



Oregon

Theodore R. Kulongoski, Governor

Real Estate Agency

1177 Center Street NE

Salem, OR 97301-2505

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www.rea.state.or.us

Notice of Agenda
OREGON REAL ESTATE BOARD
Special Meeting Agenda
Monday, March 31, 2008, 10 a.m.
Oregon Real Estate Agency
1177 Center Street NE
Salem, Oregon 97301

NOTE: The board plans to meet from 10 a.m. until 12 p.m.

I. BOARD BUSINESS

- A. Call to Order
- B. Roll Call
- C. Approval of the Agenda and Order of Business
- D. Date of the Next Meeting: April 7, 2008 at Eugene Association of Realtors located at 2139 Centennial Plaza, Eugene, Oregon 97401

II. PUBLIC COMMENT

This time is set aside for persons wishing to address the board on matters not on the agenda. Speakers will be limited to five minutes. The board chair reserves the right to further limit or exclude repetitious or irrelevant presentations. If written material is included, 12 copies of all information to be distributed to board members should be given to the Board Liaison prior to the meeting. Action will not be taken at this meeting on citizen comments. The board, however, after hearing from interested citizens, may place items on a future agenda so proper notice may be given to all interested parties. If no one wishes to comment, the next scheduled agenda item will be considered.

III. BOARD ADVICE/ACTION

Legislative concepts resulting from rule review work groups

IV. REPORTS – None

V. NEW BUSINESS - None

VI. COMMUNICATIONS - None

V. ANNOUNCEMENTS

Next regular board meeting April 7, 2008, in Eugene, Oregon.

VIII. ADJOURNMENT

Interpreter services or auxiliary aids for persons with disabilities are available upon advance request.



Real Estate Agency

1177 Center Street NE
SALEM, OREGON 97301-2505
PHONE (503) 378-4170
FAX (503) 373-7153

MEMORANDUM

TO: Oregon Real Estate Board DATE: March 26, 2008

FROM: Laurie Skillman

RE: Legislative Concepts March 26, 2008

Attached are copies of the legislative concepts dated March 26, 2008 for the March 31, 2008 Board meeting.

There are four concepts:

1. LC 919/1: Real estate streamlining and minor program changes for licensing and civil penalties for property managers.
2. LC 919/2: Individuals authorized to engage in property management; new principal property manager license
3. LC 919/3: Escrow licensing housekeeping and minor program changes
4. LC 919/4: Escrow licensing program changes

LEGISLATIVE CONCEPT

Agency No./Concept No. 919/1

Date April 3, 2008

- ◆ Attach a Fiscal Impact Estimate.
 - ◆ Attach detailed explanation of problem and solution, and draft language.
 - ◆ Deliver *original and six copies* including draft language and attachments to the Department of Administrative Services, 155 Cottage Street NE, Salem OR 97301-3965 *on or before April 4, 2008*.
-

Agency Real Estate

Division/Program N/A

Concept Subject/Title Real Estate Streamlining and Minor Program Changes for Licensing and Civil Penalty for Property Managers

Contact Person _____

Phone No. _____

◆ BRIEF DESCRIPTION OF THIS CONCEPT:

Provides a number of housekeeping and minor program changes to clarify statutes and streamline requirements for real estate brokers; deletes the requirement for the agency to publish refused applicants or addresses of disciplined licensees; provides principal real estate brokers with the ability to establish an entity to receive commission payments; authorizes the agency to issue a limited license to an applicant and write rules; and provides the agency with authority to impose a civil penalty against a property manager or a principal broker engaged in the management of rental real estate for failure to produce records.

◆ PURPOSE OF THIS CONCEPT (DESCRIBE PROBLEM YOU ARE TRYING TO SOLVE AND SUGGESTED SOLUTION):

The concept has several purposes. 1) To clarify requirements that real estate brokers cannot establish branch offices or designate registered business names and that funds placed in a clients' trust account be placed in a "licensed" escrow depository; resolve both through housekeeping amendments. 2) To protect license applicants and licensees by eliminating the Agency's requirement to publish in the Agency's newsletter: a) the names and addresses of applicants whose licenses were refused; and b) the addresses of licensees who have been disciplined. 3) To provide principal real estate brokers the same ability real estate brokers currently have to establish an entity to receive commissions. 4) To provide the Agency flexibility and authority to issue a limited license to an applicant who may otherwise be refused a license and write rules for limited licenses; current statutes allow a limited license to be issued only for revoked licensees. 5) To provide the agency with a tool to compel a property manager or a principal broker engaged in the management of rental real estate to produce records, including the accounting of significant sums of money in clients' trust accounts, by providing the agency authority to impose a civil penalty of \$1,000 per day against the licensee for failure to produce property management records.

