 Tenant Agreements**

(1) Residential. The property manager shall file and maintain legible copies of all tenant rental or lease agreements for the time period required by these rules. 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.

(2) Residential and Non-Residential. 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. A property manager shall review each tenant rental or lease agreement generated by the property manager; however, 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 tenant rental and lease agreements on behalf of the property manager. In case of such authorization, the property manager remains responsible for each tenant 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 & 696.385  
 Stats. Implemented: ORS 696.280 & 696.361  
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2006(Temp), f. 9-11-06, cert. ef. 9-15-06 thru 3-12-07; REA 1-2007, f. & cert. ef. 3-12-07

**863-025-0050  
 Tenant's Ledger**

(1) Except as provided in section (3) of this rule, 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 security deposits in individual tenant's ledgers shall be used in the monthly reconciliation of the security deposits account 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 funds. 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 tenant or prospective tenant for rent, tenant's security deposits or fees and the tenancy fails for any reason within three banking days following receipt of the check, the property manager may return the check to the tenant or 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.

Stat. Auth.: ORS 183.335 & 696.385  
 Stats. Implemented: ORS 696.280 & 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; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 1-2007, f. & cert. ef. 3-12-07

**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 identifying code assigned by the property manager to the corresponding prop-

erty management agreement and each entry shall set forth the following information:

- (a) Date of receipt and disbursement of any funds made in accordance with the property management agreement.
  - (b) Date of deposit;
  - (c) Amount of deposit and identify from whom the deposit was received;
  - (d) Date of each related disbursement;
  - (e) Check number of each related disbursement;
  - (f) Amount and identify of payee for each related disbursement;
  - (g) If applicable, the dates and amounts of interest earned and credited to the account; and
  - (h) A balance after posting each entry.
- (3) A record of the running daily balance shall be made available to the Commissioner or to the Commissioner's authorized representatives on demand.

(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. 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 & 696.385  
 Stats. Implemented: ORS 696.280 & 696.361  
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 1-2007, f. & cert. ef. 3-12-07

**863-025-0060  
 Cash Receipts**

- (1) A property manager shall prepare a legible written receipt for any cash funds received under a property management agreement.
- (2) Cash receipts prepared shall be consecutively pre-numbered, be printed in at least duplicate form and shall contain:
  - (a) The date of receipt of the cash funds;
  - (b) The amount of the funds;
  - (c) The reason for payment of the funds received;
  - (d) The identifying code of the owner on whose behalf the cash funds were received;
  - (e) The tenant's name; and
  - (f) The name of the individual who actually received the cash and prepared the receipt.
- (3) A copy of the receipt shall be maintained in the property manager's records.

Stat. Auth.: ORS 183.335 & 696.385  
 Stats. Implemented: ORS 696.280 & 696.361  
 Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2007, f. & cert. ef. 3-12-07

**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 fifth banking day following the date of the receipt of the funds into a clients' trust account or security deposits account as defined in OAR 863-025-0010 and 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 on behalf of an owner 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 for funds received pursuant to OAR 863-025-0050(3) and 863-025-0025(16), 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 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 & 696.385  
 Stats. Implemented: ORS 696.280 & 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; REA 1-2007, f. & cert. ef. 3-12-07

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

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

- (1) Terminate the property management activity conducted pursuant to the agreement in the manner provided by the terms of the agreement;
- (2) Notify the owner and any tenants of the property of the termination;
- (3) Not later than 60 days after the effective date of the termination, provide the owner with any unobligated funds due to the owner under the agreement;
- (4) Not later than 90 days after the effective date of the termination, provide the owner with:
  - (a) A final accounting of the owner's ledger account;
  - (b) The amount of any obligated funds held in the property manager's clients' trust account under the property management agreement;
  - (c) A statement of why the obligated funds are being held by the property manager; and
  - (d) A statement of when and to whom the obligated funds will be disbursed by the property manager;
- (5) 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;
- (6) Immediately notify each such tenant for whom the property manager holds a security deposit that:
  - (a) The security deposit will be transferred to the owner or to a new property manager; and
  - (b) The name and address of the owner or the name and address of the new property manager to whom these deposits will be transferred;
- (7) Not expend any tenant security deposits for payment of any expenses or fees not otherwise allowed by the tenant's rental or lease agreement; and
- (8) Complete any final accounting, inspection or other procedures required by the tenant 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.
- (9) As part of the final accounting sent to the owner under this rule, 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; and
- (10) 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 & 696.385  
 Stats. Implemented: ORS 696.280 & 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; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 1-2007, f. & cert. ef. 3-12-07

**863-025-0080  
 Audits and Compliance Reviews**

(1) Unless the Agency has reasonable grounds to believe that the funds of an owner or tenant are missing or have been misappropriated, the Agency shall provide a property manager with at least

five business days' written notice before the agency conducts a compliance review and audit of the property manager.

