

Chapter 863 Real Estate Agency

DIVISION 1

863-014-0160 Deceased or Incapacitated Broker

PROCEDURAL RULES

863-001-0000 Notice of Proposed Rule
863-001-0005 Rules of Procedure
863-001-0006 Hearing Notices and Postponements
863-001-0007 Refunds and Charges
863-001-0010 Public Records
863-001-0020 Payment of Fees to the Agency

DIVISION 5

CRIMINAL RECORDS CHECK AND CRIMINAL BACKGROUND FITNESS DETERMINATION RULES

863-005-0000 Purpose
863-005-0005 Definitions
863-005-0010 Criminal Records Check Process
863-005-0020 Criminal Background Fitness Determination
863-005-0030 Crimes Relevant to a Criminal Background Fitness Determination
863-005-0040 Incomplete Criminal Background Application
863-005-0050 Notice to Subject Individual of Incomplete Criminal Background Application
863-005-0060 Notice to Subject Individual of Criminal Background Fitness Determination
863-005-0070 Appeals
863-005-0080 Recordkeeping and Confidentiality
863-005-0090 Fees

DIVISION 10

REAL ESTATE MARKETING ORGANIZATION RULES

863-010-0600 Definitions
863-010-0610 Application for Licensing
863-010-0620 Term of License
863-010-0630 Issuance of License
863-010-0640 Fees
863-010-0650 Real Estate Marketing Employee Registration
863-010-0660 Onsite Inspection of Nonresident Real Estate Marketing Organizations

DIVISION 14

REAL ESTATE BROKER LICENSING

863-014-0000 Applicability and Purpose
863-014-0003 Definitions
863-014-0010 License Application Form and Content
863-014-0015 Background Check Application and Fingerprint
863-014-0020 Examinations
863-014-0030 License Issue, Term and Form
863-014-0035 Real Estate Broker Licensing Requirements
863-014-0040 Principal Real Estate Broker Licensing Requirements
863-014-0042 Waiver of Experience Requirements
863-014-0050 License Renewal
863-014-0060 Limited Licenses
863-014-0061 Affiliated and Subsidiary Organizations
863-014-0062 Mailing Address, Email Address, Address Change, Service of Notice
863-014-0063 Real Estate License Transfers, Principal Brokers' Responsibilities, Authority to Use Registered Business Name
863-014-0065 Inactive License, Change License Status to Active, Change License Category, License Reactivation
863-014-0066 Licensee Name Change
863-014-0070 License Surrender
863-014-0075 Reissuing Suspended License
863-014-0076 Signature Requirements
863-014-0080 Nonresident License Recognition
863-014-0085 Authorization to Control Broker's Business
863-014-0090 Authorization to Temporarily Supervise
863-014-0095 Business Name Registration
863-014-0100 Branch Office Registration

DIVISION 15

REAL ESTATE BROKER REGULATION

863-015-0000 Applicability and Purpose
863-015-0003 Definitions

General Rules

863-015-0125 Advertising
863-015-0130 Listing Agreements
863-015-0135 Offers to Purchase
863-015-0140 Principal Real Estate Broker Supervision Responsibilities
863-015-0145 Real Estate Transactions Involving a Licensee as a Principal to the Transaction
863-015-0150 Closing Real Estate Transactions
863-015-0155 Attorney's Advice
863-015-0175 Reporting Litigation Involving Licensees
863-015-0186 Clients' Trust Accounts — Disbursal of Disputed Funds
863-015-0188 Compensation Agreements
863-015-0190 Competitive Market Analyses; Letter Opinions; Lending Collateral Analysis; Default Collateral Analysis
863-015-0200 Agency Relationships
863-015-0205 Disclosed Limited Agency
863-015-0210 Disclosed Limited Agency Agreement
863-015-0215 Initial Agency Disclosure Pamphlet

Records Rules

863-015-0250 Professional Real Estate Activity Records
863-015-0255 Clients' Trust Account Records Requirements and Document Transmittal Requirements
863-015-0260 Records Retention
863-015-0265 Interest-Bearing Accounts
863-015-0275 Clients' Trust Account Reconciliation and Records

DIVISION 20

REAL ESTATE CONTINUING EDUCATION

863-020-0000 Applicability and Purpose
863-020-0005 Definitions
863-020-0007 Length of Continuing Education Courses
863-020-0010 License Renewal Continuing Education Requirements Effective January 1, 2011
863-020-0015 Licensee Records
863-020-0020 Continuing Education Provider Qualifications
863-020-0025 Board Approval of Continuing Education Provider Qualification
863-020-0030 Application for Continuing Education Provider Certification and Renewal
863-020-0035 Courses Offered by Continuing Education Providers
863-020-0040 Certain Courses Required for License Renewal that are Also Eligible for Continuing Education Credit
863-020-0045 Course Learning Objectives
863-020-0050 Continuing Education Provider Responsibilities
863-020-0055 Continuing Education Provider Record-keeping Requirements
863-020-0060 Continuing Education Instructor Form
863-020-0065 Certification Revocation

DIVISION 22

LICENSE APPLICANT COURSE REQUIREMENTS AND COURSE APPROVAL

863-022-0000 Applicability and Purpose
863-022-0005 Definitions
863-022-0010 Course Requirements for Real Estate Broker License Applicants

Chapter 863 Real Estate Agency

863-022-0015	Course Requirements for Property Manager License Applicants
863-022-0020	Advanced Practices Course Requirement for the First Active Renewal of Broker License
863-022-0022	Property Manager Advanced Practices Course Requirement for the First Active Renewal of License
863-022-0025	Education Course Requirements for Principal Broker License Applicants
863-022-0030	Agency Approval of Education Courses Provided by Private Career Schools
863-022-0035	Approval of Courses Provided by Community Colleges, Colleges, and Universities
863-022-0045	Agency Approval of Advanced Practices Course
863-022-0050	Agency Approval of Brokerage Administration and Sales Supervision Course and Instructors
863-022-0052	Changes in Application Information, Instructors, Course Materials and Failure to Comply
863-022-0055	Board Approval of Three-Hour Rule and Law Change Course
863-022-0060	Responsibilities of Providers of Real Estate Broker, Principal Broker and Property Manager License Application Courses

DIVISION 24

REAL ESTATE PROPERTY MANAGER LICENSING

863-024-0000	Application and Purpose
863-024-0003	Definitions
863-024-0010	License Application Form and Content
863-024-0015	Background Check and Fingerprint Requirements
863-024-0020	Examinations
863-024-0030	License Issue, Term, Form
863-024-0045	Property Manager Licensing Requirements
863-024-0050	License Renewal
863-024-0060	Limited Licenses
863-024-0061	Affiliated and Subsidiary Organizations
863-024-0062	Mailing Address, Email Address, Address Change, Service of Notice
863-024-0063	Property Manager License Transfers, Principal Brokers' Responsibilities, Authority to Use Registered Business Name
863-024-0065	Inactive License, Change License Status to Active, License Reactivation
863-024-0066	Licensee Name Change
863-024-0070	License Surrender
863-024-0075	Reissuing Suspended License
863-024-0076	Signature Requirements
863-024-0085	Authorization to Control Property Manager's Business
863-024-0095	Business Name Registration
863-024-0100	Branch Office Registration

DIVISION 25

PROPERTY MANAGEMENT

863-025-0005	Application and Purpose
863-025-0010	Definitions
863-025-0015	Written Policies and Delegation of Authority
863-025-0020	Property Management Agreements
863-025-0025	Clients' Trust Account and Security Deposits
863-025-0030	Account Requirements
863-025-0035	Tenant Security Deposits
863-025-0035	Records; Required Records; Maintenance; Production
863-025-0040	Record of Receipts and Disbursements
863-025-0045	Tenant Agreements
863-025-0050	Tenant Ledger
863-025-0055	Owner Ledger
863-025-0060	Cash Receipts
863-025-0065	Deposits and Funds Received
863-025-0068	Owner Information Request
863-025-0070	Termination, Transfer of Property Management
863-025-0080	Compliance Reviews and Mail-in Audits

DIVISION 27

INVESTIGATIONS AND DISCIPLINE

863-027-0000	Applicability and Purpose
863-027-0005	Definitions
863-027-0010	Investigation of Licensees: Procedures and Reporting
863-027-0020	Progressive Discipline of Licensees

DIVISION 30

OREGON SUBDIVISION CONTROL LAW

Timeshare Plans

863-030-0050	Definitions
863-030-0060	Filing with Commissioner
863-030-0065	Presales of Timeshare Plans
863-030-0075	Exchange Programs
863-030-0080	Promotional Programs

DIVISION 40

MEMBERSHIP CAMPING CONTRACT RULES

863-040-0010	Application for Membership Camping Contract Registration
863-040-0040	Membership Camping Contract Salesperson Registration and Renewal

DIVISION 49

ESCROW AGENT LICENSING

863-049-0000	Applicability and Purpose
863-049-0005	Definitions
863-049-0010	Initial License Application Form and Content
863-049-0015	Additional Information for Legal Entities
863-049-0020	Additional Information for Individual Applicants
863-049-0025	Criminal Records Check Clearance Application and Fingerprint Card
863-049-0030	License Issue, Term, and Form
863-049-0035	License Renewal
863-049-0040	Notice to Agency of Changes
863-049-0045	Application for Approval of Changes to Ownership or Individuals in Charge of Escrow Operations
863-049-0050	Letters of Credit
863-049-0055	Annual Report and Financial Statements

DIVISION 50

ESCROW AND ESCROW AGENT REGULATIONS

General Rules

863-050-0000	Definitions
863-050-0015	Documents or Property Held in Escrow
863-050-0020	Disclosure of Interest
863-050-0025	Closing Statement
863-050-0030	Bank Charges
863-050-0033	Notice of Judgments

Accounting Rules

863-050-0050	Accounting Controls; Record Inspection
863-050-0052	Disbursal of Disputed Real Estate Broker Compensation
863-050-0055	Accounting Practices
863-050-0060	Interest-Bearing Accounts
863-050-0065	Disclosure of Bank Services and Refunds
863-050-0066	Deposits

Records Rules

863-050-0100	Records
863-050-0105	Record Location
863-050-0115	Records Retention

Audit Rules

863-050-0150 Annual Report; Financial Statements; Audit or Examination Expenses

DIVISION 60

CONDOMINIUM SALE

863-060-0015 Condominium Onsite Inspection Expenses

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 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.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Real Estate Agency.]

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 monies 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

863-001-0020

Payment of Fees to the Agency

(1) As used in this rule, the following definitions apply:

(a) "Electronic funds transfer" (EFT) has the same meaning given the term in ORS 293.525.

(b) "EFT — ACH Credit" means the electronic funds transfer from a person's or entity's bank account, initiated by the person or entity, and cleared through the Automated Clearing House (ACH) network for deposit to the Agency.

(c) "EFT — ACH Debit" means the electronic funds transfer from a person's or entity's bank account, initiated by the Agency and cleared through the ACH network to debit a person's or entity's bank account and deposit to the Agency's account.

(2) Effective September 12, 2011, it is the policy of the Oregon Real Estate Agency that the payment method for accepting payments by persons or entities doing business with the Agency for the following fees shall be by EFT or credit/debit card payments:

(a) An application fee for a real estate broker, principal real estate broker or real estate property manager license.

(b) An application fee for renewal of a real estate broker, principal real estate broker or real estate property manager license.

(c) An application fee for the registration of a branch office of a principal real estate broker or property manager.

(d) An application fee for a licensee name change.

(e) An application fee to transfer a real estate broker's, principal real estate broker's or real estate property manager's license.

(f) An application fee to renew an inactive real estate broker, principal real estate broker or real estate property manager inactive license.

(h) An application fee for the reactivation of an inactive license of a real estate broker, principal real estate broker or real estate property manager.

(i) A late renewal fee that is in addition to the renewal fee, for late renewal.

(k) An application fee for the initial registration of a business name.

(l) An application fee for a membership campground contract broker, operator or salesperson.

(3) Electronic payments to the Agency shall be made using one of the following methods:

(a) Online payment process available on the Agency's website. A person or entity will authorize the Agency to charge their credit/debit card or debit their bank account using an EFT — ACH Debit through the Agency's online payment process.

(b) EFT — ACH Credit to the Agency's designated bank account. A person or entity choosing to send EFT — ACH Credits to the Agency's bank account, shall complete a form provided by the Agency. This form shall be submitted to the Agency to authorize EFT — ACH Credit payments to the Agency.

(4) Notwithstanding (3) of this rule, the Agency will grant an exception and accept payments by check when a person or entity presents satisfactory evidence of special circumstances, which the Agency will review on a case by case basis and will consider based on whether the processing of a paper check would be in the best interests of the Agency. A request for exception must be made in writing.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.270 & 296.525

Hist.: REA 4-2011, f. 8-15-11, cert. ef. 9-1-11; REA 8-2011, f. & cert. ef. 11-15-11

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 696.606. Licensee shall also mean an escrow agent as defined in 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 696.606, an escrow agent license or renewal under 696.511, a membership camping contract broker or salesperson registrant under 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 properly 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;
 (vvvv) ORS 165.074, Unlawful factoring of payment card transaction;
 (wwww) ORS 165.080, Falsifying business records;
 (xxxx) ORS 165.095, Misapplication of entrusted property;
 (yyyy) ORS 165.100, Issuing a false financial statement;
 (zzzz) ORS 165.102, Obtaining execution of documents by deception;
 (aaaaa) ORS 165.581, Cellular counterfeiting I;
 (bbbbb) ORS 165.800, Identity theft;
 (ccccc) ORS 165.810, Unlawful possession of a personal identification device;
 (ddddd) ORS 165.813, Unlawful possession of fictitious identification;
 (eeeee) ORS 166.005, Treason;
 (fffff) ORS 166.015, Riot;
 (ggggg) ORS 166.085, Abuse of corpse II;
 (hhhhh) ORS 166.087, Abuse of corpse I;
 (iiiiii) ORS 166.155, Intimidation II;
 (jjjjj) ORS 166.165, Intimidation I;
 (kkkkk) ORS 166.220, Unlawful use of weapon;
 (lllll) ORS 166.270, Possession of weapons by certain felons;
 (mmmmm) ORS 166.272, Unlawful possession of machine guns, certain short-barreled firearms and firearm silencers;
 (nnnnn) ORS 166.275, Possession of weapons by inmates of institutions;
 (ooooo) ORS 166.385, Possession of hoax destructive device;
 (ppppp) ORS 166.429, Firearms used in felony;
 (qqqqq) ORS 166.720, Racketeering activity unlawful;
 (rrrrr) ORS 167.012, Promoting prostitution;
 (sssss) ORS 167.017, Compelling prostitution;
 (ttttt) ORS 167.062, Sadomasochistic abuse or sexual conduct in live show;
 (uuuuu) ORS 167.065, Furnishing obscene materials to minors;
 (vvvvv) ORS 167.070, Sending obscene materials to minors;
 (wwwww) ORS 167.075, Exhibiting an obscene performance to a minor;
 (xxxxx) ORS 167.080, Displaying obscene materials to minors;
 (yyyyy) ORS 167.212, Tampering with drug records;
 (zzzzz) 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;
 (ddddd) ORS 167.333, Sexual assault of animal;
 (eeeeee) ORS 181.599, Failure to report as sex offender;

(fffff) ORS 192.852/865, Prohibited obtaining or disclosing of protected information;
 (gggggg) ORS 411.630, Unlawfully obtaining public assistance;
 (hhhhhh) ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance);
 (iiiiii) ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits;
 (jjjjjj) ORS 471.410, Providing liquor to person under 21 or to intoxicated
 (kkkkkk) ORS 475.525, Sale of drug paraphernalia prohibited;
 (llllll) ORS 475.805, Providing hypodermic device to minor prohibited;
 (mmmmmm) ORS 475.840, Prohibited acts generally (regarding drug crimes);
 (nnnnnn) ORS 475.846, Unlawful manufacture of heroin;
 (oooooo) ORS 475.848, Unlawful manufacture of heroin within 1,000 feet of school;
 (pppppp) ORS 475.850, Unlawful delivery of heroin;
 (qqqqqq) ORS 475.852, Unlawful delivery of heroin within 1,000 feet of school;
 (rrrrrr) ORS 475.854, Unlawful possession of heroin;
 (ssssss) ORS 475.856, Unlawful manufacture of marijuana;
 (tttttt) ORS 475.858, Unlawful manufacture of marijuana within 1,000 feet of school;
 (uuuuuu) ORS 475.860, Unlawful delivery of marijuana;
 (vvvvvv) ORS 475.862, Unlawful delivery of marijuana within 1,000 feet of school;
 (wwwwww) ORS 475.864, Unlawful possession of marijuana;
 (xxxxxx) ORS 475.866, Unlawful manufacture of 3,4 methylenedioxymethamphetamine;
 (yyyyyy) ORS 475.868, Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;
 (zzzzzz) ORS 475.870, Unlawful delivery of 3,4-methylenedioxymethamphetamine;
 (aaaaaaa) ORS 475.872, Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;
 (bbbbbbb) ORS 475.874, Unlawful possession of 3,4-methylenedioxymethamphetamine;
 (ccccccc) ORS 475.876, Unlawful manufacture of cocaine;
 (ddddddd) ORS 475.878, Unlawful manufacture of cocaine within 1,000 feet of school;
 (eeeeeee) ORS 475.880, Unlawful delivery of cocaine;
 (ffffff) ORS 475.882, Unlawful delivery of cocaine within 1,000 feet of school;
 (ggggggg) ORS 475.884, Unlawful possession of cocaine;
 (hhhhhhh) ORS 475.886, Unlawful manufacture of methamphetamine;
 (iiiiiii) ORS 475.888 Unlawful manufacture of methamphetamine within 1,000 feet of school;
 (jjjjjjj) ORS 475.890, Unlawful delivery of methamphetamine;
 (kkkkkkk) ORS 475.892, Unlawful delivery of methamphetamine within 1,000 feet of school;
 (lllllll) ORS 475.894, Unlawful possession of methamphetamine;
 (mmmmmmm) ORS 475.904, Penalty for manufacture or delivery of controlled substance within 1,000 feet of school;
 (nnnnnnn) ORS 475.906, Penalties for distribution to minors;
 (ooooooo) ORS 475.908, Causing another person to ingest a controlled substance;
 (ppppppp) ORS 475.910, Application of controlled substance to the body of another person;
 (qqqqqqq) ORS 475.914, Prohibited acts for registrants (with the State Board of Pharmacy; regarding felony crimes);
 (rrrrrrr) ORS 475.916, Prohibited acts involving records and fraud;
 (sssssss) ORS 475.918, Falsifying drug test results;
 (ttttttt) ORS 475.920, Providing drug test falsification equipment
 (uuuuuuu) ORS 475.967, Possession of precursor substance with intent to manufacture controlled substance;
 (vvvvvvv) ORS 475.975, Unlawful possession and distribution of iodine in its elemental form;
 (wwwwwww) 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;
 (bbbbbbbbb) ORS 807.500, Unlawful production of certain documents; affirmative defense;
 (cccccccc) ORS 807.520, False swearing to receive license;
 (dddddddd) ORS 807.530, False application for license;
 (eeeeeeee) ORS 807.620, Giving false information to police officer;
 (ffffff) ORS 811.182, Criminal driving while suspended or revoked;
 (gggggggg) ORS 811.540, Fleeing or attempting to elude police officer;
 (hhhhhhhhh) ORS 811.700, Failure to perform duties of driver when property is damaged;
 (iiiiiii) ORS 811.705, Failure to perform duties of driver to injured persons;
 (jjjjjjjj) ORS 811.740, False accident report;
 (kkkkkkkk) ORS 813.010, Driving under the influence of intoxicants (DUI);
 (lllllllll) ORS 819.300, Possession of a stolen vehicle;
 (mmmmmmmm) ORS 819.310, Trafficking in stolen vehicles;
 (nnnnnnnnn) 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);
 (ppppppppp) ORS 830.053/990, Fraudulent report of theft of boat;
 (qqqqqqqqq) ORS 830.325, Operating boat while under the influence of intoxicating liquor or controlled substance;
 (rrrrrrrrr) ORS 830.475, Duties of operators and witnesses at accidents;
 (sssssssss) Any federal crime;
 (ttttttttt) Any unclassified felony defined in Oregon Revised Statutes not listed elsewhere in this rule;
 (uuuuuuuuu) 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;
 (vvvvvvvvv) 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;
 (wwwwwwwww) 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;
 (xxxxxxxxx) 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
 (yyyyyyyyy) 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 misrepresentation;

(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 regis-

tration, 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 14

REAL ESTATE BROKER LICENSING

863-014-0000

Applicability and Purpose

(1) This division sets forth the requirements and process for licensing real estate brokers and principal real estate brokers, as those terms are defined in ORS 696.010.

(2) The purpose of this division is to specify the requirements for obtaining the desired real estate license.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-014-0003

Definitions

As used in this division, unless the context requires otherwise, the following definitions apply:

(1) "Agency" is defined in ORS 696.010.

(2) "Agency-approved form" means an electronic or paper form approved by the Real Estate Agency.

(3) "Board" means the Real Estate Board established pursuant to ORS 696.405.

(4) "Branch office" is defined in ORS 696.010.

(5) "Commissioner" is defined in ORS 696.010.

(6) "Incapacitated" means the physical or mental inability to perform the professional real estate activities described in ORS 696.010.

(7) "Legal name" means the first name, middle name and last or surname, without the use of initials or nicknames and is the name given at birth or subsequently acquired through marriage, court order or adoption.

(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) "Principal broker" means "principal real estate broker," as defined in ORS 696.010.

(10) "Real estate activity," "professional real estate activity," and "real estate business" mean "professional real estate activity" as defined in ORS 696.010.

(11) "Real estate broker" is defined in ORS 696.010 and includes a principal real estate broker, as that term is defined in ORS 696.010, unless the context requires otherwise.

(12) "Real estate licensee" and "licensee" mean a "real estate licensee" as defined in ORS 696.010, unless the context requires otherwise.

(13) "Registered business name" is defined in ORS 696.010.

(14) "Signed" or "Signature" means original or electronic signature as provided by OAR-014-0076.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11

863-014-0010

License Application Form and Content

(1) Effective July 1, 2011, before the Agency will accept any documents or information relating to an applicant's qualifications, an applicant for a real estate broker or principal broker license must submit an application and fee required under this rule.

(2) Effective September 15, 2011, before the Agency will accept any documents or information relating to an applicant's qualifications, an applicant for a real estate broker license or principal broker license must submit an application and pay the fee required under this rule using an online application process that is available through the Agency's website.

(3) The license application includes:

(a) The applicant's legal name as defined in OAR 863-014-0003, mailing address, email address and phone number.

(b) The applicant's date and place of birth.

(c) The applicant's Social Security Number.

(d) Certification by the applicant that the applicant has a high school diploma, General Educational Development (GED) certificate or the international equivalent.

(e) Certification by the applicant that the applicant is at least 18 years of age.

(f) For a real estate broker license applicant or a principal broker license applicant, who is not an active or inactive Oregon real estate licensee, whether the applicant:

(A) Has ever been convicted of or is under arrest, investigation, or indictment for a felony or misdemeanor;

(B) Has ever been refused a real estate license or any other occupational or professional license in any other state or country;

(C) Has ever had any real estate license or other occupational or professional license revoked or suspended; or

(D) Has ever been fined or reprimanded as such a licensee.

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

(h) Certification by the applicant that all information provided by the applicant is true and correct.

(4) In addition to the requirements of (3) of this rule, a real estate broker license applicant, who is basing the applicant's examination qualifications on a broker license from another state, must provide the appli-

cant's certified license history from the state where such examination was taken.

(5) In addition to the requirements in (3) of this rule, a principal broker license applicant must provide proof that the applicant has three years of active real estate experience.

(6) Every license application must be accompanied by the license fee authorized by ORS 696.270. At all periods of the year, the fee for all licenses issued is as authorized by 696.270. That is, the Agency does not pro-rate license fees.

Stat. Auth.: ORS 696.385

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; Renumbered from 863-015-0010, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11

863-014-0015

Background Check Application and Fingerprint

(1) An applicant for real estate broker or principal real estate broker license must submit to a background check, except an applicant who is currently licensed as a real estate broker, principal real estate broker, or real estate property manager or who is eligible for renewal of such licenses.

(2) The background check includes a criminal background check as provided in OAR chapter 863, division 005, which requires the applicant to provide fingerprints.

(3) Effective July 1, 2011, the Agency and a vendor for fingerprinting services ("fingerprint service provider") have contractually agreed that:

(a) The fingerprint service provider will provide fingerprint services to license applicants and submit the fingerprints to the Oregon State Police for Oregon and nationwide criminal history checks.

(b) A license applicant may only submit fingerprints required by the Agency through the fingerprint services provider.

(c) A license applicant must pay the fee for fingerprinting, authorized under ORS 696.270, directly to the fingerprint services provider.

(d) A license applicant must provide fingerprints according to the requirements and instructions of the fingerprint services provider.

(e) A license applicant must have submitted a license application to the Agency before providing fingerprints.

(4) 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 will keep such information segregated from other information on the applicant or licensee and maintain such information in a secure place.

(5) If the Agency determines that additional information is necessary to conduct a background check, the Agency may request such information in writing, and the applicant must provide the requested information. If the applicant fails to provide the requested information, the Agency may determine that the license application is incomplete and terminate the application.

(6) A license applicant must successfully complete the remaining portions of the licensing process required by OAR 863-014-0035 or 863-014-0040 within the 12 months from the date of the successfully completed background check process and review. If the applicant does not meet the licensing requirement within the 12 months, the background check review is no longer valid and the applicant must submit to another background check, including fingerprints as described in this rule.

Stat. Auth.: ORS 696.385

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; Renumbered from 863-015-0015, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11; REA 4-2013(Temp), f.10-31-13, cert. ef. 11-1-13 thru 4-29-14

863-014-0020

Examinations

(1) For purposes of this rule, "examination provider" means the vendor, under a contract with the Agency, which provides licensing examination services and collects the fee for such services directly from a license applicant.

(2) In addition to any other licensing eligibility requirements:

(a) A real estate broker license applicant must pass a real estate broker examination, consisting of a state portion and a national portion.

(b) A principal broker license applicant must pass a principal real estate broker examination.