◆ POLICY IMPLICATIONS:

The concept impacts real estate brokers, principal real estate brokers, property managers and applicants. The concept will provide clarity of existing statutes. The concept is the result of a significant collaborative effort by the agency and industry. If not enacted, it would be a disappointment to the working groups, continue the confusion of statutory interpretation for the Agency and the public, and continue to constrain the Agency's efforts to protect the public through audits of property manager's records.

◆ PARTNERS OR OTHER AGENCIES AFFECTED:

Agency:

Person you talked to about concept:

Phone:

No state or local impacted

◆ KNOWN SUPPORT

The concept is a result of a significant collaborative effort of the agency, the real estate brokerage industry (including members of the Oregon Association of Realtors), property managers and the Oregon Real Estate Board. More than 35 individuals participated in the working groups and another 125 individuals participated in advisory groups that reviewed the work of the working groups. The concept is supported by all participants.

◆ KNOWN OPPOSITION:

None.

◆ THIS CONCEPT: (Do not skip answers. Enter *none* or *N/A* as needed.)

Revises or repeals ORS 696

Adds new sections to ORS Chapter 696

Check one: **NO** Major program change **YES** Minor program change
YES Technical correction/housekeeping only

Was previously proposed in: Year N/A as Bill No. N/A

Why are you proposing it again (what changed)? N/A

Is a PLACEHOLDER? No **XX** Yes Expected date of completion: _____

Reason not completed: N/A

Is due to legal decision: N/A Case cite: _____ or AGO No./date _____ (attach copy)

Raises fees or assessments? No **XX** Yes (attach Fiscal Impact Estimate and form 107BF22)

Imposes or adds to unfunded mandate on local governments? No **XX** Yes (attach Fiscal Impact Estimate)

Has other fiscal, revenue, or position impacts? No Yes **XX for civil penalty** (attach Fiscal Impact Estimate)

Have you discussed this Concept with your Attorney General liaison? No Yes **XX on civil penalty provisions**

Note: we need to submit to Raul on the civil penalty

APPROVED FOR DRAFTING _____

Department of Administrative Services

Date

Governor's Office

Date

Legislative Concept No.: 919/1
Detailed explanation of problem and solution, and draft language.

Each of the concepts included in LC 919/1 are outlined below.

1) Purpose: To clarify requirements that real estate brokers cannot establish branch offices or designate registered business names and to clarify that funds placed in a clients' trust account be placed in a "licensed" escrow depository; resolve both through housekeeping amendments.

"Real estate brokers" cannot establish branch offices or designate registered business names

- This is a housekeeping concept.
- Note that a "real estate broker" may only work under the supervision of a principal real estate broker.
- ORS 696.010(4) defines a "branch office" as: "a business location, other than the main office designated under ORS 696.200 (1), where professional real estate activity is regularly conducted * * *"
- ORS 696.200 states that a main office must be maintained and designated and that branch offices must be registered.
- The language in 696.200 is confusing and implies that branch offices may be established by a "real estate broker." Main and branch offices may only be established by a principal real estate broker, a sole practitioner or property manager. A "real estate broker" cannot establish a main or branch office.
- Solution: Amend ORS 696.200 to clarify that only a principal broker, sole practitioner or property manager may establish a main or branch office.

"Real estate brokers" cannot register business names with the Agency.

- This is a housekeeping concept.
- Note that a "real estate broker" may only work under the supervision of a principal real estate broker. Only a principal real estate broker, sole practitioner or property manager may register a business name.
- ORS 696.026(1) states:
A real estate broker or principal real estate broker may conduct professional real estate activity under the broker's name, a registered business name or a name prescribed by agency rule. The business name under which a broker conducts professional real estate activity has no license standing independent of the broker.
- The language in 696.026 is confusing and implies that a business name may be registered by a "real estate broker." Business names may only be registered by a principal real estate broker, a sole practitioner or property manager.
- Solution: Amend ORS 696.026 to clarify that only a principal broker, sole practitioner or property manager may register a business name.

Trust funds received by a licensee that are not placed in a clients' trust account must be placed in a "licensed" escrow depository

- This is a housekeeping concept.
- ORS 696.241(1) states:
"Each sole practitioner and each principal real estate broker shall maintain in this state one or more separate bank accounts that shall be designated a Clients' Trust Account in which all trust funds received or handled by the sole practitioner or broker and the real estate licensees subject to the supervision of the broker on behalf of any other person shall be deposited unless, pursuant to written agreement of all parties having an interest in the trust funds, the trust funds are immediately placed in a neutral escrow depository in this state." (*emphasis added*)
- The statute does not state that funds be placed in a "licensed" escrow depository. Note that the Agency licenses escrow agents.

- Solution: Amend ORS 696.241(1) to read: “ * * *unless, pursuant to written agreement of all parties having an interest in the trust funds, the trust funds are immediately placed in a **licensed** neutral escrow depository in this state.”

2) Purpose: To protect license applicants/licensee by eliminating the agency’s requirement to publish addresses in newsletter.