(2) After a compliance review and audit of a property manager under section (1) of this rule, if the Agency determines that a property manager is not in compliance with ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, or OAR chapter 863, the Agency shall allow the property manager at least 30 days to cure the noncompliance without sanction unless the Agency has reasonable grounds to believe that the funds of an owner or tenant are missing or have been misappropriated.

Stat. Auth.: ORS 183.335 & 696.385  
 Stats. Implemented: ORS 696.280 & 696.361  
 Hist.: REA 2-2006(Temp), f. 9-11-06, cert. ef. 9-15-06 thru 3-12-07; REA 1-2007, f. & cert. ef. 3-12-07

**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, 94 & 696  
 Stats. Implemented: ORS 94.803  
 Hist.: REC 2-1982, f. 5-3-82, ef. 5-15-82; REC 1-1983(Temp), f. & ef. 8-3-83; REC 1-1984, f. 1-26-84, ef. 2-1-84; REA 5-1987, f. 12-3-87, ef. 1-1-88

**863-030-0060**

**Filing with Commissioner**

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

(1) 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 purchaser and where timeshare property not timely reserved for use or occupancy by purchasers may be rented to members of the public:

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

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

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

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

Stat. Auth.: ORS 92, 94 & 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, 94 & 696  
 Stats. Implemented: ORS 94.823, 94.873 & 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, 94 & 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, 94 & 696

Stats. Implemented: ORS 94.823, 94.940 & 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 & 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, 181, 183.335, 293 & 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**

**863-050-0000**

**Definitions**

As used in OAR chapter 863, division 50, unless the context requires otherwise:

(1) "Claim" means a request filed with the Agency in accordance with OAR 863-50-215 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.

(2) "Claimant" means a person who has filed a claim with the Agency.

(3) "Closed Escrow." An escrow is closed when all property titles have been transferred and all monies and documents have been disbursed or distributed in accordance with the instructions of the Principals to the escrow transaction.

(4) "Escrow Activity" means any activity falling within the regulation and control of ORS 696.505 to 696.585.

(5) "Holdback" means a separate escrow, derived from a closing escrow, wherein funds are held after closing for the purpose of paying obligations related to the closing or to the financing of real or personal property therein after the closing has occurred.

(6) "Net worth," as used in ORS and OAR, is the remaining balance after subtracting total liabilities from total assets.

(7) "One sided escrow" as used in ORS 696.581(6), means an escrow that is opened by, or on behalf of, one party to a written, proposed agreement between two or more parties, for the purpose of depositing funds, property or documents into the escrow account prior to execution of the agreement by the other party(s).

(8) "Principal" means "principal" as defined in ORS 696.505(4) and

(a) In a collection escrow, means the seller or buyer, lender or borrower, vendor or vendee.

(b) In a holdback escrow, means those parties directing the holdback.

(c) In a one sided escrow, means the depositing party

(9) "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 183.335, 696.385, 696.541(1), 696.578(3)&(4) & 696.581(6)

Stats. Implemented: ORS 105.475 & 696.581

Hist.: REA 5-2003, f. 12-24-03, cert. ef. 1-1-04

**863-050-0015**

**Documents or Property Held in Escrow**

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 from the principals to the escrow transactions or pursuant to order of a court of competent jurisdiction.

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

Stats. Implemented: ORS 105.475 & 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; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04

**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:

(a) A family relationship by blood or marriage with the escrow officer or such other staff member who may be assigned responsibility for the administration of the escrow agent's transaction file, with respect to any principal in the transaction, real estate licensee, lender, mortgage or loan broker, builder or subdivider interested in the transaction; and

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

(c) The nature of any financial interest of the escrow agent, escrow officer or such other staff member assigned responsibility for the administration of the escrow agent's file when that interest is

more than 10 percent ownership interest in any principal in the transaction or in any real estate licensee, lender, mortgage or loan broker, developer, builder or subdivider interest 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 ten 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) & 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; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04; REA 4-2004, f. 4-28-04 cert. ef. 5-3-04

**863-050-0025**

**Closing Statement**

(1) 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. The escrow agent shall retain a copy of the escrow statement 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.

(2) Upon request of a seller who has financed some or all of the sales price, the escrow agent shall furnish the seller with a copy of the buyer/borrower statement.