(c) A principal broker license applicant who was licensed in Oregon as a salesperson prior to July 1, 2002 is not required to take the real estate broker examination, but must pass the principal broker examination.

(d) A real estate broker or principal broker who has not held an active license for two or more consecutive years must pass a reactivation examination.

(3) To be eligible to take an examination:

(a) A license applicant must have submitted a license application and fee to the Agency required under OAR 863-014-0010 or a license reactivation application and fee required under 863-014-0065;

(b) A real estate broker license applicant must have successfully completed the required courses of study for a real estate broker license under OAR 863-022-0010 from an approved school(s);

(c) A principal broker license applicant, who has never held an Oregon real estate broker license and who has not completed the required courses of study for a real estate broker license, must have successfully completed the required courses of study for a real estate broker license under OAR 863-022-0010 from an approved school(s);

(d) A principal real estate broker license applicant must have successfully completed the brokerage administration and sales supervision course required under OAR 863-022-0025 from an approved school; and

(e) The school providing the course(s) under (b), (c) or (d) of this section, must have certified to the examination provider that the applicant completed the course(s) as provided in OAR 863-022-0060.

(4) To be admitted to an examination site:

(a) A license applicant must be eligible to take an examination under section (3) of this rule;

(b) The applicant must register with the examination provider in advance of the examination and comply with the provider's requirements and instructions; and

(c) The examination provider will collect the examination fee under ORS 696.270 directly from the applicant.

(5) An applicant must pay a separate examination fee for each examination.

(6) If an applicant for a principal real estate broker license passes 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 retake and pass the examination as required by this rule.

(7) If an applicant for a real estate broker license passes both the national and the state portions 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 retake and pass the examination as required by this rule.

(8) A real estate broker license applicant who passes only one portion of a license examination (state or national portion) must pass the remaining portion within one year from the examination date of the passed portion in order to qualify for a license on the basis of the examination.

Stat. Auth.: ORS 696.385 & 696.425

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; Renumbered from 863-015-0020, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 2-2010, f. 12-15-10, cert. ef. 1-1-11; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11; REA 5-2013(Temp), f. 10-31-13, cert. ef. 11-1-13 thru 4-29-14

863-014-0030

License Issue, Term and Form

(1) The Agency will issue a real estate license to an applicant after determining that the applicant meets the license requirements contained in ORS 696.022 and 696.790, has paid all required fees, and meets:

(a) The requirements under OAR 863-014-0035 for real estate broker license applicant; or

(b) The requirements under OAR 863-014-0040 for a principal broker license applicant.

(2) A licensee may engage in professional real estate activities allowed for that license by 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 of the following Oregon real estate licenses at any time:

- (a) Real estate broker;
- (b) Principal real estate broker; or
- (c) Property manager.

(4) The license expiration date is the last day of the month of a licensee's birth month.

(5) The license term 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 will include the following information:

- (a) The licensee's legal name;
- (b) The license number, effective date, and expiration date;
- (c) The name under which the licensee conducts real estate 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

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; Renumbered from 863-015-0030, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11

863-014-0035

Real Estate Broker Licensing Requirements

(1) Effective July 1, 2011, to be eligible for a real estate broker's license, an individual must complete the following steps in the order listed:

(a) Submit a license application and pay the fee to the Agency required by OAR 863-014-0010.

(b) Successfully complete the required courses of study for a real estate broker license required by OAR 863-022-0010.

(c) Ensure that the school providing the required course of study certifies to the examination provider that the applicant completed the course as required by OAR 863-014-0020.

(d) Pass the real estate broker licensing examination and pay the fee to the examination provider as required by OAR 863-014-0020.

(e) Provide fingerprints for a criminal background check and pay the fee to the fingerprint services provider as required by OAR 863-0014-0015.

(2) If the applicant's qualifications for the required examination under (1) of this rule are based upon an active real estate license held in another state, the applicant must furnish a certificate of active license history from the other state.

(3) After the applicant meets the requirements under (1) and (2) of this rule, the Agency will complete a background check on the applicant, which includes a criminal background check under OAR 863-014-0015.

(4) A real estate broker must be associated with a principal broker. Effective July 1, 2011 until September 14, 2011, after the requirements in (1) and (2) of this rule are met, the applicant must submit to the Agency:

(a) The name and address of the principal broker who will supervise the applicant's professional real estate activity and name and address of the registered business name of the principal broker; and

(b) The written authorization of the principal broker to be associated with the principal broker and use the principal broker's registered business name.

(5) Effective September 15, 2011, after the requirements in (1) and (2) of this rule are met:

(a) The applicant must submit to the Agency the name and address of the principal broker who will supervise the applicant's professional real estate activity and name and address of the registered business name of the principal broker; and

(b) The Agency will contact the principal broker for authorization for the applicant to be associated with the principal broker and to use the registered business name.

(6) Effective September 15, 2011, a currently licensed principal broker who wishes to be licensed as a real estate broker must submit a license application and pay the fee to the Agency required by OAR 863-014-0010.

Stat. Auth.: ORS 696.385

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; Renumbered from 863-015-0035, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11

863-014-0040

Principal Real Estate Broker Licensing Requirements

(1) Effective July 1, 2011, to be eligible for a principal real estate broker's license, an individual must complete the following steps in the order listed:

(a) Submit a license application and pay the fee to the Agency required by OAR 863-014-0010. The license application includes proof satisfactory to the Agency that the applicant has three years of active real estate experience.

(b) If the applicant has never held an Oregon real estate broker license and has not completed the required courses of study for a real estate broker license, the applicant must complete such required courses under OAR 863-022-0010 from an approved school(s).

(c) Ensure that the school providing the courses of study for a real estate broker license under (b) of this section, certifies to the examination provider that the applicant completed the course as required by OAR 863-014-0020.

(d) Successfully complete the brokerage administration and sales supervision course required by OAR 863-022-0025.

(e) Ensure that the school providing the brokerage administration and sales supervision course certifies to the examination provider that the applicant completed the course as required by OAR 863-014-0020.

(f) Pass the principal broker licensing examination and pay the fee to the examination provider required by OAR 863-014-0020.

(g) If the applicant is not an active or inactive Oregon real estate licensee, provide fingerprints for a criminal background check and pay the fee to the fingerprint services provider as required by OAR 863-0014-0015.

(2) If the applicant is required to submit fingerprints under (1) of this rule, the Agency will complete a background check on the applicant, which includes a criminal background check, as required by OAR 863-014-0015.

(3) Effective July 1, 2011 to September 14, 2011, after the requirements in (1) and (2) of this rule are met:

(a) The applicant must state that the applicant will be conducting professional real estate activity under the applicant's licensed name or is registering a business name as provided in (5) of this rule; or

(b) The applicant must submit to the Agency the name, address and authorization of a principal broker with whom the applicant will be associated, and the authorization of the principal broker to use the principal broker's registered business name.

(4) Effective September 15, 2011, after the requirements in (1) and (2) of this rule are met:

(a) The applicant must state whether the applicant will be conducting professional real estate activity under the applicant's licensed name or is registering a business name as provided in (5) of this rule; or

(b) After the applicant has submitted the following, the Agency will contact the principal broker for authorization for the applicant to be associated with the principal broker and to use the registered business name:

(A) The name and address of a principal broker with whom the applicant will be associated; and

(B) The address of the registered business name.

(5) If an applicant wishes to conduct professional real estate activity under a registered business name registered by the applicant, the applicant must first obtain the principal broker license and then register a business name under 863-014-0095.

(6) If the applicant's qualifications for three years of active experience are based wholly or partially upon an active real estate license held in another state, the applicant must furnish with the application a certificate of active license history from the other state.

(7) Effective September 15, 2011, a currently licensed real estate broker who has held a principal broker license and who wishes to be licensed as a principal broker must apply for a principal broker license, pay the required fee and meet all the qualifications for a principal broker license under this rule.

Stat. Auth.: ORS 696.385

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; Renumbered from 863-015-0040, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2010, f. 6-14-

10, cert. ef. 7-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11

863-014-0042

Waiver of Experience Requirements

(1) If an applicant for a principal real estate broker's license has met all requirements for such license except for the experience requirement, the applicant may petition the Real Estate Board for a waiver of the three-year experience requirement contained in ORS 696.022, OAR 863-014-0038, and 863-014-0040. The petition must contain sufficient information to allow the Board to determine whether the applicant qualifies for a waiver as allowed by this rule.

(2) The applicant must file a petition to waive the experience requirement on an Agency-approved form with the Agency no later than 21 days before the scheduled Real Estate Board meeting at which the applicant wishes the Board to act.

(3) The Board may issue a waiver if the applicant:

(a) Has graduated from a four-year college or university with a degree in real estate in a curriculum approved by the Commissioner, and the applicant has held an active license as a real estate broker for a period of at least one year; or

(b) Has a two-year community college associate degree in real estate in a curriculum approved by the Commissioner, has held an active license as a real estate broker for a period of at least two years and, if the applicant is applying for a principal real estate broker license, the applicant has completed the course of study for principal real estate brokers as required by OAR 863-014-0040; or

(c) Has had real estate-related experience equivalent to at least three years of active experience as a real estate licensee and provides written details about the nature of such experience.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-014-0050

License Renewal

(1) Effective July 1, 2011 a licensee may only submit a license renewal application and pay the fee using an online application process, which will be available through the Agency's website.

(2) For purposes of this rule, "received by the Agency" means the date a licensee completed the online renewal process and paid the fee required under ORS 696.270.

(3) A real estate broker or principal broker license expires if a licensee fails to renew the license on or before the license expiration date. A real estate licensee may not engage in any professional real estate activity after a license expires. A real estate licensee may renew an expired license as provided in this rule.

(4) The Agency will renew an active real estate license to active status for the term prescribed in OAR 863-014-0030 when the Agency has received the following:

(a) The renewal fee authorized by ORS 696.270; and

(b) An active renewal application that includes certification by the licensee that the licensee has met the continuing education renewal requirements under section OAR 863-020-0010.

(5) The Agency will renew an active real estate license to inactive status for the term prescribed in OAR 863-014-0030, when the Agency has received the following:

(a) The renewal fee authorized by ORS 696.270; and

(b) An inactive renewal application.

(6) The Agency will renew an inactive active real estate license to inactive status for the term prescribed in OAR 863-014-0030, when the Agency has received the following:

(a) The renewal fee authorized by ORS 696.270; and

(b) An inactive renewal application.

(7) The Agency will renew an inactive real estate license to active status for the term prescribed in OAR 863-014-0030, when the Agency has received the following:

(a) The renewal fee authorized by ORS 696.270; and

(b) An Agency-approved active renewal application form that includes certification by the licensee that the licensee has met the real estate continuing education renewal requirements under OAR 863-020-0010.

(8) The Agency will renew an expired real estate license to active status when the Agency receives, within one year of the date the license expired, the following:

(a) The renewal fee and a late fee authorized by ORS 696.270; and

(b) An Agency-approved active renewal application form that includes certification by the licensee that the licensee met the real estate continuing education renewal requirements under OAR 863-020-0010.

(9) The Agency will renew an expired real estate license to inactive license status when the Agency receives, within one year of the date the license expired, the following:

(a) The renewal fee and a late fee authorized by ORS 696.270; and

(b) An Agency-approved inactive renewal application form.

(10) When the Agency renews an expired license, the renewed license is effective the date the renewal requirements are met. The renewal is not retroactive to the date the license expired and an expired license retains the status of expired during the expiration period.

(11) A license renewed under this rule expires two years from the date of the original expiration date.

(12) A real estate license that has expired for more than one year is lapsed, as defined in ORS 696.010.

(13) A license may not be renewed if it is lapsed, surrendered, suspended, or revoked. Except as provided in 863-014-0075, the former licensee must reapply and meet all the licensing qualifications required of new license applicants.

Stat. Auth.: ORS 696.385

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; Renumbered from 863-015-0050, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11

863-014-0060

Limited Licenses

If the commissioner issues an individual a limited license under ORS 696.130, the licensee must apply in writing for an unrestricted license after the period of limitation.

Stat. Auth.: ORS 696.385

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; Renumbered from 863-015-0060, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

863-014-0061

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 the individual registering the business name submits proof satisfactory to the commissioner that the principal real estate broker or brokers involved actually manages and controls each affiliated and subsidiary organization.

(4) As used in this rule, controlling ownership interest(s) means owning 51 percent or more.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; Renumbered from 863-015-0061, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

863-014-0062

Mailing Address, Email Address, Address Change, Service of Notice

(1) Each active, inactive and expired real estate licensee must maintain on file with the Agency a current mailing address and email address and notify the Agency within 10 calendar days of a change to a mailing or email address.

(2) A forwarding address is effective as a "current mailing address" when the Agency receives notice of the forwarding address by the United States Postal Service.

(3) Agency notice by mail, whether registered, certified, or regular, to the real estate licensee's current mailing address on file with the Agency constitutes service on the licensee.

(4) The Agency is not required by law to send notification or correspondence by regular mail to a licensee or license applicant regarding license or application status. The Agency may send notification or correspondence to a licensee or license applicant to the email address of the licensee or applicant on file with the Agency. Failure by a licensee or applicant to receive notification or correspondence provided via email

does not relieve the licensee or applicant of the responsibility to maintain a current license or complete an application process.

(5) Effective September 15, 2011, the Agency's primary and preferred method of notification and correspondence is to the licensee or license applicant's email address.

(6) For purposes of this rule, "notification or correspondence" in (4) and (5) of this rule means:

(a) Notification, correspondence or confirmation to licensees about license renewal, change of license status to active or inactive, license transfers, registered business name, branch office registration, license reactivation, license expiration, and name and address changes.

(b) Notification, correspondence or confirmation to license applicants about license application status, receipt of documents or information from third parties on license qualifications, and license issuance.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; Renumbered from 863-015-0062, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11

863-014-0063

Real Estate License Transfers, Principal Brokers' Responsibilities, Authority to Use Registered Business Name

(1) As used in this rule:

(a) "Authorized licensee" means a principal broker who has authority and is responsible for a registered business name;

(b) "License transfer form" means a completed and signed form that does one of the following:

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

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

(c) "Sending principal broker" means the authorized licensee or principal broker with whom an active real estate broker is associated before the license transfer;

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

(2) A license transfer form includes:

(a) The name, mailing address, email 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 before the date 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 sending principal broker's address;

(d) If the form is used to authorize the 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 before 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 authorized licensee's address;

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

(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 receiving broker's or authorized licensee's name, license number, telephone number, date, and signature.

(3) The Agency will transfer the license of an active real estate broker associated with a sending principal broker to a receiving principal broker when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

(4) The Agency will transfer the license of an active principal real estate broker to a receiving principal broker when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

(5) The Agency will 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 when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

(6) A principal real estate broker with whom a licensee is associated remains responsible for the licensee's professional real estate activity until the Agency receives one of the following:

(a) An Agency-approved form submitted by the principal real estate broker terminating the relationship with the licensee under OAR 863-014-0065; or

(b) A license transfer form and fee.

(7) 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 the licensee's subsequent professional real estate activity until the Agency receives one of the following:

(a) An Agency-approved form submitted by the principal real estate broker terminating the relationship with the licensee under OAR 863-014-0065;

(b) An Agency-approved form submitted by the licensee terminating the relationship with the principal real estate broker under OAR 863-014-0065; or

(c) A license transfer form and fee.

(8) The Agency will document the registered business name under which a real estate licensee is authorized to conduct professional real estate activity when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 4-2007, f. & cert. ef. 9-26-07; Renumbered from 863-015-0063, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11

863-014-0065

Inactive License, Change License Status to Active, Change License Category, License Reactivation

(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 under ORS 696.301.

(3) The Agency will change an active real estate license to inactive license status when the Agency actually receives the following:

(a) The license;

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

(c) An Agency-approved form submitted by the licensee terminating the relationship with the principal real estate broker under this rule.

(4) The Agency will change the status of an active real estate broker who is associated with a principal real estate broker to inactive status when the Agency receives one of the following:

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

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

(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; or

(d) An Agency-approved form submitted by the real estate broker terminating the relationship with the principal real estate broker.

(5) An inactive real estate licensee may renew such license under OAR 863-014-0050.

(6) For a period of 30 days after a real estate broker license becomes inactive, the licensee may change such license status from inactive to active and transfer the license to a principal real estate broker under OAR 863-014-0063.

(7) Except as provided in section (8) of this rule, for a period of 30 days after the real estate license becomes inactive, the licensee may change such license category to an active principal real estate broker only if:

(a) The licensee is qualified for such license and

(b) The licensee submits to the Agency:

(A) An Agency-approved application form to change the license category and to change the license status to active,

(B) A license transfer form under OAR 863-014-0063, if applicable, and

(C) Payment of the transfer fee authorized by ORS 696.270.

(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 authorized by ORS 696.270.

(9) If a license has not been on active status for two or more consecutive years, the licensee must complete the following steps in the order listed to reactivate the license:

(a) Submit a reactivation application and pay the fee to the Agency required under ORS 696.270.

(b) Pass the real estate reactivation examination and pay the fee to the examination provider as required by OAR 863-014-0020.

(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 change the license status from inactive to active only by submitting to the Agency:

- (a) An application for license reactivation; and
- (b) Payment of the reactivation fee authorized by ORS 696.270.

(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 863-020-0008 or 863-020-0010; and

(b) Payment of the active renewal fee authorized by ORS 696.270, less the amount of the inactive renewal fee already paid by the licensee.

(12) The change of license status, transfer, change of license category or the reactivation of a license is effective when the Agency actually receives all required forms and fees.

Stat. Auth.: ORS 696.385

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; Renumbered from 863-015-0065, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10; REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11

863-014-0066

Licensee Name Change

A licensee may apply for a name change by submitting to the Agency:

(1) A name change application and payment of the fee authorized under ORS 696.270; and

(2) Legal proof of the name change, which must be in the form of an official record such as a marriage certificate, divorce certificate, or a court order/decree.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11

863-014-0070

License Surrender

(1) A real estate licensee may surrender the licensee's license to the commissioner on an Agency-approved form. Upon surrender, the license is terminated, and the licensee's rights under the surrendered license are terminated. The commissioner retains continuing jurisdiction to investigate the professional real estate activity conducted under the license and to take disciplinary action against the former licensee under ORS Chapter 696 and its implementing rules.

(2) A surrendered license may not be renewed. The former licensee must reapply and meet all the licensing qualifications required of new license applicants.

Stat. Auth.: ORS 696.385

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; Renumbered from 863-015-0070, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

863-014-0075

Reissuing Suspended License

(1) The Agency may reissue an unexpired real estate license that has been suspended by order of the commissioner if the licensee makes

a written request to the Agency that such license be reissued and pays the required fee within 30 days after the close of the suspension period.

(2) If the licensee fails to act within 30 days, the license becomes inactive and may be reactivated only pursuant to OAR 863-014-0065.

(3) If the license expires before the request for reissuance, the Agency will renew the license within the 30-day period only pursuant to OAR 863-014-0050.

(4) A license reissued under this rule is effective for licensing purposes when the Agency receives all required forms and fees.

(5) If the license has had a status other than active for two or more consecutive years, the licensee must comply with the reactivation requirements of OAR 863-014-0065.

Stat. Auth.: ORS 696.385

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; Renumbered from 863-015-0075, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

863-014-0076

Signature Requirements

(1) Subject to ORS 84.001 to 84.061, the Agency may, but is not required to, 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 an individual to submit an original or electronic signature on any document or Agency-approved form.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; Renumbered from 863-015-0076, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11

863-014-0080

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) 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 obtain an Oregon nonresident license if the applicant's state or county of residence:

(a) 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) 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 nonresident licensees' professional real estate activity.

(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. The nonresident license application must be accompanied by a background check application, fingerprint card, and processing fees as prescribed by OAR 863-014-0015. 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 nonresident license must sign and file with the Agency an affidavit stating that the applicant has reviewed and is familiar with ORS Chapter 696 and its implementing rules and agrees to be bound by them.

(5) For a nonresident real estate salesperson who is a resident of a state requiring salespersons to work under licensed real estate brokers, the license issued by that state's Real Estate Agency must contain the

business name and business address of the broker under whose license the salesperson works. The Agency will mail the Oregon license to the broker at the broker's business address.

(6) If the Agency requests, nonresident licensees must 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 Agency to inspect and examine any transaction escrow records, trust account records, and other records of professional real estate activity, wherever maintained.

(7) 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.

(8) 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 if the state or country of residence has suspended, revoked, denied, or refused to renew the individual's license or has limited the license in any way.

(9) Except as otherwise provided in reciprocity agreements entered into pursuant to section (10) below, or except as provided at the commissioner's discretion, the nonresident license application, fees, license terms, license application and renewal processing, license transfer, and all other conditions and requirements of licensure will be as provided for in ORS Chapter 696 and its implementing rules.

(10) 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.

(11) The commissioner may include in such agreements the terms and conditions prescribed in this rule and additional terms and conditions at the commissioner's discretion.

(12) Nonresident licenses granted under reciprocity agreements 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. If the non-resident licensee subsequently becomes an Oregon resident, such person may obtain, upon filing the proper application and other requisite documents and 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

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; Renumbered from 863-015-0080, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09

863-014-0085

Authorization to Control Broker's Business

(1) A principal real estate broker may authorize another principal broker to control and supervise his or her professional real estate activity and use the authorizing principal broker's registered business name, if any, during the principal broker's absence only if:

(a) The authorizing principal broker provides written authorization as required by this rule, and

(b) The supervising principal broker accepts the supervisory responsibility in writing.

(2) Both licensees have joint responsibility for all professional real estate activity conducted during the authorizing principal broker's absence.

(3) The written authorization required by this rule must contain the following information:

(a) The authorizing principal broker's authorization, including the effective date and the termination date of such authorization, which may not exceed 90 days;

(b) The supervising principal broker's affirmation accepting the supervisory responsibility; and

(c) An affirmation by both brokers acknowledging that they are jointly responsible for the professional real estate activity during the dates of the authorization.

(4) The authorizing principal real estate broker may end the authorization before the termination date by filing an amended authorization before the termination date.

(5) The written authorization required by this rule must be received by the Agency before the effective date of such authorization on an

Agency-approved form. The commissioner may allow a later filing for good cause shown.

(6) The Agency will maintain the written authorization as an Agency record.

(7) This rule provides an exception to OAR 863-014-0095(7), which prohibits a principal broker from engaging in professional real estate activities under more than one registered business name. That is, a supervising principal broker may conduct professional real estate activity under both the authorizing principal broker's registered business name and the supervising principal broker's registered business name if the parties meet the requirements contained in this rule. This exception does not allow a principal broker to conduct professional real estate activity under more than these two registered business names.

Stat. Auth.: ORS 696.385

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; Renumbered from 863-015-0085, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-014-0090

Authorization to Temporarily Supervise

(1) As used in ORS 696.022 and this rule, the following definitions apply:

(a) "Sole principal real estate broker" means a principal real estate broker who conducts professional real estate activity not in conjunction with other principal real estate brokers; and

(b) "Supervise" means to conduct the sole principal real estate broker's professional real estate activity, including supervising the professional real estate activity of any real estate brokers and property managers associated with the sole principal real estate broker. It does not include conducting professional real estate activity in conjunction with any other principal real estate broker.

(2) A real estate broker who is associated with a sole principal real estate broker may temporarily supervise the sole principal broker's professional real estate activity only if:

(a) The sole principal broker provides written authorization as required by this rule; and

(b) The real estate broker accepts the supervisory responsibility in writing.

(3) The written authorization must contain the following information:

(a) Authorization by the sole principal real estate broker, including the effective date and termination date of such authorization, which may not exceed 90 days;

(b) An affirmation by the real estate broker acknowledging that the real estate broker:

(A) Has acquired at least three years of active experience as a real estate broker;

(B) Accepts the supervisory responsibility;

(C) Is bound by and subject to all the statutory and rule requirements of a principal real estate broker during the period of authorization.

(c) An affirmation by both the sole principal real estate broker and the real estate broker acknowledging that they are jointly responsible for the real estate broker's supervision of the professional real estate activity during the dates of the authorization.

(4) The sole principal real estate broker may end the authorization before the termination date by filing an amended authorization before the termination date.

(5) The written authorization required by this rule must be received by the Agency before the effective date of such authorization on an Agency-approved form. The commissioner may allow a later filing for good cause shown.

(6) The Agency will maintain the written authorization as an Agency record.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: 2009 OL Ch. 324, Sec. 2

Hist.: REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-014-0095

Business Name Registration

(1) If a principal real estate broker wishes to conduct real estate business in a name other than the licensee's legal name, the principal broker must first register the business name with the Agency. For the purposes of this rule, "business name" means 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. A licensee must

maintain the registered business name in active status with the Oregon Secretary of State's Corporation Division.

(2) To register a business name, the principal broker must submit to the Agency on an Agency-approved form the following:

(a) The business name in which the licensee wishes to conduct real estate business, which must be the exact name on file with the Oregon Secretary of State.

(b) Written authority to register the business name;

(c) A copy of the registration on file with the Oregon Secretary of State Business Registry showing the business name is active; and

(d) The fee authorized by ORS 696.270.

(3) A licensee who wishes to use a registered business name must submit to the Agency the following:

(a) The registered business name the licensee wishes to use; and

(b) Authorization from the principal broker who is responsible for the registered business name on the records of the Agency to use the name.

(4) 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 will be treated as the registration of a new business name, and an application for the change in business name must be submitted to the Agency together with the fee authorized by ORS 696.270.

(5) If a principal broker wishes to transfer the right to use and the responsibility for a business name that is registered with the Agency, the principal broker acquiring the right to use the name must file a change of business name registration with the Agency together with the fee authorized by ORS 696.270. A licensee must notify the Agency in writing if the licensee terminates its use of a business name.

(6) A business name registration becomes void when the Agency receives notice of termination of the use of a business name. A business name registration becomes 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, unless a new user has registered the business name, without paying the fee authorized by ORS 696.270.

(7) Except as provided in OAR 863-014-0085 and this section, no real estate broker or principal broker may engage in professional real estate activities under more than one registered business name. A principal broker may engage in professional real estate activities under more than one registered business name if the business entity is an affiliated or subsidiary organization as described in 863-014-0061.

Stat. Auth.: ORS 696.026 & 696.385

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; Renumbered from 863-015-0095, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11

863-014-0100

Branch Office Registration

(1) Before engaging in professional real estate activity from a branch office, a principal real estate broker must provide to the commissioner on an Agency-approved form the branch office street and mailing addresses and the fee authorized by ORS 696.270.