- This is a minor program change.
- ORS 696.445(3) states:
“The commissioner shall publish in the Oregon Real Estate News Journal the names and addresses of all applicants for real estate or escrow licenses whose licenses have been refused, of real estate licensees who have been reprimanded, of real estate and escrow licensees whose licenses have been suspended or revoked and of real estate and escrow licensees who have been assessed civil penalties. Each such publication shall include a brief description of the situation involved and the grounds for the commissioner’s action.”
- No public purpose is served by publishing names of individuals who applied for a license, but whose license was refused. An individual may be refused based on criminal background check, lack of education or experience, or not passing a test.
- No public purpose is served by publishing the addresses of licensees who were reprimanded, suspended, revoked or assessed a civil penalty. The name of the licensee and the city and state of residence are sufficient. Not publishing addresses may provide a modest protection to the licensee.
- Solution: Amend ORS 696.445 to read:
“The commissioner shall publish in the Oregon Real Estate News Journal the names, **city and state** ~~and addresses of all applicants for real estate or escrow licenses whose licenses have been refused~~, of real estate licensees who have been reprimanded, of real estate and escrow licensees whose licenses have been suspended or revoked and of real estate and escrow licensees who have been assessed civil penalties. Each such publication shall include a brief description of the situation involved and the grounds for the commissioner’s action.”

3) To provide principal real estate brokers the same ability real estate brokers currently have to establish an entity to receive commissions.

- This is a minor program change.
- ORS 696.026(8) states:
“Notwithstanding any other provision of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and 696.995, a broker associated with a principal broker may create a corporation, limited liability company, limited liability partnership or any other lawfully constituted business organization for the purpose of receiving compensation from the principal broker. A business organization created under this subsection may not be licensed under ORS 696.022 or conduct in its own name professional real estate activity requiring a real estate license.” *(emphasis added)*
- Currently only a real estate broker associated with a principal broker may create an entity to receive compensation. Principal real estate brokers want to be able to create such entities to receive compensation.
- Solution: Amend ORS 696.026(8) to read:
Notwithstanding any other provision of ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and 696.995, a **principal real estate broker or a** broker associated with a principal broker may create a corporation, limited liability company, limited liability partnership or any other lawfully constituted business organization for the purpose of receiving compensation from ~~the a~~ principal broker. A business organization created under this subsection may not be licensed under ORS 696.022 or conduct in its own name professional real estate activity requiring a real estate license.

4) Purpose: To provide the Agency flexibility and authority to issue a limited license to an applicant who may otherwise be refused a license and write rules; current statutes allow a limited license only for revoked licensees.

- This is a minor program change.
- ORS 696.130 states:
696.130 Limited license. (1) If the license of any real estate broker or principal real estate broker is revoked by the Real Estate Commissioner, the commissioner may not issue a new license until the individual complies with the provisions of ORS 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870.
(2) Notwithstanding subsection (1) of this section, the commissioner may issue the individual a limited license if, in the discretion of the commissioner, it is in the public interest to do so. The commissioner may limit a license issued under this subsection:
 - (a) By term;
 - (b) To acts subject to the supervision of a specific principal real estate broker; or
 - (c) By conditions to be observed in the exercise and the privileges granted.(3) A limited license issued under this section does not confer any property right in the privileges to be exercised thereunder, and the holder of a limited license does not have the right to renewal of such license. A limited license may be suspended or revoked, or the licensee may be reprimanded, by the commissioner on the grounds set out in ORS 696.301.
- Problem: It would serve the public interest if some applicants for licensing as a real estate broker, who may otherwise be denied a real estate broker license, be issued a limited licensee that would be limited by (a) By term; (b) To acts subject to the supervision of a specific principal real estate broker; or (c) By conditions to be observed in the exercise and the privileges granted.
- Solution: Amend ORS 696.130 to add a new section to read:
(XX) The commissioner may issue an individual applicant for a real estate broker license a limited license if, in the discretion of the commissioner, it is in the public interest to do so. The commissioner may limit a license issued under this subsection:
 - (a) By term;**
 - (b) To acts subject to the supervision of a specific principal real estate broker; or**
 - (c) By conditions to be observed in the exercise and the privileges granted.**
- NOTE: ORS 696.130(3) must apply to the new section.

5) Purpose: To provide the agency with a tool to compel a property manager or a principal broker engaged in the management of rental real estate to produce records, including the accounting of significant sums of money in clients' trust accounts, by providing the agency authority to impose a civil penalty of \$1,000 per day against the licensee for failure to produce property management records.