Stat. Auth.: ORS 696  
 Stats. Implemented: ORS 696.535(1)(g) & 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; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04

**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 & 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 & 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

**863-050-0035**

**Letters of Credit**

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

(a) “Applicant” means the licensee who applies for and causes the financial institution to issue the letter of credit.

(b) Financial institution” means any financial institution as defined in ORS 706.008 doing business in the State of Oregon.

(c) “Beneficiary” means the State of Oregon Real Estate Agency.

(d) “Clean and unconditional” means a letter of credit or confirmation which makes no reference to any other conditional agreement, document or entity.

(2) For the purposes of complying with ORS 696.527(4)(b), and for a certified, annually renewable letter of credit to be satisfactory to the commissioner, it must:

(a) Be issued by a financial institution doing business in the state of Oregon;

(b) Name the State of Oregon Real Estate Agency as Beneficiary;

(c) Be clean and unconditional;

(d) Be automatically extended, without amendment, for successive one-year periods from the stated expiration or any future expiration date until such time as notice is given in accordance with subsection (2)(d);

(e) Provide for no less than sixty (60) days notice to the Beneficiary of any election not to renew the letter of credit; and

(f) Be payable by sight draft or upon presentation at an office of the bank by an authorized representative of the Beneficiary accompanied by a signed statement certifying that "The attached order from the Commissioner of the Oregon Real Estate Agency represents that the applicant is in violation of ORS 696.505–696.590."

(3) The Commissioner may require that a Letter of Credit include additional terms and conditions at the Commissioner's discretion.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.527

Hist.: REA 2-2004(Temp), f. & cert. ef. 1-15-04 thru 6-25-04; REA 4-2004, f. 4-28-04 cert. ef. 5-3-04

### Accounting Rules

#### 863-050-0040

##### Release of Earnest Money

(1) For the purpose of complying with subsection (7) 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 acknowledgment by any one buyer that the right to revoke has expired; and

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

(2) 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. For the purpose of complying with subsection (7) 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.

(3) As used in this rule:

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

(4) For the purpose of complying with subsection (7) of ORS 105.475, an escrow agent shall be subject to the collected funds requirements of OAR 863-050-0055(1) and (11).

(5) If the escrow agent holding funds described in OAR 863-050-0015 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 (7) and (8) of ORS 105.475 by interpleader of the deposits and considerations delivered to it.

Stat. Auth.: ORS 696

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

Hist.: REA 5-2003, f. 12-24-03, cert. ef. 1-1-04

#### 863-050-0050

##### Accounting Controls; Record Inspection

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

(a) Individual ledgers. Individual ledgers shall be identified by the escrow number and the names of the principals, to record the accounting for each escrow. Entries shall record each receipt and disbursement of escrow funds and shall be posted in date order on, or as of, the date they occur. Entries shall show the amount of the entry, the date of the entry, the receipt number, the check number or wire identification number and shall identify from or to whom funds were received or disbursed. Each ledger shall show and record a running balance of funds held in the individual escrow, on a daily basis, as entries occur. If an escrow agent uses more than one escrow trust bank account, each ledger shall identify the account in which its escrow funds are deposited.

(b) Receipts and disbursements journal, or checkbook register. A journal or register shall be established for each escrow trust bank account and shall record all receipts and disbursements of escrow funds. Entries shall be posted in date order and record a running book balance for total escrow liability of the agent in each trust bank account, on a daily basis. If entries are posted in batch totals, backup documentation adequate to identify the individual items in the batch and verify the total shall be maintained.

(2) An escrow agent shall reconcile each escrow trust bank account at least once each month. The reconciliation shall be maintained as follows:

(a) The reconciliation shall have three components:

(A) The bank statement balance, adjusted for outstanding checks and other reconciling bank items;

(B) The balance of the receipts and disbursements journal or check book register as of the bank statement cut-off date; and

(C) The sum of all the balances of the individual escrow ledgers as of the bank statement cut-off date.

(b) The balances of each component of the reconciliation shall be equal to and reconciled with each other. If any adjustment is needed, the adjustment shall be clearly identified and explained;

(c) The agent or an authorized officer in direct control of escrow operations of the agent shall verify, sign and date the reconciliation, upon completion;

(d) Outstanding checks shall be listed by check number, issue date, payee and amount.

(e) The reconciliation worksheet, bank statement and all supporting documentation including, but not limited, to copies of the receipts and disbursements journal, or check book register, and a listing of each individual escrow ledger with a balance as of the reconciliation date, shall be preserved and filed by the agent in logical sequence. Where these records are computerized, they are to be printed out for filing with the reconciliation; and

(f) All reconciling items must be identified and cleared promptly.