(2) For the purposes of ORS 696.270, a branch office registration does not require renewal.

Stat. Auth.: ORS 696.385

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; Renumbered from 863-015-0100, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-014-0160

Deceased or Incapacitated Broker

(1) If the Agency issues a temporary license under ORS 696.205, the licensee may only close or terminate the transactions that are in various stages of completion or termination at the broker's death or incapacity. The activities authorized under the temporary license include, but are not limited to:

(a) Terminating all listings and buyer's service agreements in which there were no outstanding offers or earnest money receipts when the broker died or became incapacitated;

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

(c) Depositing and withdrawing monies from the clients' trust account in connection with the completion of all transactions pending when the broker died or became incapacitated;

(d) Promptly paying all real estate commissions owing after closing all transactions, both to the decedent broker's estate and to participating real estate brokers entitled to commissions resulting from the transactions; and

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

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

(3) The holder of a temporary license is subject to ORS Chapter 696 and its implementing rules while engaging in professional real estate activity under the terms of the temporary license.

Stat. Auth.: ORS 696.385

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; Renumbered from 863-015-0160, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

DIVISION 15

REAL ESTATE BROKER REGULATION

863-015-0000

Applicability and Purpose

(1) This division applies to real estate brokers and principal real estate brokers, as those terms are defined by ORS 696.010.

(2) The purposes of this division are:

(a) To specify the regulations for licensees engaged in professional real estate activities, as that term is defined in ORS 696.010;

(b) To protect the owners, buyers, and sellers of real estate; and

(c) To make the principal real estate broker responsible for establishing a system of recordkeeping that:

(A) Provides the Agency with access to the licensees' records and

(B) Complies with the requirements contained in OAR chapter 863 and ORS Chapter 696.

(3) The Agency's goal is to encourage real estate licensees to comply with the applicable statutes and implementing rules through education and, if necessary, through progressive discipline, as provided in OAR chapter 863, division 27.

(4) Section (3) of this rule does not limit the Agency's authority to reprimand, suspend, or revoke a license pursuant to ORS 696.301 or assess civil penalties as authorized by 696.990.

Stat. Auth.: ORS 696.385

Stat. Implemented: ORS 696.015

Hist.: REA 6-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-015-0003

Definitions

As used in this division, unless the context requires otherwise, the following definitions apply:

(1) "Addendum" means additional material attached to and made part of a document. The addendum must refer to the document and be dated and signed or otherwise acknowledged by all the parties.

(2) "Agent" is defined in ORS 696.800.

(3) "Agency" is defined in ORS 696.010.

(4) "Bank" is defined in ORS 696.010.

(5) "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 under ORS 187.010.

(6) "Board" means the Real Estate Board established pursuant to ORS 696.405.

(7) "Branch office" is defined in ORS 696.010.

(8) "Buyer" is defined in ORS 696.800.

(9) "Clients' Trust Account" means an account in a "bank," as defined in ORS 696.010, that is subject to the provisions of 696.241.

(10) "Closing" means the transfer of all property titles and the disbursement or distributions of all monies and documents for a real estate transaction.

(11) "Commissioner" is defined in ORS 696.010.

(12) "Compensation" is defined in ORS 696.010.

(13) "Competitive market analysis" is defined in ORS 696.010.

- (14) "Confidential information" is defined in ORS 696.800.
- (15) "Day" or "days" means each calendar day, including legal holidays under ORS 187.010.
- (16) "Disclosed limited agency" is defined in ORS 696.800.
- (17) "First contact with a represented party" means the initial contact by a licensee, whether in person, by telephone, over the Internet, 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.
- (18) "Letter opinion" is defined in ORS 696.010.
- (19) "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.
- (20) "Listing agreement" is defined in ORS 696.800.
- (21) "Offer" is defined in ORS 696.800.
- (22) "Offering price" is defined in ORS 696.800.
- (23) "Principal" is defined in ORS 696.800.
- (24) "Principal broker" means "principal real estate broker," as defined in ORS 696.010.
- (25) "Real estate" is defined in ORS 696.010.
- (26) "Real estate activity," "professional real estate activity," and "real estate business" mean "professional real estate activity" as defined in ORS 696.010.
- (27) "Real estate broker" is defined in ORS 696.010 and includes a principal real estate broker, as that term is defined in 696.010, unless the context requires otherwise.
- (28) "Real estate licensee" and "licensee" mean a "real estate licensee" as defined in ORS 696.010, unless the context requires otherwise.
- (29) "Real property" is defined in ORS 696.800.
- (30) "Real property transaction" is defined in ORS 696.800.
- (31) "Registered business name" is defined in ORS 696.010.
- (32) "Sale" and "sold" are defined in ORS 696.800.
- (33) "Seller" is defined in ORS 696.800.
- (34) "Timely" means as soon as is practicable under the 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; Renumbered from 863-015-0120, REA 6-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

General Rules

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 enters into a listing agreement, as defined by ORS 696.800, must give the seller signing the listing agreement a true, legible copy thereof at the time of securing such listing.
- (2) Every listing agreement must meet the following requirements:
- (a) It must state an expiration date;

(b) It may not contain a provision requiring the seller signing the listing to notify the licensee of the individual's intention to cancel the listing after the stated, definite expiration date;

(c) It may not contain a provision subjecting the seller of the listed property to the payment of two or more commissions for one sale if the seller lists the same property with a second or subsequent broker after the first or preceding listing agreement expires or is terminated by mutual agreement; and

(d) It must be signed by all parties to the agreement,

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.280 & 696.800

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; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

863-015-0135

Offers to Purchase

(1) When a real estate licensee receives an offer to purchase real property or a counter-offer, the licensee must give the individual signing the offer or counter-offer a true, legible copy thereof.

(2) A real estate licensee must promptly deliver to the offeror or offeree every written offer or counter-offer the licensee receives.

(3) The licensee must maintain a written record of the date and time of each written offer or counter-offer delivered pursuant to section (2) of this rule and of the seller's or buyer's response. The licensee must maintain this record as required under OAR 863-015-0250, and if the seller rejects the offer or counter-offer, the licensee must provide a true copy to the offeror.

(4) When a licensee receives a written acceptance of an offer or counter-offer to purchase real property, the licensee must deliver within three banking days true, legible copies of the offer or counter-offer, signed by the seller and buyer, to both the buyer and seller.

(5) Real estate licensees must 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 will be accomplished by way of deed or land sales contract, and whether and at what time evidence of title will be furnished to the prospective buyer.

(6) The document serving as an earnest money receipt must specifically state the type of earnest money received, whether in the form of cash, check, or promissory note.

(7) In preparing a promissory note for use as earnest money, a licensee must make the note payable upon the seller's acceptance of the offer or payable within a stated time after the seller's acceptance. Absent a written agreement to the contrary, the note must be made payable to the seller.

(8) An offer signed by a prospective buyer is an offer to purchase, regardless of any pending inspections, conditions, or other contingencies.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.280, 696.800, 696.810 & 696.815

Hist.: REC 10, f. 8-27-59; REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 3-1980, f. 10-20-80, ef. 11-1-80; REC 1-1981, f. 10-30-81, ef. 11-1-81; REC 5-1984, f. 6-18-84, ef. 7-1-84; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97; 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; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

863-015-0140

Principal Real Estate Broker Supervision Responsibilities

(1) No principal real estate broker may allow any individual to use the principal broker's license for the sole purpose of allowing other real estate licensees to engage in professional real estate activity when the principal broker's only interest is receiving a fee for the use of the principal broker's license by others or when the principal broker only nominally supervises the professional real estate activity conducted under the principal broker's license.

(2) A principal real estate broker may not state or imply to current or prospective licensees or the public that the real estate brokers associated with the principal real estate broker are not fully subject to the principal real estate broker's supervision or are not acting as the principal real estate broker's agents.

(3) A principal real estate broker must supervise and control the professional real estate activity at any main or branch office registered by the principal broker.

(4) The principal real estate broker must directly supervise the licensees associated with the broker in fulfilling their duties and obligations to their respective clients. The principal real estate broker must review each document of agreement generated in a real estate transaction within seven banking days after it has been accepted, rejected, or

withdrawn. If the document or agreement originates in a branch office, the principal real estate broker who manages the branch office under ORS 696.200 may review such document. The document review may be done electronically or in hard copy. If the principal broker reviews a document electronically, the principal broker or the principal broker who is the branch office manager must make an electronic record of the review showing the name of the reviewer and the date of the review. If the principal broker reviews such document in hard copy, the principal broker or principal broker who manages the branch office must initial and date the document in writing at the time of review.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.200, 696.222 & 696.310

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; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

863-015-0145

Real Estate Transactions Involving a Licensee as a Principal to the Transaction

(1) If a real estate licensee, whether active or inactive, either directly or indirectly offers or negotiates for the sale, exchange, lease option, or purchase of real estate and the licensee is a principal to the transaction, the licensee must disclose to the other party to the offer or transaction that the licensee is a real estate licensee. The licensee must make the disclosure in any advertising or display signs, and it must appear in writing on at least the first written document of agreement concerning the offer or transaction. The disclosure set forth on the agreement document also must state that the real estate licensee is representing himself or herself as either the buyer or the seller in the transaction.

(2) Transactions described in section (1) of this rule of a principal real estate broker must be processed in the same manner as the licensee's other professional real estate activities and comply with the records requirements under OAR 863-015-0250.

(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 the licensee's principal real estate broker and all documents and funds must be transmitted through the licensee's principal real estate broker.

(4) If the licensee holds an inactive license while an offer or transaction described in section (1) of this rule is being effected:

(a) The licensee must place all funds received in or necessary to effect the offer or transaction into a neutral escrow depository within the state; and

(b) The licensee must maintain documents concerning the matter as required of a real estate broker under OAR 863-015-0250.

(5) This section applies 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 at any time 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 696.385

Stats. Implemented: ORS 696.015, 696.241, 696.280 & 696.301

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; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

863-015-0150

Closing Real Estate Transactions

(1) Unless all parties to the transaction agree in writing to delegate the closing function to an escrow agent licensed in Oregon, an attorney, or another real estate broker engaged in the transaction, a principal broker must promptly close any real estate transaction in which the broker is the listing broker.

(2) A real estate broker associated with a principal real estate broker may handle a closing function only if authorized in writing by the principal real estate broker and only under the principal real estate broker's direct supervision. A copy of the written authorization bearing the principal real estate broker's signature must be filed with the commissioner.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.022

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; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-015-0155

Attorney's Advice

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

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.805, 696.810 & 696.815

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; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

863-015-0175

Reporting Litigation Involving Licensees

(1) A real estate licensee must notify the commissioner of the following:

(a) Any criminal conviction (felony or misdemeanor), including a "no contest" plea or bail forfeiture;

(b) Any adverse decision or judgment resulting from any civil or criminal suit or action or arbitration proceeding or any administrative or Oregon State Bar proceeding related to the licensee in which the licensee was named as a party and against whom allegations concerning any business conduct or professional real estate activity is asserted; and

(c) Any adverse decision or judgment resulting from any other criminal or civil proceeding that reflects adversely on the "trustworthy and competent" requirements contained in ORS Chapter 696 and its implementing rules.

(2) The Agency's administrative proceeding determinations are not subject to this rule's notification requirements.

(3) The notification required by this rule must be in writing and must include a brief description of the circumstances 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 appellate court decision is subject to this rule's notification requirements.

(4) The notification required by this rule must be made within twenty 20 calendar days after receiving written notification of an adverse judgment, award, or decision described in this rule. Notification must be made under this rule whether or not the decision is appealed.

(5) Arbitration proceedings between licensees concerning only a commission payment dispute are not subject to this rule's notification requirements.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.301

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; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

863-015-0186

Clients' Trust Accounts — Disbursal of Disputed Funds

(1) A principal real estate broker may disburse disputed funds in a clients' trust account using the procedures in 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 ORS Chapter 696, ORS Chapter 105, or OAR 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 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 receiving a demand by one of the parties for the disbursal of funds in a clients' trust account, the 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 must include substantially the following information:

(a) A party has made a demand for disbursal of funds, and the 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 principal real estate broker within 20 calendar days of the date of the demand for disbursal; or

(B) A party provides proof to the 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 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 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 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 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 prevents a 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; or

(c) The requirements of law.

(7) Nothing in this rule prevents 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 principal real estate broker must review the terms of the written contract for handling disputed funds.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.241

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; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-015-0188

Compensation Agreements

Pursuant to ORS 696.582, only a principal real estate broker may enter into a compensation agreement with a principal to a real estate transaction.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.290 & 696.582

Hist.: REA 6-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-015-0190

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

(1) Real estate licensees may provide competitive market analyses and letter opinions in the normal course of their business when they are giving an opinion in pursuit of a listing, to assist a potential buyer 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 must be in writing and contain at least the following:

(a) A statement of purpose and intent;

(b) A brief property description;

(c) The basis for the 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 licensee's signature and the date it was prepared;

(g) A disclaimer that, unless the 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 must disclose to the buyer and seller the real estate broker’s relationships with the lending institution.

Stat. Auth.: ORS & 696.385

Stats. Implemented: ORS 696.022

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; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

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 represents 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 client’s disclosed limited agent;

(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 is the only disclosed limited agent of both parties; and

(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 are the only disclosed limited agents of those parties.

(4) Except as provided in sections (2) and (3) above, licensees associated 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) above must do each of the following:

(a) Supervise the licensees associated with the principal broker in fulfilling 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 using, 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) above must 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) above must refrain from disclosing or using any confidential information relating to the other party that has been acquired as a result of the licensee’s association with the principal broker, unless authorized to do so by that party.

(9) Nothing in this rule prohibits licensees from disclosing or using 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) 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 this rule, the principal broker must 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. The duties do not, however, create fiduciary or other similar duties inconsistent with the actual legal relationship between an agent and other principals to a transaction or that principal’s agents.

(12)(a) The Final Agency Acknowledgement of the agency relationships described in this rule and required by ORS 696.845 must 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 Agency). ☐ 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. Seller’s 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

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; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

863-015-0205

Disclosed Limited Agency

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

(2) A disclosed limited agency relationship exists 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 are 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 exists 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).

(4) The following conditions apply to the disclosed limited agency relationship described in OAR 863-015-0200(1):

(a) The principal broker with whom the licensee is associated must ensure 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 must be the disclosed limited agent of all clients in the transaction, unless each of the following conditions is met:

(A) The principal brokers have entered into a written agreement dividing control and supervision responsibilities. 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 so 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, must act as the disclosed limited agent of both parties, and another licensee must be designated to represent the other party exclusively; and

(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 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

Stats. Implemented:ORS 696.805, 696.810 & 696.815

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

863-015-0210

Disclosed Limited Agency Agreement

(1) Disclosed limited agency agreements required by ORS 696.815 must 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 must contain the following:

(a) The name under which the representation will take place, which must be the registered business name or, if none, the licensed name of the principal broker;

(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; and

(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; and

(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 is prima facie evidence of compliance with sections (1) and (2) of this rule:

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 is prima facie evidence of compliance with sections (1) and (2) of this rule.

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 Buyer's 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 Buyer's Agent the duties and responsibilities of an agent who represents more than one party to a transaction, consent and agree as follows:

(a) Buyer's Agent and the Buyer's 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 Buyer's Agent and who is supervised by the Buyer's Agent's Principal Broker, the Principal Broker may represent both seller and Buyer. In such a situation, the Buyer's 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 Buyer's Agent and the Buyer's 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

Stat. Implemented: ORS 696.805, 696.810 & 696.815

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-015-0215

Initial Agency Disclosure Pamphlet

(1) For purposes of this rule, "at first contact" means at the time the agent has sufficient contact information about a person to be able to provide an initial agency disclosure pamphlet to that person. Contact with a person includes, but is not limited to contacts in person, by telephone, over the Internet, by electronic mail, or by similar methods.

(2) An agent shall provide a copy of the initial agency disclosure pamphlet, which complies with section (5) of this rule, at first contact with:

(a) A prospective party to a real property transaction; or

(b) An unrepresented party seeking representation during the course of a real property transaction.

(3) An agent must provide the initial agency disclosure pamphlet in a written format by electronic mail, over the Internet, by USPS mail, facsimile, hand delivery or similar delivery method.

(4) 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, received a copy of the pamphlet from another agent.

(5) The initial agency disclosure pamphlet must contain:

(a) The following information, directed to the consumer:

(A) A licensed real estate broker or principal broker must give a copy of the initial agency disclosure pamphlet at first contact with a prospective party to a real property transaction or at first contact with an unrepresented party seeking representation during the course of a real property transaction.

(B) A licensed real estate broker or principal broker need not provide a copy of the initial agency disclosure pamphlet to a party who has, or may be reasonably assumed to have, received a copy of the pamphlet from another broker.

(C) The pamphlet describes the legal relationship between a broker and a consumer when the broker acts as the consumer's agent; and

(D) The pamphlet is informational only and may not be construed to be evidence of intent to create an agency relationship, as provided in ORS 696.820.

(b) A general definition of an agency relationship and the three real estate agency relationships of seller's agent, a buyer's agent and a disclosed limited agent.

(c) The definition of "confidential information" in ORS 696.800.

(d) The affirmative duties and responsibilities of a seller's agent under ORS 696.805.

(e) The affirmative duties and responsibilities of a buyer's agent under ORS 696.810.

(f) The affirmative duties and responsibilities of a disclosed limited agent who represents both the buyer and the seller in a transaction under ORS 696.815.

(g) The following statement to the consumer, "Whether you are a buyer or seller, you cannot make a licensee your agent without the licensee's knowledge and consent, and an agent cannot make you a client without your knowledge and consent."

(6) The Real Estate Agency will make available a sample of an initial agency disclosure pamphlet that complies with section (5) of this rule on the Agency's website.

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

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.805, 696.810, 696.815 & 696.820

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 6-2008, f. 12-15-08, cert. ef. 1-1-09; REA 2-2013(Temp), f. & cert. ef. 5-13-13 thru 11-9-13; REA 3-2013, f. 9-4-13, cert. ef. 10-1-13

Records Rules

863-015-0250

Professional Real Estate Activity Records

(1) Complete and adequate records of professional real estate activity include complete, legible, and permanent copies of all documents required by law or voluntarily generated during a real estate transaction, including all offers received by or through brokers or principal brokers to the 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 that must be signed by all parties to the agreement.

(b) A copy of any written acknowledgment of an agency relationship between a real estate broker or principal real estate broker and a client that must be signed by all parties to such acknowledgment.

(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 that must be signed by all parties to such agreement.

(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 document 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 performed the closing, the principal real estate broker must retain a copy of any closing statement showing a receipts, disbursements and adjustments, which must evidence the signature of the seller(s) and the buyer(s).

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.280

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-015-0255

Clients' Trust Account Records Requirements and Document Transmittal Requirements

(1) This rule applies to clients' trust fund accounts that hold funds from transactions involving the sale, purchase, lease option, or exchange of real property. The purpose of clients' trust accounts is to preserve clients' monies and keep them segregated from the broker's general and personal funds.

(2) Principal brokers must retain and store the records described in this rule as required by OAR 863-015-0250 and 863-015-0260. However, where separate general business or clients' trust accounts or both are maintained at branch offices, the financial records described in this rule may be maintained and located either at the principal broker's main office or, if the principal real estate principal broker or branch office manager conducts the real estate business from that branch office, at that branch office.

(3) A real estate broker must transmit to the real estate broker's principal real estate broker within three banking days of receipt 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. Absent the buyer's written instructions to the contrary, the real estate broker must transmit all earnest monies to the principal real estate broker within three banking days of receipt.

(4) If a real estate broker or principal broker receives a check as earnest money in a transaction, he or she may hold the check un-deposited until the offer is accepted or rejected, provided that the written sale agreement states that the real estate broker or principal broker is holding the check un-deposited and further states where and when the check will be deposited upon acceptance of the offer.

(5) The real estate broker or principal broker must deposit a check held pursuant to section (4) into a clients' trust account established under ORS 696.241 or transmit the check to a licensed neutral escrow depository located within this state before the close of the third banking day following acceptance of the offer or a subsequent counter offer. The prin-

principal broker must track the earnest money deposit from the buyer to the principal broker and to the escrow depository.

(6) All other funds, whether in the form of money, checks, drafts, or warrants belonging to others and accepted by any real estate broker or principal broker while engaged in professional real estate activity, must be deposited before the close of business of the fifth banking day following the date the real estate broker or principal broker receives the funds into a neutral escrow depository located within this state or into a clients' trust account established under ORS 696.241. The principal broker must retain a copy of each executed agreement required under 696.241 and OAR 863-015-0265 for interest-bearing clients' trust accounts.

(7) For all funds received under sections (3) and (4) of this rule, the principal broker must comply with the following requirements:

- (a) Account for all funds received,
- (b) Maintain a copy of any check received, and
- (c) Maintain a dated, acknowledged receipt for any check returned to the offeror.

(8) Every deposit made under ORS 696.241 must be made with deposit slips identifying each offer or transaction by a written notation of the file reference assigned to the offer or transaction.

(9) Principal brokers must maintain a complete ledger account and record all funds received in their professional real estate activity. This ledger account must show:

- (a) From whom the funds were received,
- (b) The date the funds were received,
- (c) The date the funds were deposited,
- (d) Where the funds were deposited, and
- (e) When the transaction has been completed or the offer has failed, the final disposition of the funds.

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

(11) Checks used to disburse funds from a clients' trust account must be pre-numbered, issued from one numbering sequence, and bear the words "Clients' Trust Account" upon the face thereof. Principal brokers must account for all checks, including voided checks, as a part of the records they maintain.

(12) Principal brokers must 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 their offer or transaction file.

(13) If a principal 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 principal broker, is the amount he or she must 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 principal broker when he or she 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 principal broker may not benefit from any of the merchant's discounts or processing fees generated by the use of a credit card;

(d) A principal 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.

(14) 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 principal broker of an interpleader action for disputed earnest money funds.

(15) A principal broker may not use any form of debit card on clients' trust accounts.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.241 & 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 6-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-015-0260

Records Retention

(1) Principal real estate brokers must maintain and store complete and accurate records of professional real estate activity, including any items generated through e-mail or other electronic means, pursuant to ORS 696.280 and as follows:

(a) Records of professional real estate activity may be stored at the principal broker's main office, 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 principal broker's main office.

(b) A principal real estate broker may store records of professional real estate activity in a single location other than his or her office, main office, or branch office, in which the records are readily available for inspection, if the principal 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) Authorizes the commissioner in writing to inspect such records at the new location. Such authorization must include the name of any necessary contact and the means of gaining access to the records for an inspection. The principal real estate broker must notify the commissioner of any change in the contact or means of access within ten days after such change occurs.

(2) A principal real estate broker must maintain at the broker's office a means of viewing copies of documents or records. A principal real estate broker must provide, at his or her expense, a paper copy of any document or record the Agency requests.

(3) A principal real estate broker may use electronic image storage media to retain and store copies of all listings, deposit receipts, canceled checks, clients' 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 under the following conditions:

(a) The electronic image storage must be non-erasable "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 principal broker, or its 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 ensure a consistent and logical flow of paperwork to preclude unnecessary search time; and

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

Stat. Auth.: ORS 696.385

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; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-015-0265

Interest-Bearing Accounts

(1) The written approval necessary to establish a federally insured interest-bearing clients' trust account must 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 violation of 696.241(9).

(3) In a transaction subject to ORS 696.241(5), money belonging to others may not be invested in any type of account or security or certificate of deposit that has a fixed term for maturity or imposes any fee or penalty for withdrawal before 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 violation of 696.241(9).

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.241
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; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09

863-015-0275

Clients' Trust Account Reconciliation and Records

A principal real estate broker must reconcile each clients' trust account at least once each month. The reconciliation must comply with all of the following conditions:

- (1) The reconciliation must 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 closing date; and
 - (c) The sum of all the balances of the individual trust account ledgers as of the bank statement closing date.
- (2) The balances of each component of the reconciliation must be equal to and reconciled with each other. If any adjustment is needed, the adjustment must be clearly identified and explained.
- (3) The principal broker must verify, sign, and date the reconciliation when completed.
- (4) Outstanding checks must be listed by check number, issue date, payee, and amount.
- (5) The principal broker must preserve and file in logical sequence the reconciliation worksheet, bank statements, 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 clients' trust fund account with a balance as of the reconciliation date. If these records are computerized, they must be printed out for filing with the reconciliation.
- (6) All reconciling items must be identified and cleared promptly.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.280 & 696.241
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; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

DIVISION 20

REAL ESTATE CONTINUING EDUCATION

863-020-0000

Applicability and Purpose

- (1) This division applies to licensed real estate brokers, principal real estate brokers, real estate property managers, continuing education providers, and instructors who teach courses for continuing education providers.
- (2) For all real estate licensees, the purpose of this division is to set forth continuing education requirements for licensee renewals, including:
 - (a) Courses eligible for continuing education credit completed before January 1, 2011, and
 - (b) Courses eligible for continuing education credit completed on or after January 1, 2011 taken from continuing education course providers, including:
 - (A) Courses that meet the requirements for course topics and learning objectives in this division 20,
 - (B) A Board-approved three-hour law and rule required course on recent changes in rule and law, described in OAR 863-022-0055, required for all licensees,
 - (C) A 27-hour advanced course in real estate practices, described in OAR 863-022-0020, required for real estate brokers before the first active renewal of the broker's license or before the first license reactivation following an inactive first renewal,
 - (D) A 27-hour property manager advanced practices course described in OAR 863-022-0022, required for licensed real estate property managers before the first active renewal of the property manager's license or before the first license reactivation following an inactive first renewal,
 - (E) The 40-hour brokerage administration and sales supervision course, described in OAR 863-022-0025, for an initial principal real estate broker license application, and

(F) Continuing education record-keeping requirements for all licensees.

(3) For continuing education providers, the purpose of this division is to set forth:

- (a) The application requirements for certification as a real estate continuing education course provider, and
- (b) The responsibilities of continuing education course providers, including:
 - (A) Ensuring that courses offered by the provider meet the eligible course topics, learning objectives, and length of course requirements,
 - (B) Maintaining required records,
 - (C) Providing real estate licensees with certificates of completion for each course that meet the requirements for certificates of completion, and
 - (D) Ensuring that each instructor who will teach a course offered by a provider meets instructor qualifications and completes a continuing education instructor form.