- This is a major program change.
- Currently, the Agency cannot impose civil penalties against any active real estate licensee. Property managers and principal brokers engaged in the management of rental real estate are required to maintain clients' trust accounts for receiving and disbursing trust funds for owners of rental real estate and for holding, on behalf of the property owner, security deposits of tenants (ORS 696.241). These clients' trust account may hold hundreds of thousands of dollars. The only protection afforded the public is the Agency's ability to examine and audits the books and records of these clients' trust accounts. Licensees are required to maintain records (ORS 696.280) and "the records shall at all times be open for inspection by the Real Estate Commissioner or the commissioner's authorized representatives" (ORS 696.280(3)); however, the Agency currently has no capability to compel a licensee to produce records.
- The Agency and the property management industry agreed that the Agency needed a tool to compel property managers to produce records and agreed that a useful tool would be the imposition of a civil penalty against a property manager for failure to produce records.

- Solution: Amend ORS 696.995 to include language that imposes a civil penalty. NOTE: the following language is provided only to capture the concept and is NOT suggested statutory language:
 - **A property manager or a principal broker engaged in the management of rental real estate who fails to produce records in violation of ORS 696.280 or as required by rule may be required by the Real Estate Commissioner to forfeit and pay to the General Fund of the State Treasury a civil penalty of up to \$1,000 per day.**

PUT IN FISCAL IMPACT STATEMENT HERE

FISCAL IMPACT ON CIVIL PENALTIES ONLY

DRAFT

LEGISLATIVE CONCEPT

Agency No./Concept No. 919/2

Date April 3, 2008

- ◆ Attach a Fiscal Impact Estimate.
 - ◆ Attach detailed explanation of problem and solution, and draft language.
 - ◆ Deliver ***original and six copies*** including draft language and attachments to the Department of Administrative Services, 155 Cottage Street NE, Salem OR 97301-3965 ***on or before April 4, 2008.***
-

Agency Real Estate

Division/Program N/A

Concept Subject/Title Individuals Authorized to Engage in Property Management; New Principal Property Manager License

Contact Person _____

Phone No. _____

◆ BRIEF DESCRIPTION OF THIS CONCEPT:

The concept is to: 1) create a new license of "principal property manager" who is authorized to establish property management clients' trust accounts and supervise the activities of a property manager; 2) require the agency to adopt rules about the supervision of a property manager by a principal property manager; 3) create a new licensing track for property managers where only a principal property manager could establish clients' trust accounts and enter in to property management agreements and where a property manager must be supervised by a principal property manager before qualifying for a license as a principal property manager; 4) establish greater requirements for licensing of property managers; 5) eliminate the authority of a principal real estate broker to engage in the management of rental real estate or to supervise an individual in the management of rental real estate; and 6) allow an individual to hold a license as a property manager or principal property manager and also hold a license as a real estate broker or principal real estate broker.

◆ PURPOSE OF THIS CONCEPT (DESCRIBE PROBLEM YOU ARE TRYING TO SOLVE AND SUGGESTED SOLUTION):

NOTE: This concept is a placeholder. The Agency initiated two collaborative working groups to consider legislative concepts; one for real estate brokers and one for property managers. This concept is still under review by both groups of stakeholders due to the complexity of the concept and unresolved issues including specific requirements for licensing, effective dates, transitioning from the existing licensing structure, and potential "grandfathering" of existing licensees.

The Agency currently issues three real estate licenses: real estate property manager, principal real estate broker and real estate broker. A real estate broker may not employ, engage or supervise another real estate licensee. A real estate broker must be supervised by a principal real estate broker unless the real estate broker is a "sole practitioner" with three years of experience licensed under a principal real estate broker. A property manager does not

The "management of rental real estate" is defined in ORS 696.010(12) and includes representing an owner and representing a tenant. A property manager licensee may only engage in the management of rental real estate and may not engage in any other "professional real estate activity" (i.e. representing a person in the sale or purchase of real estate) as defined in ORS 696.010(15). Currently, principal real estate brokers and real estate brokers under the supervision of a principal real estate broker are authorized to engage in the management of rental real estate. A principal real estate broker may also supervise a property manager.

A licensee who engages in the management of rental real estate must establish and maintain clients' trust accounts for all funds received by the property manager. One type of account is for the collections of rents and disbursement of expenses ("operations") and a second type of account is for security deposits. Substantial amounts of money flow in and out of operations accounts and are held in security deposit accounts. For example, if 100 rental units were managed and the rent on each unit was \$750 and the security deposit on each unit was \$1,000, then the "operating

account” would collect \$75,000 in rents each month and the security deposit average monthly balance would be \$100,000. The management and recordkeeping requirements established to safeguard these funds is complex.