(3) This rule shall also apply to interest bearing escrow trust accounts established pursuant to OAR 863-050-0060, except that where monthly bank statements are not provided reconciliation may be quarterly.

(4) Record Inspection. 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.

(a) 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 maintained at the computer firm's place of business.

(b) 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 181, 183, 293 & 696  
 Stats. Implemented: ORS 696.535(2), 696.541(2) & 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; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04

**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. 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.

(2) Escrow fees from a closing escrow shall not be withdrawn from the closing escrow account or escrow bank account until the escrow is in a position to be closed.

(3) 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.

(4) 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.

(5) 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 696.578. 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.

(6) 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 & 696.541  
 Stats. Implemented: ORS 696.535(2) & 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; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04

**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. Such approval may be contained in any agreement whether or not addressed to the escrow agent. 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. Such written instructions may be provided after the deposit to the interest bearing account but before there is any disbursement of funds from the escrow 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; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04

**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 directly or 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; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04

**863-050-0066**

**Deposits**

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

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

Stat. Auth.: ORS 696

Stats. Implemented: ORS 696.505 & 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;

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

(e) Escrow log. Each escrow shall be assigned an identifying number in a logical sequence approved by the Real Estate Commissioner and entered in an escrow log, in that order. Log entries shall show the date of opening, the escrow number and the name(s) of the principal(s); or

(f) Hard copy escrow ledger. At the time of closing or cancellation, each escrow ledger described in OAR 863-050-0050(1) shall be printed out, if computerized, and filed separately in a logical sequence approved by the Real Estate Commissioner.

(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 shall 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 un-

numbered 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; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04

**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, 183, 293 & 696

Stats. Implemented: ORS 696.535(3) & 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

**863-050-0115**

**Records Retention**

(1) 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.

(2) In addition to and not in lieu of the requirements of ORS 192.825 to 192.855 (The Electronic Signature Act), the requirements of OAR 863-050-0005 through 863-050-0150 and the Oregon Escrow Law shall apply to all records, including any items generated through E-mail or any other means which does not require the creation of a paper document.

(3) An escrow agent may use electronic image storage media to retain and store copies of , deposit receipts, canceled checks and other documents executed by him or her or obtained by him or her in connection with any escrow activity and transaction, provided 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 escrow agent or escrow agent 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.

(4) An escrow agent shall maintain at the escrow agent's office a means of viewing copies of documents or records stored pursuant to this section. An escrow agent shall provide, at the escrow agent's

expense, a paper copy of any document or record requested by the Agency.

Stat. Auth.: ORS 696.541  
 Stats. Implemented: OL 2003 Ch. 427, Sec. 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 5-2003, f. 12-24-03, cert. ef. 1-1-04; REA 4-2004, f. 4-28-04 cert. ef. 5-3-04

**Audit Rules**

**863-050-0150  
 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 an Annual Audit Report consisting of the following to the Commissioner not later than 120 days after the end of the agent’s tax or accounting year:

(a) A set of financial statements of the agent, prepared in accordance with generally accepted accounting principals, by a certified public accountant or other qualified person approved by the Commissioner. The preparer of financial statements shall provide a statement as to the type of the presentation made and include all appropriate footnotes. These financial statements shall include a balance sheet as of the agent’s year end and statements of profit and loss, cash flows, retained earnings and any other changes in capital accounts, for the year then ended; and

(b) 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

(c) A list of closing escrows which have been open for more than twelve (12) months 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

(d) 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

(e) 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

(f) 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 & 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; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04

**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 & 696  
 Stats. Implemented: ORS 696.525 & 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 & 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 & 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 & 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 & 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 & 696

Stats. Implemented: ORS 696.525 & 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 & 696

Stats. Implemented: ORS 696.525 & 696.527

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

### 863-050-0240

#### Fingerprint Requirements for Escrow Licensing

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

Stat. Auth.: ORS 183.335, 696.511 & 696.793

Stats. Implemented: ORS 696.511

Hist.: REA 2-1997, f. 6-18-97, cert. ef. 7-1-97; REA 4-1997, f. 11-24-97, cert. ef. 12-1-97

## DIVISION 60

### CONDOMINIUM SALES

#### 863-060-0015

##### Condominium Onsite Inspection Expenses

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

Stat. Auth.: ORS 91, 94, 100 & 696

Stats. Implemented: ORS 100.700

Hist.: REC 50(Temp), f. & ef. 11-3-77; REC 51, f. & ef. 12-20-77; REC 3-1984, f. 6-18-84, ef. 7-1-84; REA 7-1987, f. 12-3-87, ef. 1-1-88; REA 1-1990, f. & cert. ef. 4-18-90