(4) For instructors who teach courses for continuing education providers, the purpose of this division is to set forth the instructor qualifications, set out on the instructor form that is completed by the instructor and given to the continuing education provider.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.174, 696.182, 696.184 & 696.186
Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0005

Definitions

As used in this division, unless the context requires otherwise:

- (1) "Agency" means the Oregon Real Estate Agency.
- (2) "Applicant" means either an individual as defined in section (7) of this rule, or a person as defined in section (10) of this rule.
- (3) "Board" means the Oregon Real Estate Board.
- (4) "Commissioner" means the Real Estate Commissioner.
- (5) "Continuing education provider" means a person certified by the Agency under OAR 863-020-0030 to offer real estate continuing education courses that are eligible for credit. The continuing education courses are taught by an instructor.
- (6) "Course identification number" means a unique four-digit identifying course number assigned by a continuing education provider.
- (7) "Individual" means a human being, not a legal entity.
- (8) "Instructor" means an individual who teaches, for a continuing education provider, a real estate continuing education course that is eligible for credit. An instructor must meet the qualifications in ORS 696.186 and OAR 863-020-0060. The Agency does not certify instructors.
- (9) "Licensed real estate property manager" is defined in ORS 696.010.
- (10) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than a government agency.
- (11) "Principal real estate broker" is defined in ORS 696.010.
- (12) "Provider number" means a unique identifying number assigned by the Agency to a certified continuing education provider under OAR 863-020-0030.
- (13) "Real estate broker" is defined in ORS 696.010.
- (14) "Real estate licensee" is defined in ORS 696.010 and includes a real estate broker, principal real estate broker, and a real estate property manager.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.174, 696.182, & 696.186
Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0007

Length of Continuing Education Courses

- (1) This rule applies to courses offered by certified continuing education providers.
- (2) The minimum length of each continuing education course offered by a continuing education provider is one hour.
- (3) A continuing education provider or course instructor may allow a break of no more than 10 minutes as part of each hour of instruction.
- (4) A provider may offer a course that is longer than one hour, in additional half hour increments.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.182
Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0010

License Renewal Continuing Education Requirements Effective January 1, 2011

(1) This rule applies to all real estate licensees.
 (2) To renew an active license, a real estate licensee must truthfully certify on an Agency-approved form under OAR 863-014-0050 (for real estate brokers and principal brokers) or 863-024-0050 (for licensed real estate property managers) that the licensee:

(a) Has completed at least 27 hours of real estate continuing education that are eligible for credit under OAR 863-020-0035 and 863-020-0040 during the two years preceding renewal and,

(b) Has completed the Board-approved three-hour law and rule required course on recent changes in real estate rule and law described in OAR 863-022-0055.

(3) To renew an active license for the first time or before the first license reactivation following an inactive first renewal, a real estate broker and a licensed real estate property manager must comply with the following:

(a) A real estate broker must complete the 27-hour advanced course in real estate practices described in OAR 863-022-0020. A real estate broker must also take the three-hour law and rule required course described in 863-022-0055.

(b) Effective January 1, 2013, a licensed real estate property manager must complete the 27-hour property manager advanced practices course described in OAR 863-022-0022. A licensed real estate property manager must also take the three-hour law and rule required course described in 863-022-0055.

(4) A real estate licensee will not be given credit for repeating a continuing education course with the same content during a two-year renewal period.

(5) A licensee who falsely certifies that the licensee has completed the required continuing education violates section (2) of this rule and subject to discipline under ORS 696.301.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.022, 696.174 & 696.301

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0015

Licensee Records

(1) Effective January 1, 2011, a real estate licensee must maintain the licensee's own continuing education records described in sections (3) and (4) of this rule for three years after the renewal date for which the continuing education credit applies.

(2) Beginning January 1, 2011, a principal broker is not required to maintain the continuing education records of a real estate broker or a property manager associated with the principal broker. However, the principal broker must maintain the continuing education records that pre-date January 1, 2011 as required by OAR 863-015-0260 and produce a copy of such records if the associated licensee or the Agency so requests.

(3) A real estate licensee must complete and maintain an Agency-approved form that contains the following information, taken from the certificate of completion provided by the continuing education provider:

(a) The licensee's name and license number;

(b) The name of the course;

(c) The name of the certified course provider and the provider number;

(d) The course identification number assigned by the course provider;

(e) The course eligibility for continuing education credit as one of the following:

(A) The specific course topic(s) that is eligible under OAR 863-020-0035,

(B) The course is the three-hour law and rule required course under OAR-863-022-0055,

(C) The course is the advanced course in real estate practices under OAR-863-022-0020,

(D) The course is the property manager advanced practices course under OAR 863-022-0022, or

(E) The course is the brokerage administration and sales supervision course under OAR-863-022-0025;

(f) The date and location of the course;

(g) The length of time of the course; and

(h) The name of the instructor who taught the course.

(4) A licensee must maintain all certificates of completion the licensee received from continuing education providers.

(5) Upon request by the Agency, a licensee must produce a copy of the records required under this rule.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0020

Continuing Education Provider Qualifications

(1) An applicant for certification as a continuing education provider must be one of the following:

(a) A main or branch office with a registered business name registered with the Agency under ORS 696.026 and OAR 863-014-0095 or 863-024-0095;

(b) A licensed title or escrow company conducting business in this state;

(c) A real estate trade association as defined in section (2) of this rule or a trade association in a related field as defined in section (3) of this rule, but not the individual members of those associations;

(d) A real estate multiple listing service;

(e) An attorney admitted to practice in this state

(f) A private career school approved by the Agency to teach continuing education courses as defined in section (4) of this rule;

(g) An accredited community college, an accredited public university listed in ORS 352.002, or a private and independent institution of higher education as defined in 352.720

(h) A distance learning provider approved by the Agency as defined in section (5) of this rule; or

(i) A person who does not meet the requirements of section (1)(a) through (h) of this rule but whose qualifications have been approved by the Real Estate Board under OAR 863-020-0025.

(2) "Real estate trade association," as used in section (1) of this rule, means a local, state, regional, or national organization with members that include real estate licensees, licensed escrow agents, or licensed title companies.

(3) "Trade association in a related field," as used in section (1) of this rule, means a local, state, regional, or national organization with members that include licensed, certified, or registered:

(a) Appraisers,

(b) Architects,

(c) Attorneys,

(d) Contractors,

(e) Home inspectors,

(f) Mortgage bankers,

(g) Mortgage brokers,

(h) Professional engineers,

(i) Securities broker-dealers or salespersons,

(j) Surveyors, or

(k) Tax professionals.

(4) "Private career school approved by the Agency to teach continuing education courses," as used in section (1) of this rule, means a private career school licensed by the Department of Education and approved by the Agency to provide the basic real estate broker or property manager educational courses required under ORS 696.022.

(5) "Distance learning provider approved by the Agency," as used in section (1) of this rule, means a person whose course has been certified by the Association of Real Estate License Law Officials.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.182

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0025

Board Approval of Continuing Education Provider Qualification

(1) A person not otherwise qualified under OAR 863-020-0020(1)(a) through (h) seeking the Board's approval as an applicant for certification must petition the Board under this rule.

(2) The person must submit a petition for approval to the Agency on an Agency-approved form at least 21 days before the scheduled Board meeting at which the applicant wishes the Board to act. The petition must include the following:

(a) The petitioner's name, address, and phone number.

(b) Sufficient information about the petitioner named in the application to allow the Board to determine whether the petitioner qualifies for certification, including specifics about one or both of the following:

(A) Petitioner's demonstrated expertise and experience in providing educational courses to real estate licensees;

(B) Petitioner's demonstrated experience and expertise in at least two course topics eligible for continuing education credit under OAR 863-020-0035(4)(a)-(gg).

(c) Attestation by the petitioner that the petitioner knows and understands:

(A) The responsibilities of a continuing education provider under OAR 863-020-0050;

(B) The requirements of an instructor under ORS 696.186 and the information required on a continuing education instructor form under OAR 863-020-0060.

(3) The Agency will mail a letter to the petitioner stating the Board's determination. If the Board approves the petition, the petitioner may apply for certification as a course provider under OAR 863-020-0030.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.182

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2011(Temp), f. 2-3-11, cert. ef. 2-4-11 thru 8-3-11; REA 2-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 5-2011, f. 8-15-11, cert. ef. 9-1-11; REA 9-2011, f. & cert. ef. 11-15-11; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0030

Application for Continuing Education Provider Certification and Renewal

(1) An applicant for certification as a continuing education provider must submit to the Agency an application on an Agency-approved form containing the following information. No application fee is required.

(a) The applicant's name, mailing address, physical address, and phone number;

(b) The date of the application;

(c) The applicable qualification listed in OAR 863-020-0020(1) and, if the Real Estate Board approved the applicant's qualifications under 863-020-0025, the applicant must also submit the Agency's confirmation letter;

(d) The name and signature of the individual authorized by the applicant to submit the application;

(e) The applicant's authorized contact person, title, phone number, and e-mail address;

(f) The applicant's website address;

(g) Information concerning the course presentation formats, such as classroom instruction, online, etc.; and

(h) An affirmation that the applicant:

(A) Will comply with the statutory and administrative rule provisions applicable to continuing education providers, and

(B) Understands that the continuing education provider certification does not authorize the provider to offer an advanced course in real estate practices, the property manager advanced practices course, or the brokerage administration sales and supervision course. If the provider wishes to offer those courses, the provider may seek separate approval of the course under OAR chapter 863, division 22.

(2) The Agency will assign a provider number and mail a confirmation of certification to the applicant after review and approval of an application.

(3) The Agency will publish on its website and have available at the Agency a list of certified course providers and include the following information:

(a) The provider's name, mailing address, physical address, and phone number;

(b) The provider's authorized contact person, title, phone number, and e-mail address;

(c) The provider's website address;

(d) The course presentation formats offered by the provider, such as classroom instruction, online, etc.; and

(e) The date of certification and provider number.

(4) Once certified, the continuing education provider must submit on an Agency-approved form any changes in the information provided on the application.

(5) If a provider no longer wishes to be certified or no longer meets the qualifications contained in OAR 863-020-0020, it must inform the Agency in writing within five business days.

(6) A continuing education provider certification expires on December 31, 2013, and annually thereafter on December 31 of each year. Effective November 1, 2013, continuing education providers must submit an application for renewal, prior to expiration, using an online renewal process that is available through the Agency's website.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.182

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13; REA 6-2013(Temp), f. 10-31-13, cert. ef. 11-1-13 thru 4-29-14

863-020-0035

Courses Offered by Continuing Education Providers

(1) This rule applies to continuing education courses offered by continuing education providers except for the advanced course in real estate practices, the property manager advanced practices course, and the brokerage administration sales and supervision course. If the provider wishes to offer those courses, the provider may seek separate course approval under OAR chapter 863, division 22.

(2) A continuing education provider must ensure that a specific class or course offered is within the scope of one or more course topics listed in section (4) or (5) of this rule. The provider must also identify to real estate licensees which course topic(s) is covered by the course. The Agency will not determine whether individual courses or classes are within the scope of an eligible course topic.

(3) Each course offered for continuing education credit:

(a) Must meet all course requirements under this rule,

(b) Must meet the requirements for the length of the course under OAR 863-020-0007,

(c) Must meet the requirements for learning objectives in OAR 863-020-0045, and

(d) May be presented in a classroom setting, online, or in another format of the provider's choosing.

(4) The following course topics are eligible for real estate continuing education credit required by ORS 696.174 and OAR 863-020-0010:

(a) Principal broker or property manager record-keeping.

(b) Principal real estate broker supervision responsibilities.

(c) Principal broker or property manager clients' trust accounts.

(d) Agency relationships and responsibilities for brokers, principal brokers, or property managers.

(e) Misrepresentation in real estate transactions.

(f) Property management.

(g) Advertising regulations.

(h) Real estate disclosure requirements.

(i) Real estate consumer protection.

(j) Anti-trust issues in real estate transactions.

(k) Commercial real estate.

(l) Real estate contracts.

(m) Real estate taxation.

(n) Real estate property evaluation, appraisal, or valuation.

(o) Fair Housing laws or policy.

(p) Managing a real estate brokerage.

(q) Business ethics.

(r) Risk management.

(s) Dispute resolution.

(t) Real estate finance.

(u) Real estate title.

(v) Real estate escrows.

(w) Real estate development.

(x) Condominiums.

(y) Subdivisions.

(z) Unit owner or home owner associations.

(aa) Timeshares.

(bb) Water rights.

(cc) Environmental protection issues in real estate.

(dd) Land use planning, zoning, or other public limitations on use.

(ee) Real estate economics.

(ff) Real estate law or regulation.

(gg) Negotiation.

(5) A three-hour law and rule required course on recent changes in real estate rule and law under OAR 863-022-0055 is eligible for three hours of continuing education credit.

(6) The following do not fall within the scope of an eligible continuing education course topic listed under section (4) of this rule:

(a) Real estate broker or property manager pre-licensing courses.

(b) Examination preparation classes.

(c) Sales meetings.

(d) Motivational classes or seminars.

(e) Time management classes or seminars.

(f) Sales and marketing classes or seminars.

(g) Psychology classes or seminars.

(h) Trade association orientation courses.

(i) Courses in standardized computer software programs not specifically related to the topics listed in section (4) of this rule.

(j) Courses with content that is specific to another state or jurisdiction.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174 & 696.184

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0040

Certain Courses Required for License Renewal that are Also Eligible for Continuing Education Credit

(1) Effective January 1, 2011, in addition to the eligible courses under OAR 863-020-0035 completed on or after July 1, 2010, the courses listed in subsection (2) through (4) of this rule are eligible for continuing education credit.

(2) An Agency-approved 27-hour advanced course in real estate practices that meets the requirements of OAR 863-022-0020.

(3) Effective January 1, 2013, an Agency-approved 27-hour property manager advanced practices course that meets the requirements of OAR 863-022-0022.

(4) An Agency-approved 40-hour brokerage administration and sales supervision course that meets the requirements of OAR 863-022-0015.

(5) Certification as a continuing education provider does not authorize the provider to offer an advanced course in real estate practices, the property manager advanced practices course, or the brokerage administration sales and supervision course. If the provider wishes to offer those courses, the provider may seek separate course approval under OAR chapter 863, division 22.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.022, 696.174, & 696.184

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0045

Course Learning Objectives

(1) The Agency does not review or approve a continuing education provider's learning objectives.

(2) As used in ORS Chapter 696 and this division 20, the term "learning objective" means a statement of a continuing education provider's goal for what a licensee will know or be able to do when the course is completed.

(3) In addition to any other learning objectives a continuing education provider may develop for a course, the provider must ensure that each course within a course topic offered under OAR 863-020-0035(4) and (5) meets at least one of the learning objectives contained in section (5) of this rule.

(4) For course learning objectives relating to laws, statutes, and rules, only existing laws, statutes, and rules or those that have been adopted or enacted but are not yet in effect meet the requirements of this rule. Learning objectives related to proposed legislation or proposed regulations do not meet the requirements of this rule.

(5) At the end of the course, the licensee will be able to describe and, where appropriate, identify:

(a) Provisions in laws, statutes or administrative rules relevant to the course topic;

(b) The licensee's responsibilities under laws, statutes or administrative rules relevant to the course topic;

(c) Consumer protections relevant to the course topic;

(d) Governmental agencies with primary responsibility for regulating the course topic and the agencies' role in relation to consumers and licensees; or

(e) The principles, practices, or procedures relevant to the course topic and their impact on at least one of the following:

(A) Licensees;

(B) Consumers;

(C) Parties to the real estate transaction or property management agreement;

(D) The real estate marketplace;

(E) Real estate brokerage or property management practices;

(F) The licensees' real estate business; or

(G) A licensee's professional competence.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.182

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0050

Continuing Education Provider Responsibilities

(1) For each course offered, a continuing education provider must:

(a) Ensure that a course offered for continuing education credit is within the scope of one or more course topics listed in OAR 863-020-0035(3) or is a three-hour law and rule required course on recent changes in real estate rule and law under 863-022-0055;

(b) Identify to real estate licensees the course eligibility for continuing education credit as one of the following:

(A) A continuing education course under OAR 863-020-0035 and which course topic(s) the offered course covers,

(B) The course is a three-hour rule and law required course under OAR 862-022-0055,

(C) The course is the advanced course in real estate practices course under OAR 863-022-0020,

(D) The course is the property manager advanced practices course under OAR 863-022-0022, or

(E) The course is the brokerage administration and sales supervision course under OAR 863-022-0025;

(c) Ensure that the course meets the requirements for the length of a course under OAR 863-20-0007;

(d) Assign to each course a four-digit identifying course number;

(e) Ensure that courses offered under OAR 863-020-0035 meet the learning objective requirements contained in 863-020-0045; and

(f) Ensure that the instructor who teaches a continuing education course offered for credit:

(A) Meets the requirements set forth in ORS 696.186, and

(B) Completes and signs the form required by OAR 863-020-0060.

(2) A continuing education provider may provide the advanced course in real estate practices, the property manager advanced practices course, or the brokerage administration and sales supervision course only if the provider and the course have been approved under OAR 863, division 22.

(3) A continuing education provider must keep records as required by OAR 863-020-0055.

(4) A continuing education provider must give each licensee who completes a course a completed certificate of completion that includes:

(a) The licensee's name and license number;

(b) The name of the course;

(c) The name of the certified course provider and provider number;

(d) The course identification number assigned by the course provider;

(e) Identification of the course eligibility for continuing education credit as one of the following:

(A) A continuing education course under OAR 863-020-0035 and which course topic(s) the offered course covers,

(B) The course is a three-hour rule and law required course under OAR 862-022-0055,

(C) The course is the advanced course in real estate practices course under OAR 863-022-0020,

(D) The course is the property manager advanced practices course under OAR 863-022-0022, or

(E) The course is the brokerage administration and sales supervision course under OAR 863-022-0025;

(f) The date and location of the course;

(g) The length of time of each course; and

(h) The name of the instructor who taught the course.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 696.182, & 696.184

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0055

Continuing Education Provider Record-keeping Requirements

(1) A real estate continuing education provider must keep records of each course provided for three years from the date the course was provided. These records must include:

(a) The name of the course,

(b) The course identification number assigned by the course provider,

(c) Identification of the course eligibility for continuing education credit as one of the following:

(A) A continuing education course under OAR 863-020-0035 and which course topic(s) the offered course covers,

(B) The course is a three-hour rule and law required course under OAR 862-022-0055,

(C) The course is the advanced course in real estate practices course under OAR 863-022-0020,

(D) The course is the property manager advanced practices course under OAR 863-022-0022, or

(E) The course is the brokerage administration and sales supervision course under OAR 863-022-0025;

(d) The date and location of the course,

(e) The length of time of each course,

(f) The name of the instructor who taught the course,

(g) The signed form required by OAR 863-020-0060 containing the statement of instructor qualifications, and

(h) The licensee's name and license number for each licensee attending the course on that date.

(2) All continuing education providers, whether located within or outside of this state, must keep the required records at the address provided on the application form.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.184

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0060

Continuing Education Instructor Form

(1) As provided in OAR 863-020-0050, a continuing education provider must ensure that the instructor who teaches a continuing education course offered for credit meets the requirements contained in ORS 696.186. The Agency does not certify instructors.

(2) A continuing education provider must ensure that the instructor completes and signs a form containing the following information:

(a) The instructor's name, address, and phone number;

(b) The continuing education provider name and provider number;

(c) A description of the instructor's qualifications in sufficient detail that would enable the reader to know how the instructor has met those qualifications; and

(d) An attestation signed and dated by the instructor, identifying the instructor's qualifications under section (4) of this rule and affirming that the instructor:

(A) Has not had a professional or occupational license related to the topic of the course revoked for disciplinary reasons;

(B) Has not had a professional or occupational license related to the topic of the course that is currently suspended for disciplinary reasons; and

(C) Has not been determined by a state court, an administrative law judge, or a final agency order to have violated any statute, rule, regulation, or order pertaining to real estate activity in this or any other state in the preceding five years.

(3) The instructor must indicate on the form which of the following qualifications applies to the instructor:

(a) A bachelor's degree and two years of experience working in a field related to the course topic;

(b) Six years of experience working in a field related to the topic of the course;

(c) A total of six years of any combination of college-level coursework and experience working in a field related to the topic of the course;

(d) A designation by a professional real estate organization, as defined in section (5) of this rule, and two years of college-level coursework;

(e) A designation as a Distinguished Real Estate Instructor by the Real Estate Educators' Association;

(f) Successful completion of an instructor training course approved by the Board and two years of experience working in a field related to the topic of the course; or

(g) Certification or approval in good standing as a real estate instructor for the same or a similar course topic in any other state or jurisdiction.

(4) "Professional real estate organization," as used in section (4) of this rule, means a group of individuals with a formal membership whose membership includes real estate licensees or licensed escrow agents.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.184 & 696.186

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-020-0065

Certification Revocation

The Agency may revoke the continuing education provider's certification if the provider disregards or violates any applicable provision

of ORS Chapter 696 or this rule division. Such revocation is an agency order subject to the contested case provisions contained in ORS Chapter 183.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.182

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

DIVISION 22

LICENSE APPLICANT COURSE REQUIREMENTS AND COURSE APPROVAL

863-022-0000

Applicability and Purpose

(1) This division applies to:

(a) Real estate license applicants,

(b) Real estate licensees,

(c) Persons seeking Agency approval of the following courses:

(A) The education courses for real estate broker license applicants and

(B) The education course for property manager license applicants.

(d) Certified continuing education providers seeking approval of the following courses:

(A) The brokerage administration and sales supervision course for principal broker license applicants,

(B) The advanced practices course required for real estate brokers seeking their first active license renewal, or

(C) The property manager advanced practices course for licensed real estate property managers seeking their first active renewal.

(e) Certified continuing education providers who offer the Board-approved three-hour course on recent changes in real estate law and rule.

(2) This division sets forth the following course requirements for license applicants and licensees:

(a) The course of study required by OAR 863-014-0035 for real estate broker license applicants;

(b) The course required by OAR 863-024-0045 for property manager license applicants;

(c) The brokerage administration and sales supervision course required by OAR 863-014-0040 for principal broker license applicants;

(d) The advanced practices course required by OAR 863-020-0010 for real estate brokers seeking their first active license renewal; and

(e) The property manager advanced practices course required by OAR 863-020-0010 for licensed real estate property managers seeking their first active renewal.

(3) This division sets forth the application processes for Agency approval of the following:

(a) The course of study required by OAR 863-014-0035 for real estate broker license applicants or the course required by 863-024-0045 for property manager license applicants;

(b) The brokerage administration and sales supervision course required by OAR 863-014-0040 for principal broker license applicants;

(c) The advanced practices course required by OAR 863-020-0010 for real estate brokers seeking their first active license renewal;

(d) The property manager advanced practices course required by OAR 863-020-0010 for licensed real estate property managers seeking their first active renewal; and

(e) The three-hour course on recent changes in law and rule required for all renewing licensees under OAR 863-020-0010.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 696.182, & 696.184

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0005

Definitions

As used in this division, unless the context requires otherwise:

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

(2) "Associated broker" means a broker that is "associated with," as that term is defined in ORS 696.010, a principal real estate broker.

(3) "Board" means the Oregon Real Estate Board.

(4) "Certified continuing education provider" means a person certified by the Agency under OAR 863-020-0030 to offer real estate continuing education courses that are eligible for credit under 863-020-0035 and 863-020-0040. The continuing education courses are taught by an instructor.

(5) "Clock-hour" is a 60-minute hour, excluding meal or rest breaks.

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

(7) "Individual" means a human being, not a legal entity.

(8) "In-state community colleges, colleges, and universities" means:

(a) Campuses and centers that are part of an accredited public university listed in ORS 352.002;

(b) Oregon community colleges established and operated under ORS Chapter 341; and

(c) Accredited private and independent institutions of higher education, as that term is defined in ORS 352.720, that are located in Oregon.

(9) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than a government agency.

(10) "Private career schools" means private career schools licensed by the Oregon Department of Education and approved by the Agency to provide the 150-hour real estate license applicant course of study under OAR 863-022-0010, the 60-hour property manager license applicant courses under 863-022-0015, or both.

(11) "Principal broker" means "principal real estate broker," as defined in ORS 696.010.

(12) "Property manager" means "licensed real estate property manager," as defined in ORS 696.010.

(13) "Real estate broker" is defined in ORS 696.010.

(14) "Real estate licensee" is defined in ORS 696.010.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 696.182, & 696.184

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0010

Course Requirements for Real Estate Broker License Applicants

(1) The real estate broker license applicant course of study required by OAR 863-014-0035 must include 150 clock-hours in the seven courses listed in section (2) of this rule.

(a) Courses offered by private career schools must be approved by the Agency under OAR 863-022-0030.

(b) Courses offered by in-state community colleges, colleges, and universities must be approved by the Agency under OAR 863-022-0035.

(c) To be eligible for credit, a course provider must:

(A) Present each course for the designated number of clock-hours stated in section (2) of this rule,

(B) Include specific course topics required by the Agency as provided in section (3) of this rule, and

(C) Give each student a final examination for each course consisting of the number of questions stated in section (2) of this rule.

(2) The courses required for real estate broker license applicants are:

(a) Real Estate Law: 30 clock-hours and 60 questions on a final examination.

(b) Oregon Real Estate Practice: 30 clock-hours and 60 questions on a final examination.

(c) Real Estate Finance: 30 clock-hours and 60 questions on a final examination.

(d) Contracts: 15 clock-hours and 30 questions on a final examination.

(e) Agency Law: 15 clock-hours and 30 questions on a final examination.

(f) Property Management: 10 clock-hours and 20 questions on a final examination.

(g) Real Estate Brokerage: 20 clock-hours and 40 questions on a final examination.

(3) An applicant must complete the required courses through Agency-approved private career schools or in-state community colleges, colleges, or universities, as those terms are defined in OAR 863-022-0005.

(4) To receive credit for courses provided by private career schools, license applicants must complete the course of study and receive a passing score of at least 75% on a final examination for each course.

(5) To receive credit for courses provided by in-state community colleges, colleges, and universities, license applicants must complete the course of study, including a final examination for each course and achieve a minimum grade of "C" or equivalent.