1. One of the purposes of this concept is to create a new license of “principal property manager” who is authorized to establish clients’ trust accounts and supervise the activities of a property manager. A property manager could not establish clients’ trust accounts and would be required to work under the supervision of a principal. This concept would provide experience and training of new licensees in the operation of a business that education and testing alone cannot provide.
2. The concept would require the agency to adopt rules about the supervision of a property manager by a principal property manager. This would provide the agency flexibility to outline the details of the supervision requirement of these new licensees and provide an opportunity for greater input from stakeholders.
3. Establishing a principal property manager license would create a new licensing track for property managers where a property manager could not establish clients’ trust accounts and must be supervised by a principal property manager before qualifying for a license as a principal property manager.
4. Another purpose of the concept is to establish greater requirements in education and testing for licensing of property managers, including testing for the specialized accounting requirements for clients’ trust accounts and testing for a license as a principal property manager.
5. The concept would eliminate the authority of a principal real estate broker to engage in the management of rental real estate or to supervise an individual in the management of rental real estate. This concept reinforces distinguishing the education, training and testing requirements for individuals who engage in real estate transactions from those who engage in the management of rental real estate.
6. The concept would allow an individual to hold a license as a property manager or principal property manager and also hold a license as a real estate broker or principal real estate broker. This concept also reinforces the distinction of two very different professional real estate activities.

◆ **POLICY IMPLICATIONS:**

The purpose of the concept is to increase the protection to consumers who engage property managers in the management of rental real estate. The concept impacts current property managers, real estate brokers, principal real estate brokers and applicants. A property manager could no longer “establish a business” as a property manager, that is, a property manager would need to obtain a principal property manager license, which would require property management experience under the supervision of a principal property manager, passing a test, and completing educational requirements. A property manager could no longer work under the supervision of a principal real estate broker. A principal real estate broker could no longer engage in the management of rental real estate without obtaining a license as a property manager nor could they supervise the activities of a real estate broker or a property manager engaged in the management of rental real estate. Real estate brokers could no longer engage in the management of rental real estate under the supervision of a principal real estate brokers. Applicants for a property manager license would be faced with greater requirements for a license.

◆ **PARTNERS OR OTHER AGENCIES AFFECTED:**

Agency:

Person you talked to about concept:

Phone:

None

◆ **KNOWN SUPPORT**

The concept impacts real estate brokers, principal real estate brokers, property managers and applicants. The concept is the result of a significant collaborative effort by the agency and industry, including two separate working groups composed of real estate brokers and property managers and one joint group. The working groups agreed on the fundamental concept of separating the license and authority of property managers from real estate brokers and principal real estate brokers. The groups agreed on increasing the requirements for licensing of property managers

and to create a new license of principal property manager. The groups still need to work on a significant number of details about this concept and, therefore, it is being submitted as a placeholder at this time. In addition, the Real Estate Board must review a final concept.

◆ KNOWN OPPOSITION:

As the concept is further developed, a determination will be made. At this time, there is no known opposition.

◆ THIS CONCEPT: (Do not skip answers. Enter *none* or *N/A* as needed.)

Revises or repeals ORS 696

Adds new sections to ORS Chapter 696

Check one: **XX** Major program change Minor program change Technical correction/housekeeping only

Was previously proposed in: Year _____ as Bill No. _____

Why are you proposing it again (what changed)? _____

Is a PLACEHOLDER? No Yes **XX** Expected date of completion: **June 10, 2008**

Reason not completed: The Agency initiated two collaborative working groups to consider legislative concepts; one for real estate brokers and one for property managers. This concept is still under review by both groups of stakeholders due to the complexity of the concept and unresolved issues including specific requirements for licensing, authorized activities, effective dates, transitioning from the existing licensing structure, and potential “grandfathering” of existing licensees.

Is due to legal decision: **N/A** Case cite: _____ or AGO No./date _____ (attach copy)

Raises fees or assessments? No **XX** Yes (attach Fiscal Impact Estimate and form 107BF22)

Imposes or adds to unfunded mandate on local governments? No **XX** Yes (attach Fiscal Impact Estimate)

Has other fiscal, revenue, or position impacts? No Yes **XX** (attach Fiscal Impact Estimate)

Note: the creation of a new license of “principal property manger” will have a fiscal impact on the collection of fees and a workload for the Agency. When a more complete legislative concept is submitted, a fiscal impact statement will be provided.

Have you discussed this Concept with your Attorney General liaison? No Yes **XX, to some degree, and discussions will continue as the concept is developed**

APPROVED FOR DRAFTING

Department of Administrative Services

Date

Governor’s Office

Date

LEGISLATIVE CONCEPT

Agency No./Concept No. 919/3

Date April 3, 2008

- ◆ Attach a Fiscal Impact Estimate.
 - ◆ Attach detailed explanation of problem and solution, and draft language.
 - ◆ Deliver *original and six copies* including draft language and attachments to the Department of Administrative Services, 155 Cottage Street NE, Salem OR 97301-3965 *on or before April 4, 2008*.
-

Agency Real Estate

Division/Program N/A

Concept Subject/Title Escrow Licensing Housekeeping and Minor Program Changes

Contact Person _____

Phone No. _____

◆ BRIEF DESCRIPTION OF THIS CONCEPT:

Provides a number of housekeeping changes to the escrow statutes in ORS chapter 696 that update archaic language and clarify statutes. Requires Agency to establish a system of licensing for escrow agents by rule and deletes procedural matters from statute. Requires application for changes in ownership of escrow agency and criminal background check.