(6) The real estate broker license applicant course of study is not eligible for continuing education credit under OAR 863-020-0010.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 696.182, & 696.184

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0015

Course Requirements for Property Manager License Applicants

(1) The course required by OAR 863-024-0045 for real estate property manager license applicants consists of a 60 clock-hour Agency-approved real estate property manager course. The property manager course covers the specialized area of the management of rental real estate, including Oregon's legal requirements.

(a) A course offered by private career schools must be approved by the Agency under OAR 863-022-0030.

(b) A course offered by in-state community colleges, colleges, and universities must be approved by the Agency under OAR 863-022-0035.

(2) The 60-hour property manager course prepares the applicant for the property manager license examination that will be in effect beginning January 1, 2013. To be eligible for credit, the 60-hour course must include 60 clock-hours allocated among topics in the number of hours as follows:

(a) (12 hours) Oregon real estate license statutes and administrative rules relating to the management of rental real estate, including requirements of licensees, agency law, and affirmative duties of a property manager.

(b) (12 hours) Clients' trust accounts and three-way reconciliation of bank statements, ledgers and record of receipts and disbursements for clients' trust accounts, and security deposits accounts.

(c) (12 hours) Tenant relations and fair housing laws, including the Oregon Residential Landlord and Tenant Act and the Fair Credit Reporting Act.

(d) (7 hours) Contracts and leases.

(e) (6 hours) Risk management and maintenance.

(f) (6 hours) Economics and accounting.

(g) (5 hours) Real property law.

(3) A license applicant must complete the Agency-approved property manager course through a private career school or an in-state community college, college, or university, as those terms are defined in OAR 863-022-0005.

(4) To receive credit for a course provided by a private career school, an applicant must complete the course and receive a passing score of at least 75% on a final exam.

(5) To receive credit for a course provided by a community college, college or university an applicant must complete the course, including a final examination and achieve a minimum grade of "C" or equivalent.

(6) The property manager license applicant course is not eligible for continuing education credit under OAR 863-020-0010.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.022

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0020

Advanced Practices Course Requirement for the First Active Renewal of Broker License

(1) The course required by OAR 863-020-0010 before the first active renewal of the real estate broker's license or before the first license reactivation following an inactive first renewal is an Agency-approved advanced course in real estate practices.

(2) Effective August 15, 2012, a real estate broker who is required to take the advanced practices course may get credit for a course:

(a) Described in section (4) of this rule;

(b) Described in section (5) of this rule if the course was completed on or before December 31, 2010; or

(c) Described in section (6) of this rule if the course was completed between January 1, 2011 and before December 31, 2012.

(3) In order to renew a license, a real estate broker who completes the 27-hour course described in section (4) of this rule must also complete the three-hour course on recent changes in law and rule required under OAR 863-020-0010.

(4) Effective August 15, 2012, an Agency-approved advanced practices course must include 27 clock-hours allocated among topics in the number of hours as follows:

(a) (10 hours) Business ethics

(b) (3 hours) Review of recent administrative actions issued by the Agency

- (c) (4.5 hours) Property management
- (d) (3 hours) Business economics
- (e) (3 hours) Advanced agency relationships, including dual representation

- (f) (4.5 hours) Misrepresentation and negligence.

(5) To be eligible for credit, an advanced practices course completed on or before December 31, 2010 must:

(a) Meet the requirements under section (7) of this rule, which is a 30-hour course that includes three hours on recent changes in law and rule, that is provided by a person whose advanced practices course has been approved by the Agency on or before June 30, 2010, or

(b) Meet the requirements under section (8) of this rule, which is a 30-hour course that includes three hours on recent changes in law and rule, that is provided by a certified continuing education provider whose advanced practices course has been approved by the Board on or after July 1, 2010.

(6) To be eligible for credit, an advanced practices course completed on or after January 1, 2011 must meet the requirements under section (8) of this rule and be provided by a certified continuing education provider whose advanced practices course has been approved by the Board on or after July 1, 2010.

(7) A 30-hour advanced practices course approved by the Agency on or before June 30, 2010 must include 30 clock-hours allocated among topics in the number of hours and percentages as follows:

- (a) (30% or 10 hours) Business ethics;

(b) (10% or 3 hours) Recent changes in real estate law and rule, including Oregon Real Estate License Law and administrative rule changes from the most recent legislative session and other legislative changes affecting real estate;

(c) (10% or 3 hours) Review of recent administrative actions issued by the Agency;

- (d) (15% or 4.5 hours) Property management;

- (e) (10% or 3 hours) Business economics (3 hours);

(f) (10% or 3 hours) Advanced agency relationship, including dual representation; and

- (g) (15% or 4.5 hours) Misrepresentation and negligence.

(8) A 30-hour advanced practices course approved by the Board on or after July 1, 2010 must include 30 clock-hours allocated among topics in the number of hours and percentages as follows:

- (a) (30% or 10 hours) Business ethics;

(b) (10% or 3 hours) A three-hour course on recent changes in real estate law and rule approved by the Board under OAR 863-022-0055;

(c) (10% or 3 hours) Review of recent administrative actions issued by the Agency;

- (d) (15% or 4.5 hours) Property management;

- (e) (10% or 3 hours) Business economics (3 hours);

(f) (10% or 3 hours) Advanced agency relationship, including dual representation; and

- (g) (15% or 4.5 hours) Misrepresentation and negligence.

(9) To receive credit for an advanced practices course, a real estate broker must complete the course, including a final examination, and receive a passing score of at least 75% on a final examination.

(10) The licensee must obtain a certificate of course completion and maintain it as required by OAR 863-020-0015.

(11) The advanced course in real estate practices and the three-hour course on recent changes in real estate law and rule are eligible for continuing education credit under OAR 863-020-0010.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 696.182, & 696.184

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0022

Property Manager Advanced Practices Course Requirement for the First Active Renewal of License

(1) The property manager advanced practices course required by OAR 863-020-0010 before the first active renewal of the property manager license or before the first license reactivation following an inactive first renewal is an Agency-approved 27-hour property manager advanced practices course.

(2) Effective August 15, 2012, a property manager who is required to take the advanced practices course in order to renew a license on or after January 1, 2012, must also complete the three-hour course on recent changes in law and rule required under OAR 863-020-0010.

(3) Effective August 15, 2012, an Agency-approved advanced practices course must include 27 clock-hours allocated among topics in the number of hours as follows:

- (a) (2 hours) Agency law and affirmative duties in ORS 696.890;

- (b) (2 hours) Property management agreements;
- (c) (3 hours) Managing the operation of a property management company;

- (d) (3 hours) Clients' trust accounts and security deposits accounts;

- (e) (6 hours) Property management accounting;

(f) (2 hours) Oregon Residential Landlord and Tenant Act under ORS Chapter 90;

- (g) (2 hours) Fair Housing Laws;

- (h) (2 hours) Property management records;

- (i) (2 hours) Real Estate License Law under ORS Chapter 696;

- (j) (1.5 hours) Commercial property management;

(k) (1.5 hours) Emergency plans, energy management plans, maintenance and repair.

(4) To receive credit for an advanced practices course, a property manager must complete the course and receive a passing score of at least 75% on a final examination containing 60 questions.

(5) The licensee must obtain a certificate of course completion and maintain it as required by OAR 863-020-0015.

(6) The advanced practices course and the three-hour course on recent changes in real estate law and rule are eligible for continuing education credit under OAR 863-020-0010.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174

Hist.: REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0025

Education Course Requirements for Principal Broker License Applicants

(1) The course required by OAR 863-014-0040 for principal real estate broker license applicants is a 40-hour Agency-approved brokerage administration and sales supervision course.

(2) The brokerage administration and sales supervision course covers legal requirements unique to principal brokers and reviews the material introduced in the 150-hour real estate broker applicant course of study described in OAR 863-022-0010.

(3) The 40-hour brokerage administration and sales supervision course prepares the applicant for the principal real estate broker license examination that will be in effect beginning January 1, 2013. To be eligible for credit, the 40-hour course must include 40 clock-hours allocated among topics in the number of hours as follows:

- (a) (15 hours) Brokerage business, supervision and legal requirements, which includes:

- (A) Introduction to real estate brokerage business practices;

(B) Supervising and managing other real estate licensees, independent contractors and employees;

- (C) Financial records of the brokerage business;

- (D) Clients' trust accounts;

- (E) Required records and maintenance;

- (F) Property management.

- (b) (25 hours) Review of real estate principles and practices;

- (A) Real Estate Law;

- (B) Oregon Real Estate Practice;

- (C) Real Estate Finance;

- (D) Contracts;

- (E) Agency Law;

- (F) Property Management;

- (G) Real Estate Brokerage.

(4) A license applicant must complete the brokerage administration and sales supervision course and receive a passing score of at least 75% on a final exam.

(5) An Agency-approved brokerage administration and sales supervision course is eligible for continuing education credit for licensees renewing under OAR 863-020-0010.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 696.182, & 696.184

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0030

Agency Approval of Education Courses Provided by Private Career Schools

(1) Private career schools that wish to provide the real estate broker license applicant or property manager license applicant courses under OAR 863-022-0010 and 863-022-0015 must apply to the Agency for approval of these courses. No application fees are required.

(2) All license applicant courses under OAR 863-022-0010 and 863-022-0015 submitted by private career schools and approved by the Agency before August 15, 2012 are approved by this rule; however, the course approval expires December 31, 2012.

(3) Effective August 15, 2012, a private career school applying for Agency approval of a 150-hour course of study for real estate broker license applicants or a 60-hour course for property manager license applicants must submit an Agency-approved application form and the following documents:

(a) Proof of current licensing as a private career school with the Oregon Department of Education and an expiration date.

(b) Sample certificates of course completion.

(c) If the private career school wishes to provide a course through distance education, documentation that the course has been certified by the Association of Real Estate License Law Officials.

(d) If the private career school is applying for approval to use course materials owned and developed by a third-party vendor, written authorization from the vendor, on an Agency-approved form, that the course provider is authorized to use the course materials and the dates the provider is authorized to use the course.

(e) Course materials, including:

(A) Course curriculum or syllabus for the course of study.

(B) Student materials, including all course materials, textbooks and handouts.

(C) A completed Agency-approved topic checklist that lists the detailed course topics and indicates the location of the topic in the course materials. This requirement applies to all course materials, including materials developed by the course provider or materials developed by a third-party vendor.

(D) Instructor materials, if any.

(E) Final examinations.

(F) Examination answer keys, as a document that is separate from the examination.

(G) Agency-approved instructor forms for each instructor who will teach the course.

(f) Proof of current business registration with the Oregon Secretary of State. The applicant's name that is licensed with the Oregon Department of Education must be the exact name that is registered with the Secretary of State.

(4) After review, the Agency will approve or deny the completed application and notify the applicant. Upon approval, the Agency will send a letter of approval. If the Agency denies the application, the applicant may seek a contested case hearing pursuant to ORS Chapter 183.

(5) All course approvals expire on June 30 each year. Providers must apply for renewal of course approval at least 30 days before the expiration date.

(6) Approved course providers must comply with the provisions of OAR 863-022-0052 for submitting all changes to application information, changes to course materials, and changes to instructors. Within 10 days of license renewal by the Oregon Department of Education, a private career school must submit documentation to the Agency that the school's license has been renewed.

(7) If a private career school wants to provide courses other than the real estate broker or property manager license applicant courses, the school must comply with the following:

(a) To provide the advanced course in real estate practices or the property manager advanced practices course, the school must be a certified continuing education provider and apply for course approval under OAR 863-022-0045.

(b) To provide the brokerage administration and sales supervision course, the school must be a certified continuing education provider and apply for course approval under 863-022-0050.

(c) To provide the Board-approved three-hour law and rule update course under OAR 863-022-0055 required for licensee renewals, the school must be a certified continuing education provider.

(d) To provide any other continuing education course under OAR 863-020-0035 or 863-020-0040, the school must be a certified continuing education provider and comply with the requirements of OAR 863, division 20.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 696.182, & 696.184

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0035

Approval of Courses Provided by Community Colleges, Colleges, and Universities

(1) In-state community colleges, colleges, and universities that wish to provide the real estate broker license applicant or property manager license applicant courses under OAR 863-022-0010 and 863-022-0015 must apply to the Agency for approval of these courses. No application fees are required.

(2) All license applicant courses under OAR 863-022-0010 and 863-022-0015 submitted by in-state community colleges, colleges, and universities and approved by the Agency before August 15, 2012 are approved by this rule. However, the course approval expires December 31, 2012.

(3) Effective August 15, 2012, an in-state community college, college or university applying for Agency approval of a 150-hour course of study for real estate broker license applicants or a 60-hour course for property manager license applicants must submit an Agency-approved application form and the following documents:

(a) Sample certificates of course completion or a statement describing equivalent proof of completion.

(b) If the private career school is applying for approval to use course materials owned and developed by a third-party vendor, written authorization from the vendor, on an Agency-approved form, that the course provider is authorized to use the course materials and the dates the provider is authorized to use the course.

(c) Course materials, including:

(A) Course curriculum or syllabus for the course of study.

(B) Student materials, including all course materials, textbooks and handouts.

(C) A completed Agency-approved topic checklist that lists the detailed course topics and indicates the location of the topic in the course materials. This requirement applies to all course materials, including materials developed by the course provider or materials developed by a third-party vendor.

(D) Instructor materials, if any.

(E) Final examinations.

(F) Examination answer keys, as a document that is separate from the examination.

(4) After review, the Agency will approve or deny the completed application and notify the applicant. Upon approval, the Agency will send a letter of approval. If the Agency denies the application, the applicant may seek a contested case hearing pursuant to ORS Chapter 183.

(5) All course approvals expire on June 30 each year. Providers must apply for renewal of course approval at least 30 days before the expiration date.

(6) Approved course providers must comply with the provisions of OAR 863-022-0052 for submitting all changes to application information, changes to course materials, and changes to instructors.

(7) If an in-state community college, college or university wants to provide courses other than the real estate broker or property manager license applicant courses, the school must comply with the following:

(a) To provide the advanced course in real estate practices or the property manager advanced practices course, the school must be a certified continuing education provider and apply for course approval under OAR 863-022-0045.

(b) To provide the brokerage administration and sales supervision course, the school must be a certified continuing education provider and apply for course approval under 863-022-0050.

(c) To provide the Board-approved three-hour law and rule update course under OAR 863-022-0055 required for licensee renewals, the school must be a certified continuing education provider.

(d) To provide any other continuing education course under OAR 863-020-0035 or 863-020-0040, the school must be a certified continuing education provider and comply with the requirements of OAR 863, division 20.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 696.182, & 696.184

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0045

Agency Approval of Advanced Practices Course

(1) A person seeking Agency approval of the 27-hour advanced course in real estate practices described in OAR 863-022-0020 or the 27-hour property manager advanced practices course under 863-022-0022 must be a certified continuing education provider.

(2) The person must submit an Agency-approved form and the following documents:

(a) Sample certificates of course completion.

(b) For all providers, except those providers listed in subsection (c), written authorization from the vendor, on an Agency-approved form, to use course materials owned and developed by a third party vendor stating:

(A) That the course provider is authorized to use the course materials, and

(B) The dates the provider is authorized to use the course.

(c) For in-state community colleges, colleges and universities applying for approval to use course materials owned and developed by a third party vendor, attestation that the provider must submit all revisions or updates to the Real Estate Agency for approval before using such materials.

(d) Course materials, including:

(A) Course curriculum or syllabus for the course of study.

(B) Student materials, including all course materials, textbooks and handouts.

(C) A completed Agency-approved topic checklist listing the detailed course topics and indicating the location of the topic in the course materials. This requirement applies to all course materials, including materials developed by the course provider or materials developed by a third-party vendor.

(D) Instructor materials, if any.

(E) Final examinations.

(F) Examination answer keys, as a document that is separate from the examination.

(G) For all providers except instate community colleges, colleges and universities, a continuing education instructor form for each instructor who will teach the course.

(3) The Agency will approve or deny the completed application and notify the applicant. Upon approval, the Agency will send a letter of approval. If the Agency denies the application, the applicant may seek a contested case hearing pursuant to ORS Chapter 183.

(4) All course approvals expire on June 30 each year. Providers must apply for renewal of course approval at least 30 days before the expiration date.

(5) Approved course providers must comply with the provisions of OAR 863-022-0052 for submitting all changes to application information, changes to course materials, and changes to instructors.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 696.182, & 696.184

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0050

Agency Approval of Brokerage Administration and Sales Supervision Course and Instructors

(1) A person seeking Agency approval of the 40-hour brokerage administration and sales supervision course described in OAR 863-022-0015 must be a certified continuing education provider.

(2) The person must submit an Agency-approved form and the following documents:

(a) Certificates of course completion.

(b) For all providers except instate community colleges, colleges and universities, that are applying for approval to use course materials owned and developed by a third party vendor, written authorization from the vendor, on an Agency-approved form, that the course provider is authorized to use the course materials and the dates the provider is authorized to use the course.

(c) For in-state community colleges, colleges and universities, that are applying for approval to use course materials owned and developed by a third party vendor, attestation that the provider must submit all revisions or updates to the Real Estate Agency for approval prior to using such materials

(d) Course materials, including:

(A) Course curriculum or syllabus for the course of study.

(B) Student materials, including all course materials, textbooks and handouts.

(C) A completed Agency-approved topic checklist that lists the detailed course topics and indicates the location of the topic in the course materials. This requirement applies to all course materials, including materials developed by the course provider or materials developed by a third-party vendor.

(D) Instructor materials, if any.

(E) Final examinations.

(F) Examination answer keys, as a document that is separate from the examination.

(G) For all providers except instate community colleges, colleges and universities, a continuing education instructor form for each instructor who will teach the course.

(3) The Agency will approve or deny the completed application and notify the applicant. Upon approval, the Agency will send a letter of approval. If the Agency denies the application, the applicant may seek a contested case hearing pursuant to ORS Chapter 183.

(4) All course approvals expire on June 30 of each year. Providers must apply for renewal of course approval at least 30 days before the expiration date.

(5) Approved course providers must comply with the provisions of OAR 863-022-0052 for submitting all changes to application information, changes to course materials, and changes to instructors.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 696.182, & 696.184

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0052

Changes in Application Information, Instructors, Course Materials and Failure to Comply

(1) This rule applies to any course provider whose course was approved under OAR 863-022-0030, 863-022-0035, 863-022-0045, or 863-022-0050.

(2) For any change to the information a course provider submitted on an initial course application or on a renewal application, the course provider must submit an application to the Agency for approval of the changes.

(3) Within 10 business days of license renewal by the Oregon Department of Education, a private career school must submit documentation to the Agency that the school's license has been renewed.

(4) A course provider may not use materials that have not been approved by the Agency for that course provider. A course provider must submit an application to the Agency for approval of any change in the course materials. This requirement applies to courses developed by the course provider and to courses developed by third party vendors.

(5) A course provider must submit an application to the Agency for approval for each new instructor that will teach the course.

(6) A course provider must notify the Agency that an approved instructor will no longer teach the course within 10 days of such change.

(7) The Real Estate Agency may revoke the approval of a course if:

(a) The course provider fails to submit an application for approval of changes in course provider information submitted on an initial application or a renewal application,

(b) The course provider fails to submit an application for approval of any change to course materials, or

(c) The course provider uses course materials that have not been approved by the Agency.

(8) If the Agency revokes a course approval, the Agency will also revoke the course provider's authority to submit information for student examination eligibility to the examination provider as provided in OAR 863-022-0060.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 686.182, 686.184, 696.022 & 696.020

Hist.: REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0055

Board Approval of Three-Hour Rule and Law Change Course

(1) The Board will develop the course content required for a course on recent changes in real estate rule and law required by ORS 696.174, and the Agency will make the course content available to the public.

(2) The Board will update the course at least biannually.

(3) To be eligible for continuing education credit required under OAR 863-020-0010, the Board-approved course must be provided by a certified continuing education provider.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174, 696.182, & 696.184

Hist.: REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

863-022-0060

Responsibilities of Providers of Real Estate Broker, Principal Broker and Property Manager License Application Courses

(1) For purposes of this rule, a "course provider" is:

(a) A private career school, in-state community college, college, or university that provides the 150-hour real estate broker license applicant course of study under OAR 863-022-0010, the 60-hour property manager license applicant course under 863-022-0015; or the 40-hour brokerage administration and sales supervision course under 863-022-0025; and

(b) A continuing education provider who provides the 40-hour brokerage administration and sales supervision course under OAR 863-022-0025.

(3) For purposes of this rule, “examination provider” means the vendor, under a contract with the Agency, which provides licensing examination services and collects the fee for such services directly from a license applicant.

(4) A course provider must certify to the examination provider that an applicant for a real estate license has successfully completed the course or courses according to the requirements and instructions of the examination provider.

(5) Before certifying that a license applicant completed a course as provided in section (4) of this rule, a course provider must obtain proof from a license applicant that the applicant has submitted a license application to the Agency.

(6) A course provider must inform each student taking a course that:

(a) The course provider will certify to the examination provider that an applicant for a real estate license has successfully completed the course or courses; and

(b) Before a course provider may certify that the applicant completed the course, a student must provide proof to the provider that the student has applied to the Agency for a real estate broker, principal broker or property manager license.

(7) In addition to the requirements under this rule, a course provider must provide a certificate of completion to each student.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11; REA 1-2012(Temp), f. 8-14-12, cert. ef. 8-15-12 thru 2-1-13; REA 1-2013, f. 1-14-13, cert. ef. 2-1-13

DIVISION 24

REAL ESTATE PROPERTY MANAGER LICENSING

863-024-0000

Application and Purpose

(1) This division sets forth the requirements and process for licensing real estate property managers, as that term is defined in ORS 696.010.

(2) The purpose of this division is to specify the requirements for obtaining a real estate property manager’s license.

Stat. Auth.: ORS 696.385

Stat. Implemented:

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-024-0003

Definitions

As used in this division, unless the context requires otherwise, the following definitions apply to this division:

(1) “Agency” is defined in ORS 696.010.

(2) “Agency-approved form” means an electronic or paper form approved by the Real Estate Agency.

(3) “Board” means the Real Estate Board established pursuant to ORS 696.405.

(4) “Branch office” is defined in ORS 696.010.

(5) “Commissioner” is defined in ORS 696.010.

(6) “Legal name” means the first name, middle name and last or surname, without the use of initials or nicknames and is the name given at birth or subsequently acquired through marriage, court order or adoption.

(7) “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.

(8) “Management of rental real estate” is defined in ORS 696.010.

(9) “Principal broker” means “principal real estate broker,” as defined in ORS 696.010.

(10) “Property manager” means “real estate property manager,” as defined in ORS 696.010.

(11) “Real estate activity,” “professional real estate activity,” and “real estate business” mean “professional real estate activity” as defined in ORS 696.010, which includes managing rental real estate.

(12) “Real estate broker” is defined in ORS 696.010.

(13) “Real estate licensee” and “licensee” mean a “real estate licensee” as defined in ORS 696.010.

(14) “Registered business name” is defined in ORS 696.010.

(15) “Signed” or “Signature” means original or electronic signature as provided by OAR-024-0076.

Stat. Auth.: ORS 696.385

Stat. Implemented: ORS 696.010 & 696.020

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11

863-024-0010

License Application Form and Content

(1) Effective July 1, 2011, before the Agency will accept any documents or information relating to an applicant’s qualifications, an property manager license applicant must submit an application and fee required under this rule.

(2) Effective September 15, 2011, before the Agency will accept any documents or information relating to an applicant’s qualifications, an property manager license applicant must submit an application and pay the fee required under this rule using an online application process that is available through the Agency’s website.

(3) The license application includes:

(a) The applicant’s legal name as defined in OAR 863-024-0003, mailing address, email address and phone number;

(b) The applicant’s date and place of birth;

(c) The applicant’s Social Security Number;

(d) Certification by the applicant that the applicant has a high school diploma, General Educational Development (GED) certificate or the international equivalent.

(e) Certification by the applicant that the applicant is at least 18 years of age.

(f) Whether the applicant:

(A) Has ever been convicted of or is under arrest, investigation, or indictment for a felony or misdemeanor;

(B) Has ever been refused a real estate license or any other occupational or professional license in any other state or country;

(C) Has ever had a real estate or any other occupational or professional license revoked or suspended; or

(D) Has ever been fined or reprimanded as such a licensee; and

(g) Any other information the commissioner considers necessary to evaluate the applicant’s trustworthiness and competency to engage in the management of rental real estate in a manner that protects the public interest.

(h) Certification by the applicant that all information provided by the applicant is true and correct.

(4) Every license application must be accompanied by the license fee authorized by ORS 696.270. At all periods of the year, the fee for all licenses issued is as authorized by 696.270. That is, the Agency does not pro-rate license fees.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11

863-024-0015

Background Check and Fingerprint Requirements

(1) An applicant for a property manager license must submit to a background check, except an applicant who is currently licensed as a real estate broker or principal real estate broker or who is eligible for renewal of such licenses.

(2) The background check includes a criminal background check as provided in OAR chapter 863, division 005, which requires the applicant to provide fingerprints.

(3) Effective July 1, 2011, the Agency and a vendor for fingerprinting services (“fingerprint service provider”) have contractually agreed that:

(a) The fingerprint service provider will provide fingerprint services to license applicants and submit the fingerprints to the Oregon State Police for Oregon and nationwide criminal history checks.

(b) A license applicant may only submit fingerprints required by the Agency through the fingerprint services provider.

(c) A license applicant must pay the fee for fingerprinting, authorized under ORS 696.270, directly to the fingerprint services provider.

(d) A license applicant must provide fingerprints according to the requirements and instructions of the fingerprint services provider.

(e) A license applicant must have submitted a license application to the Agency before providing fingerprints.

(4) 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 will keep such information segregated from other information on the applicant or licensee and maintain such information in a secure place.

(5) If the Agency determines that additional information is necessary in order to conduct a background check, the Agency may request such information in writing, and the applicant must provide the requested information. If the applicant fails to provide the requested information, the Agency may determine that the license application is incomplete and terminate the application.

(6) A license applicant must successfully complete the remaining portions of the licensing process required by 863-024-0045 within the 12 months from the date of the successfully completed background check process and review. If the applicant does not meet all licensing requirement within the 12 months, the background check review is no longer valid and the applicant must submit to another background check, including fingerprints as described in this rule.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11; REA 4-2013(Temp), f.10-31-13, cert. ef. 11-1-13 thru 4-29-14

863-024-0020

Examinations

(1) For purposes of this rule, "examination provider" means the vendor, under a contract with the Agency, which provides licensing examination services and collects the fee for such services directly from a license applicant.