◆ PURPOSE OF THIS CONCEPT (DESCRIBE PROBLEM YOU ARE TRYING TO SOLVE AND SUGGESTED SOLUTION):

The purpose of this concept is to update language and clarify statutes related to escrow agents. Currently, the statute contains many procedural matters related to licensing that are more appropriately established by rule, which will allow the Agency greater flexibility on administrative matters. Currently, the Agency requires a criminal background check for owners and officers of escrow agencies; however, the statute does not provide for such a requirement for new owners or officers when there is a change in ownership. The purpose of the concept is to require an escrow agent to submit an application for changes in ownership and require fingerprints and criminal background check for new owners and officers.

◆ POLICY IMPLICATIONS:

The concept impacts escrow agents. The concept is the result of a significant collaborative effort by the agency and the escrow industry through a series of work groups. If not enacted, it would be a disappointment to the working groups.

◆ PARTNERS OR OTHER AGENCIES AFFECTED:

Agency: _____ Person you talked to about concept: _____ Phone: _____

No state or local impacted

◆ KNOWN SUPPORT

The concept is a result of a significant collaborative effort of the agency and the escrow industry. More than 18 individuals participated in the working group. The concept is supported by all participants and the Oregon Real Estate Board.

◆ KNOWN OPPOSITION:

None.

◆ THIS CONCEPT: (Do not skip answers. Enter *none* or *N/A* as needed.)

Revises or repeals ORS 696

Adds new sections to ORS Chapter 696

Check one: NO Major program change NO Minor program change

YES Technical correction/housekeeping only

Was previously proposed in: Year N/A as Bill No. N/A

Why are you proposing it again (what changed)? N/A

Is a PLACEHOLDER? No **XX** Yes Expected date of completion: _____

Reason not completed: N/A

Is due to legal decision: Case cite: or AGO No./date (*attach copy*)

Raises fees or assessments? No **XX** Yes (*attach Fiscal Impact Estimate and form 107BF22*)

Imposes or adds to unfunded mandate on local governments? No **XX** Yes (*attach Fiscal Impact Estimate*)

Has other fiscal, revenue, or position impacts? No **XX** Yes (*attach Fiscal Impact Estimate*)

Have you discussed this Concept with your Attorney General liaison? No **XX** Yes

APPROVED FOR DRAFTING

Department of Administrative Services

Date

Governor's Office

Date

Legislative Concept No.: 919/3
Detailed explanation of problem and solution, and draft language.

AMEND ORS 696.511 "License required; application and information required; issuance."

Existing Language:

696.511 License required; application and information required; issuance. (1) A person may not directly or indirectly engage in or carry on, or purport to engage in or carry on, the business of an escrow agent, or act in the capacity of an escrow agent, unless the person holds an active license as an escrow agent under the provisions of ORS 696.505 to 696.590.

(2)(a) Every escrow agent before engaging in the escrow business shall file in the office of the Real Estate Commissioner an application for a license, in writing, verified by the applicant and in the form prescribed by the commissioner. The application must include the location of the agent's main office and all branch offices in this state, the name or style of doing business, the names, resident and business addresses of all persons interested in the business as principals, partners, elected officers, trustees and directors, specifying as to each the person's capacity and title, the general plan and character of business and the length of time the agent has been engaged in business. Notification of changes in the information contained in the application or in the ownership of the business must be immediately filed with the commissioner.

(b) If the applicant is an individual, the applicant must be 18 years of age or older.

(3) For the initial license of an escrow agent, the commissioner may require information and evidence the commissioner considers necessary to demonstrate the applicant's qualifications to transact escrow business including, but not limited to, information regarding the applicant's financial resources, the applicant's escrow business in another state or the experience or training of employees in escrow business, or a testimonial of an escrow agent licensed in this state. Subject to subsection (4) of this section, an applicant:

(a) Who is an individual must demonstrate a minimum of three years of experience in the administration of escrows within Oregon or a state with comparable escrow laws; or

(b) Who is not an individual must demonstrate a minimum collective experience among its personnel of three years in the administration of escrows within Oregon or a state with comparable escrow laws.

(4) The commissioner may waive the three-year experience requirement in subsection (3) of this section for an applicant who demonstrates other qualifications sufficient to ensure the protection of the public.

(5) For the initial license or license renewal of an escrow agent, the commissioner shall require fingerprints and a state or nationwide criminal records check under ORS 181.534 of an applicant for an initial license and may require fingerprints and a state or nationwide criminal records check under ORS 181.534 of an applicant for license renewal. The commissioner may require additional information for an initial license or license renewal under this subsection that the commissioner considers necessary for protecting the public. For purposes of requiring fingerprints and a criminal records check, "applicant" means an individual who has more than five percent ownership interest in the escrow agency and the corporate officers in direct control of escrow operations.