(2) In addition to any other licensing eligibility requirements:

(a) A property manager license applicant must pass a property manager examination.

(b) A property manager who has not held an active license for two or more consecutive years must pass a reactivation examination.

(3) To be eligible to take an examination:

(a) A license applicant must have submitted a license application and fee to the Agency required under OAR 863-024-0010 or a license reactivation application and fee required under OAR 863-024-0065;

(b) A license applicant must have successfully completed the required course of study for a property manager license under OAR 863-022-0015 from an approved school; and

(c) The school providing the course under (b) of this section must have certified to the examination provider that the applicant completed the course as provided in OAR 863-022-0060;

(4) To be admitted to an examination site:

(a) A license applicant must be eligible to take an examination under section (3) of this rule;

(b) The applicant must register with the examination provider in advance of the examination and comply with the provider's requirements and instructions; and

(c) The examination provider will collect the examination fee under ORS 696.270 directly from the applicant.

(5) An applicant must pay a separate examination fee for each examination.

(6) If an applicant for a property manager license examination passes the 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 retake and pass the examination as required by this rule.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020, 696.022 & 696.425

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11

863-024-0030

License Issue, Term, Form

(1) The Agency will issue a property manager license to an applicant after determining that the applicant meets the license requirements contained in ORS 696.022 and 696.790, has paid all required fees and meets the requirements under OAR 863-024-0045.

(2) A licensee may engage in property management 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 of the following Oregon real estate licenses at any time:

- (a) Real estate broker,
- (b) Principal real estate broker, or
- (c) Property manager.

(4) The license expiration date is the last day of the month of a licensee's birth month.

(5) The license term 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 will include the following information:

- (a) The licensee's legal name,
- (b) The license number, effective date, and expiration date,
- (c) The name under which the licensee conducts real estate 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

Stats. Implemented: ORS 696.020, 696.022 & 696.270

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11

863-024-0045

Property Manager Licensing Requirements

(1) Effective July 1, 2011, to be eligible for a property manager license, an individual must complete the following steps in the order listed:

(a) Submit a license application and pay the fee to the Agency required by OAR 863-024-0010.

(b) Successfully complete the required courses of study for a property manager license required by OAR 863-022-0015.

(c) Ensure that the school providing the required course of study certifies to the examination provider that the applicant completed the course as required by OAR 863-024-0020.

(d) Pass the property manager licensing examination and pay the fee to the examination provider as required by OAR 863-012-0020.

(e) Provide fingerprints for a criminal background check and pay the fee to the fingerprint services provider as required by OAR 863-0014-0015.

(2) After the applicant meets the requirements under (1) of this rule, the Agency will complete a background check on the applicant, which includes a criminal background check under OAR 863-024-0015.

(3) Effective July 1, 2011 to September 14, 2011, after the requirements in (1) and (2) of this rule are met:

(a) The applicant must state that the applicant will be conducting professional real estate activity under the applicant's licensed name or is registering a business name as provided in (5) of this rule; or

(b) The applicant must submit to the Agency the name and address and authorization of a property manager or principal broker with whom the applicant will be associated and the authorization of the property manager or principal broker to use the registered business name.

(4) Effective September 15, 2011, after the requirements in (1) and (2) of this rule are met:

(a) The applicant must state whether the applicant will be conducting professional real estate activity under the applicant's licensed name or is registering a business name as provided in (5) of this rule; or

(b) After the applicant has submitted the following, the Agency will contact the property manager or principal broker for authorization for the applicant to be associated with the property manager or principal broker and to use the registered business name:

(A) The name and address of a property manager or principal broker with whom the applicant will be associated; and

(B) The address of the registered business name.

(5) If an applicant wishes to conduct professional real estate activity under a registered business name registered by the applicant, the

applicant must first obtain a property manager license and then register a business name under 863-024-0095.

(6) A real estate property manager may only engage in the management of rental real estate. The licensee 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 licensee 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 licensee may charge, pay, receive, or 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.

(7) A real estate property manager 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 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 863-024-0085, a property manager may not authorize another real estate licensee to supervise that property manager's licensed activity in the property manager's absence.

(8) 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 property manager may not act in the broker's absence under OAR 863-024-0085.

Stat. Auth.: ORS 696.385

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; Renumbered from 863-015-0045, REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11

863-024-0050

License Renewal

(1) Effective July 1, 2011 a licensee may only submit a license renewal application and pay the fee using an online application process, which will be available through the Agency's website.

(2) For purposes of this rule, "received by the Agency" means the date a license renewal is received by the Agency or the postmarked date.

(3) A property manager license expires if a licensee fails to renew the license on or before the license expiration date. A licensee may not engage in any professional real estate activity after a license expires. A property manager may renew an expired license as provided in this rule.

(4) The Agency will renew an active property manager license to active status for the term prescribed in OAR 863-024-0030 when the Agency has received the following:

(a) The renewal fee authorized by ORS 696.270; and

(b) An Agency-approved active renewal application form requesting active license status that includes certification by the licensee that the licensee has met the real estate continuing education renewal requirements under section OAR 863-020-0010.

(5) The Agency will renew an active property manager license to inactive status for the term prescribed in OAR 863-024-0030, when the Agency has received the following:

(a) The renewal fee authorized by ORS 696.270; and

(b) An Agency-approved inactive renewal application form.

(6) The Agency will renew an inactive property manager license to inactive status for the term prescribed in OAR 863-024-0030 when the Agency has received the following:

(a) The renewal fee authorized by ORS 696.270; and

(b) An Agency-approved inactive renewal application form.

(7) The Agency will renew an inactive property manager license to active status for the term prescribed in OAR 863-024-0030, when the Agency has received the following:

(a) The renewal fee authorized by ORS 696.270; and

(b) An Agency-approved active renewal application form requesting active license status that includes certification by the licensee that the licensee has met the real estate continuing education renewal requirements under section (3) or (4) of this rule.

(8) The Agency will renew an expired property manager license to active status when the Agency receives, within one year of the date the license expired, the following:

(a) The renewal fee and a late fee authorized by ORS 696.270; and

(b) An Agency-approved active renewal application form that includes certification by the licensee that the licensee met the real estate continuing education renewal requirements under section OAR 863-020-0010.

(9) The Agency will renew an expired property manager license to inactive status when the Agency receives, within one year of the date the license expired, the following:

(a) The renewal fee and a late fee authorized by ORS 696.270; and

(b) An Agency-approved inactive renewal application form.

(10) When the Agency renews an expired license, the renewed license is effective the date the renewal requirements are met. The renewal is not retroactive to the date the license expired, and the expired license retains the status of expired during the expiration period.

(11) A license renewed under this rule expires two years from the date of the original expiration date.

(12) A real estate license that has expired for more than one year is lapsed, as defined in ORS 696.010.

(13) A license may not be renewed if it is lapsed, surrendered, suspended, or revoked. Except as provided in OAR 863-024-0075, the former licensee must reapply and meet all the licensing qualifications required of new license applicants.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020, 696.022 & 696.270

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11

863-024-0060

Limited Licenses

If the commissioner issues a limited license to an individual under ORS 696.130, the licensee must apply in writing for an unrestricted license after the period of limitation.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020, 696.022 & 696.130

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09

863-024-0061

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 engaging in the management of rental real estate may use the same property manager or principal broker, provided that the individual registering the business name submits proof satisfactory to the commissioner that the property manager or principal real estate broker actually manages and controls each affiliated and subsidiary organization.

(4) As used in this rule, controlling ownership interest means owning 51 percent or more.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09

863-024-0062

Mailing Address, Email Address, Address Change, Service of Notice

(1) Each active, inactive and expired property manager licensee must maintain on file with the Agency a current mailing address and email and notify the Agency within 10 calendar days of a change of mailing or email address.

(2) A forwarding address is effective as a "current mailing address" when the Agency receives notice of the forwarding address by the United States Postal Service.

(3) Agency notice by mail, whether registered, certified, or regular, to the real estate licensee's current mailing address on file with the Agency constitutes service on the licensee.

(4) The Agency is not required by law to send notification or correspondence by regular mail to a licensee or license applicant regarding license or application status. The Agency may send notification or correspondence to a licensee or license applicant to the email address of the licensee or applicant on file with the Agency. Failure by a licensee or applicant to receive notification or correspondence provided via email does not relieve the licensee or applicant of the responsibility to maintain a current license or complete an application process.

(5) Effective September 15, 2011, the Agency's primary and preferred method of notification and correspondence is to the licensee or license applicant's email address.

(6) For purposes of this rule, "notification or correspondence" in (4) and (5) of this rule means:

(a) Notification, correspondence or confirmation to licensees about license renewal, change of license status to active or inactive, license transfers, registered business name, branch office registration, license reactivation, license expiration, and name and address changes.

(b) Notification, correspondence or confirmation to license applicants about license application status, receipt of documents or information from third parties on license qualifications, and license issuance.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11

863-024-0063

Property Manager License Transfers, Principal Brokers' Responsibilities, Authority to Use Registered Business Name

(1) As used in this rule:

(a) "Authorized licensee" means a property manager or principal broker who has authority over the use of a registered business name;

(b) "License transfer form" means a completed and signed Agency-approved form that does one of the following:

(A) Transfers a property manager license to a receiving principal broker in order to become associated with the receiving principal broker, or

(B) Authorizes a property manager to use a registered business name to conduct management of rental real estate.

(c) "Sending principal broker" means the principal real estate broker with whom an active property manager license is associated before the license transfer;

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

(2) The property manager licensee must provide the following information on a license transfer form:

(a) The name, mailing address, email address and license number of the property manager 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 property manager is associated with a sending principal broker, certification that the property manager provided written notice of the transfer to the sending principal broker, and that such notice was provided before the date 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 sending principal broker's address;

(d) If the form is used to authorize the use of a different registered business name, certification that the property manager licensee provided written notice of such change to the authorized licensee for the current registered business name, and that such notice was provided before 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 authorized licensee's address;

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

(f) If applicable, the street address, registered business name identification number, and the registered business name under which the property manager licensee will be authorized to conduct management of rental real estate; and

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

(3) The Agency will transfer the license of an active property manager associated with a sending principal broker to a receiving principal broker when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

(4) The Agency will transfer the license of a property manager to a receiving principal broker when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

(5) The Agency will transfer the license of an inactive property manager licensee, who has been inactive for a period of 30 days or less,

to a receiving principal broker when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

(6) A principal real estate broker with whom a property manager licensee is associated remains responsible for the licensee's management of rental real estate until the Agency receives one of the following:

(a) An Agency-approved form submitted by the principal real estate broker terminating the relationship with the licensee under OAR 863-024-0065; or

(b) A license transfer form and fee.

(7) If a principal real estate broker with whom a property manager is associated voluntarily gives the license to the property manager named in the license, the principal real estate broker remains responsible for the licensee's subsequent management of rental real estate until the Agency receives one of the following:

(a) An Agency-approved form submitted by the principal real estate broker terminating the relationship with the licensee under OAR 863-024-0065;

(b) An Agency-approved form submitted by the licensee terminating the relationship with the principal real estate broker under OAR 863-024-0065; or

(c) A license transfer form and fee.

(8) The Agency will document the registered business name under which a property manager licensee is authorized to conduct management of rental real estate when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11

863-024-0065

Inactive License, Change License Status to Active, License Reactivation

(1) A property manager licensee whose license is on inactive status may not engage in management of rental real estate.

(2) The commissioner may reprimand, suspend, revoke, or impose a civil penalty against an inactive licensee under ORS 696.301.

(3) The Agency will change an active property manager license to inactive license status when the Agency actually receives a request by the licensee submitted on an Agency-approved form to change the license status to inactive.

(4) An inactive property manager licensee may renew such license under OAR 863-024-0050.

(5) For a period of 30 days after a property manager license becomes inactive, a property manager may change such license status from inactive to active under OAR 863-024-0063.

(6) If a property manager license has not been on active status for two or more consecutive years, the licensee must complete the following steps in the order listed to reactivate the license:

(a) Submit an application for licensing reactivation examination and pay the fee to the Agency authorized by ORS 696.270; and

(b) Pass the property manager reactivation examination and pay the fee to the examination provider as required by OAR 863-024-0020.

(7) After the 30-day period in section (5) of this rule, and subject to the examination requirements in section (6) of this rule, a property manager may change the license status from inactive to active only by submitting to the Agency:

(a) An application for license reactivation; and

(b) Payment of the reactivation fee authorized by ORS 696.270.

(8) Subject to the examination requirements in section (6) of this rule, if an inactive licensee renews a license and maintains inactive status, 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 863-020-0010; and

(b) Payment of the active renewal fee authorized by ORS 696.270, less the amount of the inactive renewal fee already paid by the licensee.

(9) The change of license status, transfer of license, or the reactivation of a license is effective when the Agency actually receives all required forms and fees.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2010, f. 6-14-10, cert. ef. 7-1-10; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11

863-024-0066

Licensee Name Change

A licensee may apply for a name change by submitting to the Agency:

- (1) A name change application and payment of the fee authorized under ORS 696.270; and
- (2) Legal proof of the name change, which must be in the form of an official record such as a marriage certificate, divorce certificate, or a court order/decreed.

Stat. Auth.: ORS 696.385
 Stats. Implemented: ORS 696.020 & 696.022
 Hist.: REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11

863-024-0070

License Surrender

(1) A property manager may surrender the licensee's license to the commissioner on an Agency-approved form. Upon surrender, the license is terminated, and the licensee's rights under the surrendered license are terminated. The Commissioner retains continuing jurisdiction to investigate the management of rental real estate conducted under the license and to take disciplinary action against the former licensee under ORS Chapter 696 and its implementing rules.

(2) A surrendered license may not be renewed. The former licensee must reapply and meet all the licensing qualifications required of new license applicants.

Stat. Auth.: ORS 696.385
 Stats. Implemented: ORS 696.020 & ORS 696.022
 Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09

863-024-0075

Reissuing Suspended License

(1) The Agency may reissue an unexpired property manager's license that has been suspended by order of the commissioner if the licensee asks that it be reissued and pays the required fee within 30 days after the close of the suspension period.

(2) If the licensee fails to act within 30 days, the license becomes inactive and may be reactivated only pursuant to OAR 863-024-0065.

(3) If the license expires before the request for reissuance, the Agency will renew the license within the 30-day period only pursuant to OAR 863-024-0050.

(4) A license reissued under this rule is effective for licensing purposes when the Agency receives all required forms and fees.

(5) If the license has had a status other than active for two or more consecutive years, the licensee must comply with the reactivation requirements of OAR 863-024-0065.

Stat. Auth.: ORS 696.385
 Stats. Implemented: ORS 696.020 & 696.022
 Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-024-0076

Signature Requirements

(1) Subject to ORS 84.001 to 84.061, the Agency may, but is not required to, 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 an individual to submit an original or electronic signature on any document or Agency-approved form.

Stat. Auth.: ORS 696.385
 Stats. Implemented: ORS 696.020 & 696.022
 Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11

863-024-0085

Authorization to Control Property Manager's Business

(1) A property manager may authorize another property manager to control and supervise his or her property management activity during the property manager's absence for a period not to exceed 90 days.

(2) Both licensees have joint responsibility for all property management activity conducted during the authorizing property manager's absence.

(3) The written authorization required by this rule must contain the following information:

(a) The authorizing property manager's authorization, including the effective date and termination date of such authorization, which may not exceed 90 days;

(b) An affirmation by the supervising property manager acknowledging that the property manager accepts the supervisory responsibility, and

(c) An affirmation by both property managers acknowledging that they are jointly responsible for the property management activity during the dates of the authorization.

(4) The authorizing property manager may end the authorization before the termination date by filing an amended authorization before the termination date.

(5) The written authorization required by this rule must be received by the Agency before the effective date of such authorization on an Agency-approved form. The commissioner may allow a later filing for good cause shown.

(6) The Agency will maintain the written authorization as an Agency record.

(7) This rule provides an exception to OAR 863-014-0095(7), which prohibits a principal broker from engaging in professional real estate activities under more than one registered business name. That is, a supervising principal broker may conduct professional real estate activity under both the authorizing principal broker's registered business name and the supervising principal broker's registered business name if the parties meet the requirements contained in this rule. This exception does not allow a principal broker to conduct professional real estate activity under more than these two registered business names.

Stat. Auth.: ORS 696.385
 Stats. Implemented: ORS 696.026
 Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-024-0095

Business Name Registration

(1) Before conducting business in a name other than the licensee's legal name, the property manager must register the business name with the Agency. For the purposes of this rule, "business name" means 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. A licensee must maintain the registered business name with the Oregon Secretary of State's Corporation Division.

(2) To register a business name, the property manager must submit to the Agency, on a Agency-approved form, the following:

(a) The business name in which the licensee wishes to conduct business, which must be the exact name on file with the Oregon Secretary of State;

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

(c) A copy of the registration on file with the Oregon Secretary of State Business Registry, showing the business name is active; and

(d) The fee authorized by ORS 696.270.

(3) A property manager who wishes to use a registered business name must submit to the Agency the following:

(a) The registered business name the licensee wishes to use; and

(b) Authorization from the property manager or principal broker who is responsible for the registered business name on the records of the Agency to use the name.

(4) 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 will be treated as the registration of a new business name, and the change in business name must be registered with the Agency together with the fee authorized by ORS 696.270.

(5) If a licensee wishes to transfer the right to use a business name that is registered with the Agency, the licensee acquiring the right to use the name must file a change of business name registration with the Agency together with the fee authorized by ORS 696.270. A licensee must notify the Agency in writing if the licensee terminates its use of a business name.

(6) A business name registration becomes void when the Agency receives notice of termination of the use of a business name. A business name registration becomes 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, unless a new user has registered the business name, without paying the fee set forth in ORS 696.270.

(7) No real estate property manager may engage in professional real estate activities under more than one registered business name. An exception to this requirement is that a real estate property manager may engage in the management of rental real estate under more than one registered business name if the business entity is an affiliated or subsidiary organization as described in OAR 863-024-0061.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.026

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 3-2011(Temp), f. & cert. ef. 6-22-11 thru 12-1-11; REA 6-2011, f. 8-15-11, cert. ef. 9-1-11; REA 7-2011, f. & cert. ef. 11-15-11

863-024-0100

Branch Office Registration

(1) Before a property manager may engage in the management of rental real estate from a branch office, the property manager must provide to the commissioner on an Agency-approved form the branch office street and mailing addresses and the fee authorized by ORS 696.270.

(2) For the purposes of ORS 696.270, a branch office registration does not require renewal.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.026 & 696.200

Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

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 ORS 696.396.

(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 or assess civil penalties under ORS 696.990.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.361

Hist.: REA 3-1987, f. 12-3-87, ef. 1-1-88; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0207; 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; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

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) "Audit trail" means a documented history of a financial transaction by which the transaction can be traced to its source.

(2) "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).

(3) "Banking day" means each day a bank is required to be open for the normal conduct of its business but does not include Saturday, Sunday, or any legal holiday under ORS 187.010.

(4) "Compliance review" means an Agency review of a property manager's records and procedures for the purpose of educating the property manager on statutes and rules.

(5) "Clients' Trust Account" means a federally insured 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.

(6) "Cure noncompliance" means a property manager's acts that resolve the property manager's failure to comply with statutory and rule requirements.

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

(8) "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. A property manager may use a supplemental unique series of letters and/or numbers on transactions and records if the property manager establishes a clear audit trail to a specific property management agreement and to the original identifying code.

(9) "Investigation" means an Agency-initiated investigation of a property manager that may result in administrative actions against the licensee.

(10) "Mail-in audit" means an Agency audit of a clients' trust account based on information and documents prepared by a property manager and mailed to the Agency.

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

(12) "Property manager" means a real estate licensee authorized to engage in management of rental real estate as defined in ORS 696.010(12).

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

(14) "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 or lease agreement or any part of a rental or lease agreement.

(15) "Security Deposits Account" means a federally insured 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.

(16) "Sufficient funds" or "sufficient credit balance" means an amount of funds on an owner's ledger or a tenant's ledger that is equal to or greater than the amount of a planned disbursement from a clients' trust account or a security deposits account but which must not include any security deposits in a security deposits trust account that are required to be held pending the 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 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; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

863-025-0015

Written Policies and Delegation of Authority

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

(2) Each policy must 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 agreements under OAR 863-025-0020(6) and tenant rental and lease agreements under 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.
 - (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 management agreements under OAR 863-025-0020(6);
 - (b) Review and approve reconciliations and receive and disburse funds under OAR 863-025-0025(23); and
 - (c) Review, approve and accept tenant rental and lease agreements under OAR 863-025-0045(2).
- Stat. Auth.: ORS 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; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

863-025-0020

Property Management Agreements

- (1) A property manager must not engage in the management of rental real estate without a written, unexpired property management agreement between the owner and the property manager.
- (2) A property management agreement must include, but is not 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 is earned and when it will be paid;
 - (g) A description of the monthly statements of accounting the property manager will provide to the owner;
 - (h) The disposition of the property manager's records of the management of the owner's rental real estate after termination of the agreement;
 - (i) Disclosure of the use of employees or a business in which the property manager has a pecuniary interest at the time of the execution of the property management agreement, that will provide services for the owner's property;
 - (j) A statement that the property manager will disclose to the owner, in writing, the property manager's planned use of any employees or a business in which the property manager has a pecuniary interest to provide services for the owner's property, if such employees or business were not disclosed in the property management agreement pursuant to section (2)(i) of this rule;
 - (k) An identifying code;
 - (l) Signatures of the property manager, or a person authorized in section (6) 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, the terms 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) or (6), including provisions specifying to whom the interest earnings inure as follows:
 - (A) If the interest earnings inure to the benefit of the owner, when such interest earnings will be disbursed;
 - (B) If the interest earnings inure to the benefit of the property manager, that such interest will be disbursed to the property manager within ten calendar days from the date of the bank statement on which such interest is first shown as required in OAR 863-0025-0025(8) and
 - (c) Specific pass-through charges that will be paid by the owner.

(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 must 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) Only a property manager may 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 who is under the supervision and control of the principal real estate broker.

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

Stat. Auth.: ORS 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; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

863-025-0025

Clients' Trust Account and Security Deposits Account Requirements

- (1) All clients' trust accounts and security deposits trust accounts must be federally insured bank accounts.
- (2) A property manager must open and maintain at least one clients' trust account as defined in OAR 863-025-0010.
- (3) 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).
- (4) Except as provided in section (7) of this rule, a property manager who receives security deposits on behalf of an owner must 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.
- (5) Except as provided in section (7) of this rule and OAR 863-025-0030, a property manager who receives a security deposit on behalf of an owner must deposit the security deposit into the property manager's security deposits account within five banking days after receipt.
- (6) 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) and the tenant has provided the property manager with written approval required in 863-0035-0025(24).
- (7) When a property management agreement and a corresponding lease or rental agreement provide that the security deposit will be transferred to and held by the owner, the security deposit funds must be deposited in the clients' trust account and disbursed to the owner in the month in which they are received.
- (8) If interest earned in a clients' trust account under section (3)(b) of this rule or in a security deposits account under section (6)(b) of this rule inures to the benefit of the property manager, such interest must be disbursed to the property manager within ten calendar days from the date of the bank statement on which such interest first appears.
- (9) A property manager may not allow an owner to be an authorized signer on a clients' trust account or security deposit account and may not allow an owner to deposit, hold or disburse funds in a clients' trust account or security deposit account.
- (10) A property manager must be an authorized signer on each client's trust account and each security deposits account and is solely responsible for the receipts and disbursements on each bank account.

(11) A property manager must 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 must:

- (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.

(12) A property manager must 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.

(13) 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.

(14) 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.

(15) A property manager must 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 may only disburse such fees if sufficient funds are available.

(16) 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.

(17) A property manager may 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 must arrange with the account depository and other entities for written verification of when funds are received or disbursed by wire or electronic transfer.

(18) Upon request by the commissioner or an authorized representative of the commissioner, a property manager must 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.

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

(20) A property manager must reconcile each clients' trust account within 30 calendar days of the date of the bank statement pursuant to the requirements contained in this section.

(a) The reconciliation must have three components that are contained in a single reconciliation document:

- (A) The bank statement balance, adjusted for outstanding checks and other reconciling bank items;
- (B) The balance of the record of receipts and disbursements or the check register as of the date of the bank statement; and
- (C) The sum of all positive owners' ledgers as of the date of the bank statement.

(b) The balances of each component in section (20)(a) of this rule must be equal to and reconciled with each other. If any adjustment is

needed, the adjustment must be clearly identified and explained on the reconciliation document.

(c) Outstanding checks must be listed by check number, issue date, payee and amount;

(d) Within 30 calendar days from the date of the bank statement, the property manager must:

- (A) Complete the reconciliation document; and
- (B) Sign and date the reconciliation document, attesting to the accuracy and completeness of the reconciliation; and

(e) The property manager must preserve and file in logical sequence the reconciliation document, bank statement, and all supporting documentation including, but not limited to, copies of the record of receipts and disbursements or check register and a listing of each owner's ledger balance as of the date of the bank statement.

(21) A property manager must reconcile each security deposits account within 30 calendar days of the bank statement date pursuant to the requirements contained in this section.

(a) The reconciliation must have three components that are contained in a single reconciliation document:

- (A) The bank statement balance, adjusted for outstanding checks and other reconciling bank items;
- (B) The balance in the records of receipts and disbursements or the check register as of the date of the bank statement;
- (C) The sum of all positive balances of individual security deposits and fees held in the security deposits account.

(b) The balances of each component in section (21)(a) of this rule must be equal to and reconciled with each other. If any adjustment is needed, the adjustment must be clearly identified and explained on the reconciliation document;

(c) Outstanding checks must be listed by check number, issue date, payee and amount;

(d) Within 30 calendar days of the date of the bank statement, the property manager must:

- (A) Complete the reconciliation document; and
- (B) Sign and date the reconciliation document, attesting to the accuracy and completeness of the reconciliation; and

(e) The property manager must preserve and file in logical sequence the reconciliation document, bank statement, and all supporting documentation including, but not limited to, copies of the record of receipts and disbursements or check register and a listing of all balances of individual security deposits and fees as of the date of the bank statement.

(22) A property manager must take corrective action to resolve all adjustments made in a reconciliation prior to the next reconciliation or document the good faith efforts the property manager has taken to resolve the adjustment.

(23) 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.

(24) A property manager may place security deposits received by the property manager in a federally insured interest-bearing security deposits account if:

- (a) The property management agreement includes a provision for such an account under OAR 863-025-0020(3);
- (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 the property management agreement and the written approval of the tenant specify to whom and under what circumstances the interest earnings will accrue and be disbursed.

(25) 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.

(26) A property manager must 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 must 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 pro-

gram used for the transfer does not automatically update the owner's ledger, the property manager must manually record the transfer in the owner's ledger. At the time the transfer is made, the property manager must print and preserve a hard copy of the electronic record of the transfer.

(27) 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 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; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

863-025-0030

Tenant Security Deposits

(1) Except as provided in section (3) of this rule, all tenants' security deposits received by a property manager must be deposited and maintained in a security deposits account until:

(a) The property manager forwards the tenant's security deposit 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 property manager disburses the tenant's security deposit for purposes authorized by the tenant's rental or lease agreement and the property management agreement;

(c) The property manager refunds a deposit to the tenant according to the terms of the tenant's rental or lease agreement and the property management agreement; or

(d) The property management agreement is terminated and the property manager transfers the tenant's security deposit to the owner unless the owner directs the property manager, in writing, to transfer the security deposits and fees to another property manager, escrow agent or person.

(2) If a property manager receives a security deposit 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 must be deposited into the security deposits account within three banking days after deposit of the check into the clients' trust account.

(3) When a property manager establishes a clients' trust account for a single property and the property management agreement and the corresponding lease or rental agreement provide that the security deposit will be transferred to and held by the owner, the security deposit must be deposited in the clients' trust account and disbursed to the owner in the month in which they are received.

Stat. Auth.: ORS 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; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

863-025-0035

Records; Required Records; Maintenance; Production

(1) The property manager's records of the management of rental real estate are "complete and adequate" as required under ORS 696.280 if the records contain, at least, the following:

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

(b) Client trust account and security deposit account records required by OAR 863-025-0000 to 863-025-0080 and ORS Chapter 696;

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

(d) A record of receipts and disbursements or check register maintained for each clients' trust account or security deposits account;

(e) A legible copy of each tenant agreement;

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

(g) A record of all cash receipts;

(h) All paid bills and receipts required under OAR 863-025-0040(8);

(i) A record of electronic bank transactions required under OAR 863-025-0040(9);

(j) Records of the reconciliation of each clients' trust account and security deposits account, including the reconciliation document;

(k) All cancelled checks or bank-supplied images of cancelled checks as provided under ORS 696.243(1) with the bank statements to which the checks pertain; and

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

(2) A property manager must 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 must provide such records within no less than five banking 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 produced immediately; and

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

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

(a) The property manager must 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 must be maintained in a format that will readily enable tracing and reconciliation.

(4) A property manager must 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.

(5) Subject to section (6) of this rule, a property manager may maintain records required under section (1) of this rule within this state at a location other than the property manager's licensed business location, or outside this state, but within the United States, if the property manager notifies the Commissioner in writing of each new location of records at least five banking days prior to establishing a new location. Notice to the Commissioner must include at least:

(a) The name, business address and telephone number of the property manager;

(b) A statement that the property manager intends to establish a new location for records;

(c) The complete address of the new location;

(d) The means of gaining access to the records at the new location and the name, address and telephone number of all contact persons who will provide access to the records during regular business hours;

(e) If the property manager has sole custody, control and access to the records, written, signed and dated authorization by the property manager for the Commissioner to freely access and inspect all records at the new location;

(f) If the property manager authorized a third party authority over custody, control or access to records, joint authorization from the property manager and such third party for the Commissioner to freely access and inspect all records at the new location; and

(g) The signature of the property manager attesting to the accuracy of the information and the date the notice is signed.

(6) If a property manager stores records at a location other than the property manager's licensed business location, the property manager must maintain an inventory of such records and information necessary to retrieve specific records.

Stat. Auth.: ORS 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; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

863-025-0040

Record of Receipts and Disbursements

(1) Except as provided in section (4) of this rule, a property manager must prepare and maintain a chronological record of receipts and

disbursements or a check register for each client's trust account and each security deposits account in which the manager must record each receipt of funds and each disbursement of funds.

(2) A record of receipts and disbursements or a check register must contain at least the following information:

(a) For each receipt of funds:

(A) The date the funds were received, unless the date is recorded in a separate document as provided in section (3) of this rule;

(B) The amount of the funds received;

(C) The purpose of the funds and identity of the person who tendered the funds; and

(D) The date the funds were deposited.

(b) For each disbursement of funds:

(A) The date the funds were disbursed;

(B) The amount of funds disbursed;

(C) The check number and payee of the disbursement; and

(D) The purpose of the disbursement.

(c) If there is more than one property in a clients' trust account, each entry for a receipt, deposit or disbursement must be identified with the applicable identifying code;

(d) If the trust account is an interest-bearing account, the amount of interest earned and the date the interest was credited to the account; and

(e) The account balance after each entry.

(3) The property manager may record the date funds were received as required in section (2)(a)(A) of this rule in a record that is separate from the record of receipts and disbursement or check register if the property manager establishes an audit trail that shows when the funds were received and deposited.

(4) If a property manager maintains a separate client's trust account for a single owner pursuant to property management agreement, the property manager must maintain at least one of the following:

(a) A record of receipts and disbursements;

(b) A check register; or

(c) An owner's ledger as defined under OAR 863-025-0055.

(5) Upon any activity, the property manager must record each receipt, deposit or disbursement as required in this rule and record each deposit or disbursement on the corresponding owner's ledger as required in OAR 863-025-0055 and/or tenant's ledger as required in 863-025-0050.

(6) A property manager may aggregate individual deposits or individual disbursements and record the aggregated total in the record of receipts and disbursements or check register only if the property manager:

(a) Aggregates the deposits or disbursements on a daily basis;

(b) Maintains a separate report that details the individual deposits or disbursements, which states the information for each deposit and disbursement as required in section (2) of this rule; and

(c) Preserves and maintains the detailed report as a required record.

(7) A record of receipts and disbursements or check register for a clients' trust account may show a negative balance during the course of a day only if the record of receipts and disbursements or check register shows a positive balance at the close of the day.

(8) A property manager must 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.

(9) 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;

(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 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; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

863-025-0045

Tenant Agreements

(1) Residential Property. The property manager must file and maintain legible copies of all tenant rental or lease agreements for the time period required under OAR 863-025-0035. Each tenant rental or lease

agreement prepared by a property manager for residential real estate must 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 Property. The property manager must file and maintain legible copies of all tenant's rental or lease agreements for the time period required under OAR 863-025-0035. A property manager must 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 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; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

863-025-0050

Tenant Ledger

(1) Except as provided in section (3) of this rule, a property manager must 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.

(2) A property manager must use the balances of tenant security deposits in individual tenant's ledgers in the monthly reconciliation of the security deposits account as required in OAR 863-025-0025.

(3) A property manager must prepare and maintain a separate record of 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

(4) A tenant's ledger must contain at least the following information:

(a) The name of the tenant;

(b) The legal description of the property, the mailing address of the property and the unit number, or a unique series of letters and/or numbers that establishes an audit trail to the tenant agreement;

(c) The identifying code;

(d) For each deposit of funds:

(A) The amount of funds received;

(B) The purpose of the funds and identity of the person who tendered the funds; and

(C) The check number, cash receipt number or a unique series of letters and/or numbers that established an audit trail to the receipt of funds; and

(D) The date the funds were deposited;

(e) For each disbursement of funds:

(A) The date the funds were disbursed;

(B) The amount of funds disbursed;

(C) The check number or bank-generated electronic tracking number;

(D) The payee of the disbursement;

(E) The purpose of the disbursement; and

(f) The balance after each recorded entry.

(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 must retain a photocopy of the check and a dated receipt for the check in the required records of property management activity. The property manager must record the amount of the check, the dates of receipt and return of the check on the ledger required under section (3) of this rule.

Stat. Auth.: ORS 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; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

863-025-0055

Owner Ledger

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

(2) If a property manager maintains a separate client's trust account for a single owner pursuant to property management agreement, the property manager may maintain either a record of receipts and disbursements or check register in lieu of an owner's ledger.

(3) All owner ledgers must contain at least the following information:

- (a) The owner's name and identifying code;
- (b) For each deposit of funds:
 - (A) The amount of funds received;
 - (B) The purpose of the funds and identity of the person who tendered the funds;
- (C) The check number, cash receipt number or a unique series of letters and/or numbers that established an audit trail to the receipt of funds; and
 - (D) The date the funds were deposited;
 - (c) For each disbursement of funds:
 - (A) The date the funds were disbursed;
 - (B) The amount of funds disbursed;
 - (C) The check number or bank-generated electronic tracking number;
 - (D) The payee of the disbursement;
 - (E) The purpose of the disbursement; and
 - (d) The balance after each recorded entry.
- (4) A property manager must 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 must 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 must set forth such information separately.

(5) A property manager must 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 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; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

863-025-0060

Cash Receipts

(1) A property manager must prepare a legible written receipt for any cash funds received under a property management agreement.

(2) If a property management agreement states that the property manager is responsible for collecting cash from machines located on the owner's property including, but not limited to, vending and laundry machine, the property manager must prepare and maintain cash receipts as provided in this rule.

(3) Cash receipts must be consecutively pre-numbered, be printed in at least duplicate form and must contain:

- (a) The date of receipt of the cash funds;
- (b) The amount of the funds;
- (c) The reason for payment or collection of the funds received;
- (d) The identifying code of the owner on whose behalf the cash funds were received;

(e) The tenant's name or, in the case of collection of cash as provided in section (2) of this rule, the machine(s) the cash was collected from;

(f) The payee of the funds; and

(g) The name and signature of the individual who actually received the cash and prepared the receipt.

(4) A copy of the receipt must be maintained in the property manager's records.

Stat. Auth.: ORS 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; REA 8-2008, f.12-15-08, cert. ef. 1-1-09

863-025-0065

Deposits and Funds Received

(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, must 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 must account for all funds received.

(2) Any person employed by the property manager must 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 may not deposit any funds received on behalf of an owner in the property manager's personal account or commingle any such funds received with personal funds of the property manager.

(4) Except for funds received pursuant to OAR 863-025-0050(3) and 863-025-0025(16), for each deposit made under ORS 696.241, a property manager must obtain a deposit slip and make a written notation of the owner's identifying code assigned to the property management agreement on the deposit slip. As used in this rule, "deposit slip" means an independently verifiable third party document created by the third party at the time of the deposit.

(5) A property manager must maintain a complete record of all funds or other consideration received in the property manager's property management activity. This record must 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 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; REA 8-2008, f.12-15-08, cert. ef. 1-1-09; REA 2-2010, f. 12-15-10, cert. ef. 1-1-11

863-025-0068

Owner Information Request

(1) Upon written request from a property owner, a property manager must deliver to the owner the information listed in subsections (a) through (e) of this section for each tenant within five business days of actually receiving the request for information, unless the owner and the manager agree to a different time period.

- (a) The tenant's name, mailing address, and phone number;
- (b) The current rent amount and all scheduled tenant charges;
- (c) An accounting of all security deposits and fees held for the tenant;

(d) The name of each utility provider and the account number for each provider; and

(e) The name of each fire and life safety service provider and the account number for each provider.

(2) Upon written request from a property owner, a property manager must deliver to the owner copies of the current rental or lease agreement, including all addenda and modifications, within five business days of the date of actually receiving the request for information, unless the owner and the manager agree to a different time period.

(3) For the purposes of this rule, to deliver information to the owner means delivering the information by U.S. Mail, by fax, or by sending it electronically to the owner at the address or number provided to the manager by the owner with the request for information. The information is considered delivered on the date it is mailed, faxed, or sent electronically.

(4) This rule is in addition to and does not replace OAR 863-025-0070 concerning the final accounting after termination of the property management agreement.

Stat. Auth.: ORS 696.385
 Stats. Implemented: ORS 696.280 & 606.381
 Hist.: REA 2-2010, f. 12-15-10, cert. ef. 1-1-11

863-025-0070

Termination, Transfer of Property Management

(1) If a property management agreement is terminated, the property manager must terminate property management activity pursuant to the terms of the property management agreement and this rule.

(2) Not later than 60 days after the effective date of the termination, the property manager must:

(a) Disburse all obligated funds to the party or parties entitled to the funds; and

(b) Provide the owner with the following:

(A) A final accounting of the owner's ledger account;

(B) All funds belonging to the owner as shown on the owner's ledger, unless the owner directs the property manager, in writing, to transfer the funds to another property manager, escrow agent or person;

(C) An accounting of all security deposits and fees held for tenants;

(D) All tenant security deposits and fees held for tenants, unless the owner directs the property manager, in writing, to transfer the security deposits and fees to another property manager, escrow agent or person;

(E) Copies of all current tenant rental or lease agreements, unless the owner waives such requirement in writing or directs the property manager, in writing, to provide such documents to another property manager, escrow agent or person; and

(F) A notice the property manager may destroy the required records of the property management activity performed after six years.

(3) No later than the next calendar day after the effective date of the termination, a property manager must notify each tenant for whom the property manager holds a security deposit that:

(a) The security deposit and all fees held for the tenant will be transferred to the owner or, if applicable, to another property manager, escrow agent or person; and

(b) The name and address of the owner, other property manager, escrow agent or person to whom these deposits will be transferred;

(4) A property manager may not expend any tenant security deposits for payment of any expenses or fees not otherwise allowed by the tenant's rental or lease agreement.

(5) If a tenant's termination of tenancy occurs simultaneously with or prior to the effective date of termination of the property management agreement, a property manager must complete any final accounting, inspection or other procedures within the time required by:

(a) The tenant rental or lease agreement;

(b) The Residential Landlord Tenant Act; and

(c) The property management agreement, unless the owner otherwise directs in writing.

(6) A property manager must transfer and assign by written agreement any interest of the property manager in a rental or lease agreement to the owner or to a new property manager.

Stat. Auth.: ORS 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; REA 8-2008, f. 12-15-08, cert. ef. 1-1-09

863-025-0080

Compliance Reviews and Mail-in Audits

(1) The Agency will provide a property manager with written notice at least five business days before conducting a compliance review.

(2) A compliance review is completed when the Agency delivers a written notice of completion to the property manager.

(3) Except as provided in section (4) 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 after the Agency completes a compliance review, the Agency will allow the property manager at least 30 days from the date the compliance review is completed to cure the noncompliance without sanction.

(4) Upon completion of a compliance review, if the Agency has reasonable grounds to believe that the funds of an owner or tenant may be missing, funds may have been misappropriated, or that the property manager's records are in such a condition that the property manager is placing owners' and/or tenants' money at risk the Agency may immediately initiate an investigation without providing a property manager with an opportunity to cure noncompliance.

(5) The Agency will provide a property manager with written notice of a mail-in audit at least 30 days before required information and documentation must be provided to the Agency.

(6) After the Agency reviews the information and documents provided in a mail-in audit, the Agency will take one of the following actions:

(a) If the information and documents are in compliance with statutes and rules, the Agency will provide written notice to the property manager confirming compliance only as to the information and documents provided;

(b) If the information and documents indicate that the property manager may be subject to additional documentation and procedural requirements that were not part of the mail-in audit, the Agency will provide written notice to the property manager detailing the Agency's expectations for compliance on those matters;

(c) If the information and documents demonstrate that the 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 will provide written notice to the property manager that includes:

(A) The property manager must cure all noncompliance issues and provide information and documentation to the Agency that the noncompliance has been cured within 30 days of the date of the notice; and

(B) If all noncompliance issues are not cured within 30 days, the Agency may impose sanctions on the property manager or may initiate an investigation and not allow additional time for the property manager to cure the noncompliance.

(d) If the Agency has reasonable grounds to believe that the funds of an owner or tenant may be missing, funds may have been misappropriated, or that the property manager's records are in such a condition that the property manager is placing owners' and/or tenants' money at risk, the Agency may immediately initiate an investigation without providing a property manager with an opportunity to cure noncompliance.

(7) If a property manager does not respond to a mail-in audit within the time period required in the notice, the Agency may initiate an investigation.

(8) The Agency may conduct a mail-in audit of a property manager:

(a) As part of a regular, routine and random selection of property manager clients' trust accounts for mail-in audits;

(b) When the Agency has determined, after a compliance review, that the property manager was not in compliance and provided the property manager with an opportunity to cure the non-compliance; and

(c) After an investigation has been initiated.

Stat. Auth.: ORS 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; REA 8-2008, f. 12-15-08, cert. ef. 1-1-09

DIVISION 27

INVESTIGATIONS AND DISCIPLINE

863-027-0000

Applicability and Purpose

This division applies to licensed real estate brokers and property managers. It describes the methods and procedures the Agency will use to investigate complaints and the process the Agency will follow when taking disciplinary action.

Stat. Auth.: ORS 696.385

Stat. Implemented: ORS 696.396

Hist.: REA 9-2008, f. 12-15-08, cert. ef. 1-1-09

863-027-0005

Definitions

As used in this division, unless the context requires otherwise, the following definitions apply:

(1) "Agency" is defined in ORS 696.010.

(2) "Commissioner" is defined in ORS 696.010.

Stat. Auth.: ORS 696.385

Stat. Implemented: ORS 696.010

Hist.: REA 9-2008, f. 12-15-08, cert. ef. 1-1-09

863-027-0010

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 there-

under, may have occurred that constitutes grounds for discipline under 696.301. Reasonable grounds means a reasonable belief in facts or circumstances which, if true, would in law constitute a violation of 696.007 to 696.995 or its implementing rules.

(b) If the commissioner or an agency manager determines there are reasonable grounds to believe a violation may have occurred, the agency will initiate an investigation. 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
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; Renumbered from 863-015-0225, REA 9-2008, f. 12-15-08, cert. ef. 1-1-09

863-027-0020

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 the agency follows, which may include using increasingly severe steps or measures against a licensee when a licensee fails to correct inappropriate behavior or exhibits subsequent instances of inappropriate behavior.

(2) The commissioner will 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) An agency manager 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 696.396(2)(c).

Stat. Auth.: ORS 696.385 & 696.396
Stats. Implemented: ORS 696.241 & 696.301
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; Renumbered from 863-015-0230, REA 9-2008, f. 12-15-08, cert. ef. 1-1-09

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 49

ESCROW AGENT LICENSING

863-049-0000

Applicability and Purpose

This division applies to escrow agents and those who wish to become escrow agents. Its purpose is to set forth the requirements and processes for initial licensing, changes in ownership and individuals in charge of escrow operations, notice to the Agency of other changes, and license renewal.

Stat. Auth.: ORS 696.541

Stats. Implemented: ORS 696.511

Hist.: REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-049-0005

Definitions

As used in this division, unless the context requires otherwise:

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

- (2) "Bank" is defined in ORS 706.008.
- (3) "Commissioner" means Oregon Real Estate Commissioner.
- (4) "Escrow" is defined in ORS 696.505.
- (5) "Escrow agent" is defined in ORS 696.505.
- (6) "Escrow operations" means any activity that is subject to regulation under ORS 696.505 to 696.590.
- (7) "Escrow trust account" is defined in section 1, chapter 174, Oregon Laws 2009.
- (8) "Trust funds" is defined in section 1, chapter 174, Oregon Laws 2009.

Stat. Auth.: ORS 696.541
 Stats. Implemented: ORS 696.505 & 696.511
 Hist.: REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-049-0010

Initial License Application Form and Content

(1) An applicant for an escrow agent's license may be either a legal entity or an individual, but the requirements for each are slightly different. All applicants must submit:

- (a) An initial license application on an Agency-approved form;
- (b) Additional information required by OAR 863-049-0015 for legal entities or OAR 863-049-0020 for individuals;
- (c) The information required by OAR 863-049-0025 concerning criminal records checks and fingerprint cards; and
- (d) The fees authorized by ORS 696.530 and OAR 863-005-0090.

(2) The application form for all applicants must contain the following information:

- (a) The applicant's legal name;
- (b) The assumed business name, if any, as registered with Oregon Secretary of State;
- (c) The applicant's Federal Tax ID Number;
- (d) The applicant's fiscal year end;
- (e) The applicant's main office address, phone number, FAX number, and if applicable, Web site address;
- (f) If the applicant has any branch offices, the address, phone number, and FAX number of such offices;
- (g) The authorized contact for the applicant, including the individual's name, title, address, phone number and, if applicable, e-mail address and FAX number;
- (h) The name, title, date, and signature of the individual authorized to submit the application and a certification that this individual is so authorized; and
- (i) For a legal entity, the application form must also contain the names of the following:
 - (A) Any individual or legal entity holding an ownership interest in the escrow agent of more than five percent,
 - (B) All corporate officers in charge of escrow operations, and
 - (C) All individuals in charge of escrow operations.

Stat. Auth.: ORS 696.541
 Stats. Implemented: ORS 696.511
 Hist.: REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-049-0015

Additional Information for Legal Entities

(1) In addition to the license application form, an applicant that is a legal entity must submit the following:

(a) A corporate surety bond in the amount required by ORS 696.525 or one of the following:

(A) Evidence of a deposit in an amount equal to the surety bond as provided in ORS 696.527, or

(B) A written request to the commissioner for a waiver of the surety bond or deposit, as provided in ORS 696.527(4);

(b) A document signed and dated by the individual authorized to submit the application containing the following:

- (A) A general plan and description of the character of the business;
- (B) A history of the formation of the escrow business, including when the business was established; and
- (C) Except as provided in section (2) of this rule, a description of:

(i) The experience or training of the applicant's employees in the escrow business,

(ii) Information showing that the entity has at least three years of collective experience among its personnel in administering escrows in Oregon or in a state with comparable escrow laws,

(iii) The applicant's escrow business in another state, or

(iv) A testimonial of an escrow agent licensed in this state concerning the applicant's training and escrow experience.

(c) Information about the applicant's financial resources prepared by a certified public accountant in accordance with Generally Accepted Accounting Principles;

(d) Resumes of the individuals submitting the fingerprint cards and criminal records check clearance applications required by this division;

(e) A resolution of the entity authorizing the individual to sign and submit documents;

(f) A certificate of existence shown by current documentation from the Oregon Secretary of State or other appropriate state agency that the applicant is active and in good standing; and

(g) Current documentation from the Oregon Secretary of State that any assumed business name the escrow agent intends to use in its escrow operations is active and in good standing.

(2) If the applicant does not meet the three-year experience requirement contained in this rule, the applicant may seek a waiver from the commissioner by submitting information showing that the applicant has other qualifications sufficient to ensure the protection of the public.

(3) The Agency may require the applicant to submit any additional information that the Agency considers necessary to demonstrate the applicant's qualifications to transact escrow business.

(4) Every license application must be accompanied by the license fee authorized by ORS 696.530. The fee applies to all periods of the year. The Agency does not pro-rate license fees.

(5) Every license application must be accompanied by criminal records check clearance applications and fingerprint cards as specified in OAR 863-049-0025 (Criminal Records Check Clearance Application and Fingerprint Card) and an additional fee as specified in 863-005-0090 sufficient to recover the costs of processing any required fingerprint information and securing any criminal offender information for the following:

(a) Any individual holding an ownership interest in the escrow agent of more than five percent,

(b) All corporate officers in charge of escrow operations, and

(c) All individuals in charge of escrow operations.

Stat. Auth.: ORS 696.541
 Stats. Implemented: ORS 696.511
 Hist.: REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-049-0020

Additional Information for Individual Applicants

(1) In addition to the license application form, an individual applicant must submit the following documents:

(a) A corporate surety bond in the amount required by ORS 696.525 or one of the following:

(A) Evidence of a deposit in an amount equal to the surety bond as provided in ORS 696.527, or

(B) A written request to the commissioner for a waiver of the surety bond or deposit, as provided in ORS 696.527(4);

(b) A document signed and dated by the individual submitting the application containing the following information:

- (A) A general plan and description of the character of the business;
- (B) A history of the formation of the escrow business, including when the business was established; and
- (C) Except as provided in section (2) of this rule, a description of:

(i) The experience or training of the applicant's employees in the escrow business,

(ii) Information showing that the individual has at least three years of experience administering escrows in Oregon or in a state with comparable escrow laws,

(iii) The applicant's escrow business in another state, or

(iv) A testimonial of an escrow agent licensed in this state concerning the applicant's training and escrow experience.

(c) Information about the applicant's financial resources prepared by a certified public accountant in accordance with Generally Accepted Accounting Principles;

(d) Evidence that the individual is 18 years or older; and

(e) Resumes of the individuals submitting the fingerprint cards and criminal records check clearance applications required by this division;

(2) If the individual applicant does not meet the three-year experience requirement contained in this rule, the applicant may seek a waiver from the commissioner by submitting information showing that the applicant has other qualifications sufficient to ensure the protection of the public.

(3) The Agency may require the applicant to submit any additional information that the Agency considers necessary to demonstrate the applicant's qualifications to transact escrow business.

(4) The license application must be accompanied by the license fee authorized by ORS 696.530. The fee applies to all periods of the year. The Agency does not pro-rate license fees.

(5) Every license application must be accompanied by criminal records check clearance applications and fingerprint cards as specified in OAR 863-049-0025 (Criminal Records Check Clearance Application and Fingerprint Card) and an additional fee as specified in 863-005-0090 sufficient to recover the costs of processing any required fingerprint information and securing any criminal offender information pertaining to the applicant for the following:

- (a) The license applicant and
- (b) All individuals in charge of the escrow operations.

Stat. Auth.: ORS 696.541

Stats. Implemented: ORS 696.511

Hist.: REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-049-0025**Criminal Records Check Clearance Application and Fingerprint Card**

(1) The Agency conducts a criminal records check, makes a criminal background fitness determination, and either approves or denies a criminal background check clearance application under the provisions of OAR chapter 863, division 5. The Agency conducts this process on certain individuals, owners, or employees of an escrow agent license applicant as part of the initial application review and approval process. The Agency conducts this criminal records check process on certain individuals, owners, or employees of an escrow agent licensee as part of the application for changes in ownership or individuals who are in charge of escrow operations under OAR 863-049-045.