(6) For license renewal, an escrow agent shall provide:

(a) A certification of training, by which the applicant certifies that the applicant provides escrow agency staff within Oregon with an average of six hours or more of training per year per permanent, full-time employee in subjects that bear directly on the administration of escrows; and

(b) A statement identifying by name, address and telephone number one or more individuals who can respond to the inquiries of or referrals by the commissioner or the commissioner's authorized representative regarding the applicant's escrow business.

(7) The commissioner, if satisfied that the applicant should not be refused a license under ORS 696.535, shall issue or renew an escrow agent license for an applicant that complies with the requirements of ORS 696.505 to 696.590.

(8) To qualify for issuance or renewal of an escrow agent license, an applicant shall pay any outstanding civil penalties or other moneys due and owing to the Real Estate Agency except civil penalties or other moneys due that are the subject of judicial or administrative review on the date of the application for license or license renewal.

Amendments to ORS 696.511 (cont.)		
Concept/Solution	Problem	Statute
<p>1. <u>Housekeeping</u>. Amend 696.511(1) to apply to activities within the state. Suggested language:</p> <p>(1) A person may not directly or indirectly engage in or carry on, or purport to engage in or carry on, the business of an escrow agent, or act in the capacity of an escrow agent, within this state unless the person holds an active license as an escrow agent under the provisions of ORS 696.505 to 696.590.</p>	<p>Need to clarify jurisdiction is for activity within this state.</p>	<p>ORS 696.511</p>
<p>2. <u>Minor Program Change</u>. Amend 696.511(2) to require the Agency to establish by rule a system of licensing. Suggested language for 696.511(2):</p> <p><u>Delete language in 696.511(2)(a) and replace with the following language:</u></p> <p>The Real Estate Agency shall establish by rule a system for licensing escrow agents. The system shall establish, at a minimum:</p> <p>(a) The form and content of applications for licensing;</p> <p>(b) The requirements for submitting surety bonds under ORS 696.525 or evidence of deposits in lieu of a bond under ORS 696.527;</p> <p>(c) The form and content of applications for changes in ownership of a licensee;</p> <p>(d) Schedules and procedures for issuing and renewing licenses;</p> <p>(e) Schedules and procedures for approving changes in ownership of a licensee;</p> <p>(f) The term of a license;</p> <p>(g) Requirements for a licensee to notify the agency of changes in the information contained in the application including, but not limited to, changes in office location, establishing a branch office, office closure and cessation of business operations; and</p> <p>(h) Terms and conditions under which the license of a real estate licensee must be returned or transferred to the Real Estate Commissioner for purposes including, but not limited to, inactivation, suspension or termination of the license.</p> <p><u>Renumber 696.511(2)(b) to keep separate from new 696.511(2)(a):</u></p> <p>(bXX) If the applicant is an individual, the applicant must be 18 years of age or older.</p>	<p>Currently, licensing requirements and some licensing procedures are in statute. Procedural matters should be in administrative rule. Amendment provides flexibility for Agency to administer application processes. Clarifies that bond is required on application. Requires an escrow agent to file an application for change in ownership.</p> <p>Note: Language is similar to ORS 696.022 (Agency licensing of real estate licensees).</p>	<p>ORS 696.511</p>

Amendments to ORS 696.511 (cont.)		
Concept/Solution	Problem	Statute
<p>3. <u>Minor program change.</u> Amend first sentence in 696.511(5) to require application for change in ownership of escrow agency and establish authority to require background check on new owners and officers. Suggested language:</p> <p>(5) For the initial license or license renewal of an escrow agent, or application for a change in ownership interest in an escrow agent, the commissioner shall require fingerprints and a state or nationwide criminal records check under ORS 181.534 of an applicant for an initial license or an applicant for a change in ownership and may require fingerprints and a state or nationwide criminal records check under ORS 181.534 of an applicant for license renewal. * * *</p>	<p>Owners of escrow agencies are currently required to have background checks on applications for licensing. Statute needs to clarify that a change in ownership will require an application for change in ownership and a background check of new owners and officers. Agency needs information when ownership has changed; impacts licensing requirements. Creates consistency.</p> <p><u>Note to Legislative Counsel: consider streamlining all this language.</u></p>	ORS 696.511
<p>4. <u>Housekeeping.</u> Amend last sentence of 696.511(5) to change “agency” to “agent” add “officer in charge of escrow operations.” Suggested language:</p> <p>(5) * * * For purposes of requiring fingerprints and a criminal records check, “applicant” means an individual who:</p> <p>(a) has more than five percent ownership interest in the escrow agency agent;</p> <p>(b) is a and the corporate officers in direct control is in charge of escrow operations; or</p> <p>(c) is in charge of escrow operations.</p>	<p>“Agency” is not a concept or a licensee in ORS 696. Clarify ownership interest and use language used in the escrow industry “in charge of escrow operations.” Include individuals who are not “officers” of a corporation but are “in charge of operations” because not all escrow agents are corporations.</p>	ORS 696.511
<p>5. <u>Housekeeping.</u> Amend 696.511(7) to clean up language so that Agency issues an escrow license if all requirements are met.</p> <p>(7) The commissioner, if satisfied that the applicant should not be refused a license under ORS 696.535, Real Estate Agency shall issue or renew an escrow agent license, or approve a change in ownership of an escrow agency for an applicant that complies with the requirements of ORS 696.505 to 696.590.</p>	<p>Outdated language that is cumbersome.</p> <p><i>Question for Legislative Counsel: add language that applicant must also comply with the rules adopted thereunder? Is any of this language even necessary?</i></p>	ORS 696.511
<p>6. <u>Housekeeping/Minor program change.</u> Require an applicant who is a legal entity to be an “active” entity who is registered with the Secretary of State. Require a licensee who is a legal entity to maintain active status and consequence of not doing so is termination of license.</p>	<p>Agency needs assurance that legal entity “exists” under the law. If legal entity holds license and is not “active” with the Secretary of State, then entity does not “exist” under the law and therefore, escrow agent license no longer exists.</p>	ORS 696.511