(2) As used in this rule, “applicant” means the individual applying for a criminal records check clearance under OAR chapter 863, division 5.

(3) The applicant must apply for a criminal records check clearance in writing on an Agency-approved form with all information provided and verified by the applicant.

(4) The criminal records check clearance application must include, but is not limited to, the following information:

- (a) The applicant’s legal name, residence address, and telephone number;
- (b) The applicant’s date and place of birth;
- (c) The applicant’s Social Security Number; and
- (d) Whether the applicant has ever been convicted of or is under arrest, investigation, or indictment for a felony or misdemeanor.

(5) The commissioner may require additional information from the applicant that the commissioner considers necessary for protecting the public.

(6) As provided in OAR 863-005-0090, all fingerprint cards, photographs, records, reports, and criminal offender information obtained or compiled by the Agency are confidential and exempt from public inspection. The Agency will keep such information segregated from other information on the escrow agent applicant or licensee and maintain such information in a secure place.

(7) If the Agency determines that additional information is necessary to process the application, the Agency may request such information in writing, and the applicant must provide the requested information in order to complete the application. If the applicant fails to provide the requested information, the Agency may determine that the application is incomplete and deny the application.

(8) An escrow agent license applicant who has otherwise qualified for the escrow agent’s license may not be considered for such license until each criminal records check clearance application has been approved or denied.

(9) If the Agency denies an individual’s criminal records check clearance application, the Agency will not approve the escrow license application.

(10) For the purposes of the Agency’s final approval of an initial application pursuant to OAR 863-049-0010 or a change of ownership pursuant to 863-049-0045, an approved criminal background check clearance for an individual is valid for 12 months.

Stat. Auth.: ORS 696.541 & 696.790

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; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09; Renumbered from 863-050-0240 by REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-049-0030**License Issue, Term, and Form**

(1) The Agency will issue an escrow agent’s license to an applicant after determining that the applicant meets the license requirements contained in ORS 696.505 to 696.590 and this division and receiving:

(a) The license application form and documents required under this division, and

(b) The fees authorized by ORS 696.530 and OAR 863-005-0090.

(2) A licensee may engage in escrow operations from the date the license is issued until the license expires or is revoked, surrendered, or suspended.

(3) All escrow agents’ licenses expire on June 30 of each year. A license may be renewed by filing a license renewal application as provided in OAR 863-049-0035 and paying the required fee.

Stat. Auth.: ORS 696.541

Stats. Implemented: ORS 696.511 & 696.530

Hist.: REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-049-0035**License Renewal**

(1) An escrow agent’s license expires on June 30 of each year. A licensee may not engage in escrow operations after a license expires.

(2) The Agency will renew an escrow agent’s license when the Agency has received the following:

(a) The renewal fee authorized by ORS 696.530, and

(b) An Agency-approved renewal application form that includes the training certification and contact information required by ORS 696.511(6).

(3) A licensee has a 30-day grace period after June 30 in which to renew the expired license. The licensee may not engage in escrow operations during that time. No late fee is required for late renewal.

(4) If the Agency renews an expired license during the 30-day grace period, the renewed license is effective as of the renewal date and is not retroactive. The renewed license does not authorize any escrow operations that occurred between July 1 and the license renewal date.

(5) If the licensee fails to renew a license by the end of the 30-day grace period but wishes to engage in escrow operations, the licensee must submit a new initial license application pursuant to OAR 863-049-0010 and pay all required fees.

Stat. Auth.: ORS 696.541

Stats. Implemented: ORS 696.511 & 696.530

Hist.: REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-049-0040**Notice to Agency of Changes**

(1) An escrow agent must notify the Agency within five calendar days on an Agency-approved form of the following changes in the information contained in an escrow agent license application: main or branch office location changes, branch office establishment, and branch office closure.

(2) An escrow agent must notify the Agency on an Agency-approved form ten business days before ceasing business operations.

Stat. Auth.: ORS 696.541

Stats. Implemented: ORS 696.511

Hist.: REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-049-0045**Application for Approval of Changes to Ownership or Individuals in Charge of Escrow Operations**

(1) An escrow agent must apply to the Agency for approval of changes in ownership or changes to individuals in charge of escrow operations. The application must be submitted on an Agency-approved form and include resumes, criminal records check clearance applications, fingerprint cards, and fees required under OAR 863-005-0090.

(2) The following changes are subject to this rule:

(a) Any individual who will hold an ownership interest in the escrow agent of more than five percent;

(b) Corporate officers who will be in charge of escrow operations for an escrow agent; and

(c) Other individuals who will be in charge of escrow operations for an escrow agent.

(3) The licensee may not allow the proposed change in ownership interest in (2)(a) of this rule to occur until the Agency approves the criminal records check clearance and notifies the licensee in writing.

(4) A licensee must submit an application for a change to corporate officers or individuals in charge of escrow operations under (2)(b) or (c) of this rule no later than five business days after the change.

(5) If the Agency denies a criminal records check clearance application submitted under (4) of this rule, the Agency will submit written notice to the individual and to the licensee, and the licensee must immediately remove the individual who was denied clearance from any duties as a corporate officer of individual in charge of the licensee's escrow operations.

Stat. Auth.: ORS 696.541
Stats. Implemented: ORS 696.511
Hist.: REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-049-0050

Letters of Credit

(1) For a certified, annually renewable letter of credit to be satisfactory to the commissioner under ORS 696.527 in lieu of a surety bond or deposit, the letter of credit must:

- (a) Be executed by a bank;
- (b) Name the State of Oregon Real Estate Agency as beneficiary;
- (c) Make no reference to any other conditional agreement, document, or entity;
- (d) Be annually renewable, 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 this section;
- (e) Provide for no less than sixty (60) calendar days notice to the Agency as 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 escrow agent is in violation of ORS 696.505-696.590."

(2) The commissioner may require that a Letter of Credit include additional terms and conditions.

Stat. Auth.: ORS 696.541
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; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09; Renumbered from 863-050-0035 by REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-049-0055

Annual Report and Financial Statements

(1) An escrow agent must submit to the Agency by March 31 of each year an Annual Report for the previous calendar year consisting of the following:

- (a) 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 must include the beginning balance and the ending balance of each such account and be prepared based upon the individual escrow ledgers for such accounts;
- (b) A list of closing escrows that have been open for more than twelve months as of December 31 of the previous year, showing the escrow number, date opened, names of principals, the escrow ledger balance, and a statement of the reason the escrow has remained open for more than one year;

(c) 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 must include the beginning balance and the ending balance for each account. The schedule must be prepared from the outstanding individual escrow ledgers for such accounts;

(d) An executed general authorization to inspect all clients' trust accounts set up as required by ORS 696.578(1) on an Agency-approved form;

(e) A list of outstanding checks as of December 31 of the previous year, listed by check number, issue date, payee, and amount, for all escrow trust accounts; and

(f) Any other information the Agency deems necessary to administer the provisions of ORS 696.505 to 696.590.

(2) An escrow agent must submit to the Agency, not later than 150 days after the end of the agent's tax or accounting year, a set of the agent's financial statements as follows:

(a) The financial statements must be prepared in accordance with generally accepted accounting principals by a certified public accountant or other qualified person approved by the Agency.

(b) The person preparing the financial statements must provide a statement of the type of the presentation made and include all appropriate notes to the financial statement.

(c) The financial statements must include the following:

- (A) A balance sheet as of the agent's year end;
- (B) Statement of profit and loss;
- (C) Statement of cash flows;
- (D) Statement of retained earnings; and
- (E) Any other changes in capital accounts for the year then ended.

(d) As part of the report submitted under this rule, the escrow agent must authorize the commissioner or the commissioner's authorized representative to examine and verify any asset or liability shown on the balance sheet. The authorization must be in writing and submitted to the Agency with the report.

(3) The commissioner may grant an extension of time, to be determined by the commissioner, for filing reports submitted under sections (2) or (3) of this rule if the agent so requests in writing and provides sufficient reason why the agent cannot file the reports by the specified date.

(4) The reports required by this rule must be signed by the escrow agent or appropriate corporate officer of the escrow agent attesting to the accuracy of the information contained in the report.

Stat. Auth.: ORS 696.541
Stats. Implemented: ORS 696.534
Hist.: REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

DIVISION 50

ESCROW AND ESCROW AGENT REGULATIONS

General Rules

863-050-0000

Definitions

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

- (1) "Agency" means the Oregon Real Estate Agency.
- (2) "Bank" has the meaning given that term in ORS 706.008. As used in ORS 696.578, "a bank authorized to do business within this state" means a banking business, as that term is defined in 706.005, that has either a bank charter or a certificate of authority issued by the Oregon Department of Consumer and Business Services pursuant to Chapters 706 to 716.
- (3) "Banking Day" means each day a bank is required to be open for the normal conduct of its business but does not include Saturday, Sunday, or any legal holiday under ORS 187.010.
- (4) "Bank services" are any monetary benefits received directly or indirectly from an escrow agent's bank as services to the escrow agent in consideration for the escrow agent's depositing and maintaining its clients' trust funds in such bank.
- (5) "Closed Escrow" means that 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.
- (6) "Escrow" is defined in ORS 696.505.
- (7) "Escrow Activity" means any activity subject to regulation under ORS 696.505 to 696.590.
- (8) "Escrow Agent" is defined in ORS 696.505.
- (9) "Escrow Number" means a unique identifying number assigned to each escrow in logical sequence.
- (10) "Escrow Trust Account" means a bank account established pursuant to ORS 696.578.
- (11) "Holdback escrow" 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.
- (12) "Net worth," as used in ORS 696.535, means is the remaining balance after subtracting total liabilities from total assets.
- (13) "One-sided escrow" as used in ORS 696.581 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 any written instrument, money, evidence of title to real or personal property, or other thing of value into the escrow account before execution of the agreement by the other party(s).
- (14) "Owner" means an individual who has more than five percent ownership interest in the escrow agent.
- (15) "Principal" is defined in ORS 696.505 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.

(16) "Required Records" means all records required by OAR 863-050-0000 to 863-050-0150 and the Oregon Escrow Law, ORS 696.505 to 696.590.

(17) "Subservicer" is defined in ORS 696.505.

Stat. Auth.: ORS 696.385, 696.541

Stats. Implemented: ORS 696.505 & 696.590

Hist.: REA 5-2003, f. 12-24-03, cert. ef. 1-1-04; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

863-050-0015

Documents or Property Held in Escrow

Except as otherwise provided in ORS 696.581, an escrow agent must use documents or other property deposited in escrow only in accordance with the dated written instructions of the principals to the escrow transactions or pursuant to court order.

Stat. Auth.: ORS 696.385, 696.541

Stats. Implemented: ORS 696.581

Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 2-1981, f. 10-30-81, ef. 11-1-81; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92; REA 1-1993, f. 12-1-93, cert. ef. 1-1-94; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

863-050-0020

Disclosure of Interest

(1) An escrow agent must act as a disinterested, neutral third party with regard to any of the principals to an escrow transaction.

(2) An escrow agent must provide the disclosure required by this rule 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 interest or relationship described in section (5) of this rule.

(3) An escrow agent must disclose to the principals in an escrow transaction, in a separate written notice:

(a) The specific interest the agent or the agent's employees have in the transaction described in section (5) of this rule; and

(b) The statement described in section (6) of this rule.

(4) An escrow agent must deliver the notice required by this rule to the principals:

(a) When the escrow agent accepts the escrow and before any of the principals becomes liable for any costs or signs any written escrow instruction; or

(b) If the interest is discovered after any of the principals becomes liable for costs or signs written escrow instructions, upon discovery of the interest.

(5) An escrow agent must disclose any interest that the agent or the agent's employees have in the escrow transaction, other than as escrow agent, title insurer, or title insurance agent. Such interests include but are not limited to the following:

(a) A family relationship by blood, domestic partnership, 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 with an interest in the transaction;

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

(c) 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 five percent ownership interest in:

(A) A principal in the transaction; or

(B) A real estate licensee, lender, mortgage or loan broker, developer, builder or subdivider interest in the transaction.

(6) An escrow agent must include the following statement in a disclosure made under 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."

(7) An escrow agent making any disclosure required by this rule must take a written receipt for the disclosure statement or document the disclosure and its delivery to a principal. The escrow agent must maintain such receipts or documentation as a required record.

(8) For the purposes 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 is not 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 and interest earned on clients' trust funds under ORS 696.578(2) are not subject to the disclosure requirements of this rule.

Stat. Auth.: ORS 696.385, 696.541

Stats. Implemented: ORS 696.581

Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 2-1990, f. 4-18-90, cert. ef. 7-1-90; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04; REA 4-2004, f. 4-28-04 cert. ef. 5-3-04; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

863-050-0025

Closing Statement

(1) When an escrow closes, an escrow agent must prepare, sign, and date a closing statement of each principal's escrow account that includes the following:

(a) The funds received and disbursed on the principal's behalf for the principal's benefit; and

(b) Third party expenses paid by the escrow agent in connection with the escrow transaction, which must be clearly designated and separate from the escrow agent's own fees.

(2) If payments or credits are made outside of escrow, the escrow agent may show such payments or credits on the closing statement if they are designated as payments or credits outside of escrow and are set forth separately from payments or credits made by or to the escrow agent.

(3) The escrow agent must deliver a copy of the signed and dated closing statement of the applicable escrow account to:

(a) Each principal to the escrow or the principal's designee;

(b) A real estate broker who represents a principal to the transaction, upon the broker's request, but only the closing statement for the principal that the broker represents; and

(c) A seller who has financed some or the entire sales price, a copy of the buyer/borrower statement, at the seller's request.

Stat. Auth.: ORS 696.385 & 696.581

Stats. Implemented: ORS 696.535

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; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

863-050-0030

Bank Charges

An escrow agent may not authorize or allow a bank to remove funds from its 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 must be paid from the escrow agent's own funds.

Stat. Auth.: ORS 696.385 & 696.581

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; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

863-050-0033

Notice of Judgments

(1) Except as otherwise provided by section (4) of this rule, an escrow agent must notify the Commissioner in writing of any of the following:

(a) A judgment entered against the escrow agent in any civil action involving the alleged misconduct of the escrow agent in an escrow transaction or of any owner, officer, employee, or director of the escrow agent in an escrow transaction handled through the escrow agent;

(b) A conviction in any criminal proceeding involving the misconduct of the escrow agent in an escrow transaction or of any owner, officer, employee, or director of the escrow agent in an escrow transaction handled through the escrow agent; or

(c) A decision adverse to the escrow agent resulting from court-ordered binding arbitration involving the alleged misconduct of the escrow agent in an escrow transaction or of any owner, officer, employee, or director of the escrow agent in an escrow transaction handled through the escrow agent.

(2) The notice required by section (1) of this rule must contain a brief description of the escrow transaction involved and the names of the principals. If a civil action or court-ordered binding arbitration, the notice must include a copy of the judgment entered or arbitrator's decision. If a criminal proceeding, the notice must include the criminal charge for which the escrow agent, officer, employee, or director was convicted and the sentence imposed.

(3) The notice required by sections (1) and (2) of this rule must be made within ten banking days after the judgment is entered, the arbitrator's decision is issued, or the sentencing date. The escrow agent must

provide notice under this section even if the judgment or conviction is appealed. If the judgment or conviction is appealed, the escrow agent must report each subsequent decision of an appellate court within ten banking days after the date the appellate order is entered.

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

Stat. Auth.: ORS 696.385 & 696.541

Stats. Implemented: ORS 696.511 & 696.535

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; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

Accounting Rules

863-050-0050

Accounting Controls; Record Inspection

(1) An escrow agent must establish and maintain the escrow business records described in this rule as required records.

(a) Individual ledgers must be established to record the accounting for each escrow.

(A) The ledgers must be identified by the escrow number and the names of the principals.

(B) Entries must record each receipt and disbursement of escrow funds and must be posted in date order on, or as of, the date they occur.

(C) Entries must show the amount of the entry, the date of the entry, the receipt number, and the check number or wire identification number and must identify from or to whom funds were received or disbursed.

(D) Each ledger must show and record a running balance of funds held in the individual escrow, on a daily basis, as entries occur.

(E) If an escrow agent uses more than one escrow trust bank account, each ledger must identify the account in which its escrow funds are deposited.

(b) A journal or register must be established for each escrow trust bank account and must record all receipts and disbursements of escrow funds.

(A) Entries must be posted in date order and record a running book balance for total escrow liability of the agent in each escrow trust account, on a daily basis.

(B) If entries are posted in batch totals, backup documentation adequate to identify the individual items in the batch and verify the total must be maintained.

(2) An escrow agent must reconcile each escrow trust account within 30 days of the bank statement date pursuant to the requirements contained in this section.

(a) The reconciliation must have three components, which must be contained in a single reconciliation document:

(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 closing date; and

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

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

(c) The escrow agent or an authorized officer in direct control of the agent's escrow operations must date and sign the reconciliation document upon completion, attesting to the accuracy and completeness of the reconciliation;

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

(e) The escrow agent must preserve and file in logical sequence the reconciliation document, 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 bank statement closing date.

(3) An escrow agent must take corrective action to resolve all adjustments in a reconciliation before the next reconciliation or document the good faith efforts the escrow agent has taken to resolve the adjustment.

(4) In addition to the maintenance and production requirements contained in ORS 696.534, an escrow agent must comply with the following requirements:

(a) An escrow agent using the computer services of another firm must file a continuing authorization with the Commissioner and the other

firm authorizing the Commissioner to examine or audit the escrow agent's records maintained at the other firm's place of business.

(b) If an escrow agent uses a computerized system for producing and maintaining the records and accounts required in the escrow agent's licensed activity, the computerized system must have the following capabilities:

(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 must be made available to the Commissioner or to the Commissioner's authorized representatives upon demand;

(C) The reconciliations and all required supporting data must be capable of being printed out at the time of reconciliation and preserved as required records of the licensed escrow activity.

Stat. Auth.: ORS 696.385 & 696.541

Stats. Implemented: ORS 696.578 & 696.534

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; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

863-050-0052

Disbursement of Disputed Real Estate Broker Compensation

If there is a dispute among or between real estate brokers who are sole practitioners or principal real estate brokers regarding who is entitled to the moneys or other property agreed to as compensation in a written compensation agreement, and the escrow agent is holding such moneys or other property pursuant to ORS 696.582(1)(a), the escrow agent must hold the moneys or other property until the escrow agent receives a written agreement between the brokers or a final order from a court directing the escrow agent to disburse the moneys or other property.

Stat. Auth.: ORS 696.385, ORS 696.541

Stats. Implemented: ORS 696.582

Hist.: REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

863-050-0055

Accounting Practices

(1) An escrow agent may not draw, execute, or date a check on an individual escrow account ledger or escrow trust account before the account has sufficient monies to pay the check. An escrow agent may not withdraw or transfer money from any individual escrow account or escrow trust unless such account has sufficient monies for such payment or transfer.

(2) An escrow agent may not withdraw escrow fees from a closing escrow account until:

(a) The escrow is cancelled; or

(b) The escrow is closed with the exception of customary post-closing procedures as contained in the escrow instructions of the principals to the escrow transaction.

(3) An escrow agent may deposit only the funds received as part of an escrow transaction or as trustee of a trust deed under ORS 86.705 to 86.795 in an account established under 696.578.

(4) All funds deposited in an escrow trust account established under ORS 696.578 may 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 must provide the Commissioner upon the Commissioner's request with a continuing authorization to certify the actual balance in any escrow trust account the escrow agent has established under ORS 696.578. The escrow agent must file the authorization in the depository in which the escrow trust account is maintained and file a copy of the authorization with the Commissioner.

(6) Upon request by the Commissioner or an authorized representative, an escrow agent must demonstrate that an individual escrow account contained sufficient funds before any disbursement by producing documentation and financial records showing that:

(a) The trust funds deposited into an escrow trust account on behalf of a principal 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 principal's trust funds.

Stat. Auth.: ORS 696.385 & 696.541

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 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; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

863-050-0060

Interest-Bearing Accounts

(1) If an escrow agent deposits and maintains the trust funds in an interest-bearing escrow trust account pursuant to ORS 696.578(2) and (3), the written escrow instructions from all principals having an interest in the funds must include:

- (a) The names of all principals;
- (b) Written approval of all principals to the escrow transaction;
- (c) The escrow number;
- (d) To whose account the interest earnings will accrue;
- (e) How and when the interest will be disbursed; and
- (f) Any limitations that may be imposed on withdrawing trust funds deposited in the interest-bearing escrow trust account.

(2) The escrow agent may deposit funds to the interest-bearing escrow trust account before receiving the written instructions required by this rule, but the escrow agent may not disburse any funds from the escrow account until the escrow agent has received the written instructions.

(3) An escrow agent must account separately for the funds deposited and the disposition of interest earned, if any, in each escrow transaction and treat 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.

Stat. Auth.: ORS 696.541

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; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

863-050-0065

Disclosure of Bank Services and Refunds

(1) An escrow agent may retain bank services, but only with approval in the written closing instructions of the principals. If an escrow agent retains bank services, the agent must disclose to the principals in a transaction the nature of the benefit the agent receives and retains. The disclosure must contain a good faith estimate of the amount of the benefit received as it applies to the individual escrow.

(2) If an escrow agent disburses funds and those funds are returned or refunded to escrow, the escrow agent must:

- (a) Account for and handle such moneys as any other funds deposited in escrow;
- (b) Adjust the ledger for the escrow transaction to reflect the refund or return;
- (c) Disburse the refunded or returned funds in accordance with the appropriate principals' dated written escrow instructions, and
- (d) Provide an explanation of the refund or return to the appropriate principals.

(3) The requirements contained in section (2) of this rule do not apply to de minimus amounts of fund if those amounts and the disposition of such funds are defined in the escrow instructions.

Stat. Auth.: ORS 696.385, 696.541

Stats. Implemented: ORS 696.578 & 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 10-2008, f. 12-15-08, cert. ef. 1-1-09

863-050-0066

Deposits

An escrow agent must deposit all checks or cash received in escrow into the agent's escrow trust account established under ORS 696.578 no later than the close of business of the banking day the day after the agent receives the checks or cash. This requirement does not apply to checks received from a lender who requires that the checks not be deposited until an escrow is ready to close.

Stat. Auth.: ORS 696.385 & 696.541

Stats. Implemented: ORS 696.578

Hist.: REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

Records Rules

863-050-0100

Records

(1) An escrow agent must keep at least the following records:

- (a) Copies of all receipt records, including voided receipts;
- (b) All cancelled checks or bank-supplied images provided pursuant to ORS 696.243, which must be filed with all numbered check forms accounted for, including voided checks;
- (c) All vouchers and check stubs, including voided vouchers and check stubs;
- (d) Copies of all transfer forms used in making transfers of funds between escrow accounts;
- (e) An escrow log, with entries entered in logical sequence based on the escrow number assigned, containing an entry for each escrow that includes the escrow number, the date of opening, and the names of the principals;
- (f) Copies of the escrow closing statements required by OAR 863-050-0025;
- (g) The books and other records required by OAR 863-050-0050; and
- (h) Any other required records, as that term is defined in OAR 863-050-0000.

(2) An escrow agent may use electronic image storage media to retain and store copies of deposit receipts, canceled checks, and other documents executed or obtained by the agent in connection with any escrow activity and transaction, provided the agent satisfies the following requirements:

- (a) The electronic image storage must be non-erasable "write once, read many" ("WORM") that does not allow changes to the stored document or record;
- (b) The stored document or record was 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; and

(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.

(3) For any lost or missing checks, an escrow agent must maintain a signed, dated statement explaining why the check is missing.

(4) Except as provided in this rule, an escrow agent may not receive trust funds without issuing a receipt and may not disburse trust funds without issuing a check. An escrow agent must issue an appropriate receipt as soon as practicable after receiving cash in a collection escrow or receiving cash or checks in a closing escrow.

(5) An escrow agent must send an annual written statement to a principal in a collection escrow to show all receipts and disbursements in the collection escrow during the year covered in the report.

(6) For wire and electronic transfers, the following requirements apply:

(a) An escrow agent may not disburse funds from an individual escrow account based upon a wire or electronic transfer deposited into the escrow trust account until the escrow agent has verified the deposit;

(b) An escrow agent must arrange 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;

(c) An escrow agent must post the receipt of funds by wire or electronic 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; and

(d) The escrow agent disbursing funds by wire or electronic transfer must 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.

(7) Check forms used by an escrow agent must be pre-numbered with consecutive numbers. If a computer fills in or generates checks and any check copies, all check stock and check copies must be consecutively

pre-numbered. If a computer generates checks using unnumbered check stock, the computer must continually and consecutively number the checks as generated. The account number must appear in the magnetic coding on the bank check face to identify the account number for reading by the bank's computerized accounting system.

(8) An escrow agent must produce the records required under this rule for inspection by the Agency as follows:

(a) When the Agency makes a request for production of escrow records, the escrow agent must provide such records within no less than five banking days; and

(b) If the Agency informs an escrow agent that the Agency has reasonable grounds to believe that escrow funds may be missing or misappropriated or that the escrow agent has engaged in fraudulent activity, the escrow agent must produce any records demanded or requested by the Agency immediately.

Stat. Auth.: ORS 696.385 & 696.541

Stats. Implemented: ORS 696.243, 696.534, 696.578 & 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 2-1997, f. 6-18-97, cert. ef. 7-1-97; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

863-050-0105**Record Location**

An escrow agent must notify the Commissioner of any relocation of the records at least 15 days before the relocation. The notice must include the street address of the new location 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 must 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 696.385 & 696.541

Stats. Implemented: ORS 696.534

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; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

863-050-0115**Records Retention**

(1) 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 apply to all records, including any electronically generated items.

(2) An escrow agent must maintain at the escrow agent's office a means of viewing copies of documents or records stored pursuant to this

section. An escrow agent must provide, at the escrow agent's expense, a paper copy of any document or record requested by the Agency.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.534

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; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

Audit Rules**863-050-0150****Annual Report; Financial Statements; Audit or Examination Expenses**

(1) The escrow agent must pay to the Agency the reasonable expenses of an audit or examination as authorized by ORS 696.541.

(2) 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. If an escrow agent submits a required independent audit to the Commissioner or the Commissioner's authorized representative, this does not preclude any subsequent audit within the same year.

Stat. Auth.: ORS 696.385, 696.541

Stats. Implemented: ORS 696.534 & 696.541

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; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

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