Amendments to ORS 696.520		
Concept/Solution	Problem	Statute
<p>ORS 696.520 are the exemptions from licensing as an escrow agent. The purposes of the amendments are for clarification, simplification, and consistency within ORS chapter 696.</p> <p>Retitle 696.520 to "exemptions."</p>	Outdated language.	ORS 696.520
Amendments to ORS 696.527		
Concept/Solution	Problem	Statute
<p>AMEND ORS 696.527 to update and align statutes with current banking and financial practices.</p> <p>696.527 Deposits in lieu of bond; payment of claims; waiver. (1) Any escrow agent may satisfy the requirements of ORS 696.525 by depositing with the State Treasurer, in an amount equal to the surety bond required, a deposit consisting only of the following:</p>		
<p>1. Amend ORS 696.527(1)(c) to authorize Real Estate Agency to accept "assignment of certificates of deposit" Suggested language:</p> <p>(c) Certificates of deposit, an assignment of certificates of deposit or other investments described in ORS 733.650 (4), to the extent that such investments are insured by the Federal Deposit Insurance Corporation; or * *</p>	Issue: Current statutes are outdated and do not align with current financial practices. Solution: Amend statute to align with current banking and finance practices.	ORS 696.527
<p>2. Move Letters of Credit from the waiver section, 696.527(4), to the "in lieu" section, 696.527(1) as they are more similar to the other cash equivalents.</p> <p>Place as 696.527(1)(d) and renumber (e) to any combination. The release provisions of 696.527(3)(b) are appropriate for Letters of Credit.</p>	Issue: Current statutes are outdated and do not align with current financial practices. Solution: Amend statute to align with current banking and finance practices.	ORS 696.527
Amendments to ORS 696.530		
Concept/Solution	Problem	Statute
<p>Simplify language in 696.530(1) "expires June 30 next after the date."</p> <p>No suggested language.</p>	Outdated language. All escrow agent licenses expire June 30 each year. If application is made in September of one year, the license expires June 30 of the next year.	ORS 696.530

Amendments to ORS 696.532		
Concept/Solution	Problem	Statute
<p>Existing language: 696.532 Limited license. (1) The Real Estate Commissioner may issue or renew a limited escrow agent license if: (a) An applicant elects not to apply for an escrow agent license; or (b) An applicant does not qualify for an escrow agent license. (2) The commissioner may limit a license issued under this section: (a) By term; (b) To activities subject to supervision by a specific escrow agent; (c) By conditions to be observed in the exercise of the privileges granted; or (d) In other ways determined by the commissioner as necessary or appropriate to protect the public. (3) A limited licensee shall comply with the requirements of ORS 696.505 to 696.590 and shall: (a) Restrict the escrow business of the licensee to those escrows specified in the application; or (b) Limit its escrow business to collection escrows. [2003 c.427 §2]</p>		
<p>1. ORS 696.532(1)(a) and (b) allows the commissioner to issue or renew a limited license to a person who “elects not to apply” or to a person that “does not qualify.”</p> <p>(1) The Real Estate Commissioner may issue or renew a limited escrow agent license. if: (a) An applicant elects not to apply for an escrow agent license; or (b) An applicant does not qualify for an escrow agent license. (2) The commissioner may limit a license issued under this section: (a) By term; (b) To activities subject to supervision by a specific escrow agent; (c) By conditions to be observed in the exercise of the privileges granted; or (d) In other ways determined by the commissioner as necessary or appropriate to protect the public. (3) A limited licensee shall comply with the requirements of ORS 696.505 to 696.590 and shall: (a) Restrict the escrow business of the licensee to those escrows specified in the application; or (b) Limit its escrow business to collection escrows.</p>	<p>This language was added in 2003 to allow the agency to issues limited licenses based on the nature of the escrow activity; however, it states that a license can be issued to a person who does not qualify or does not apply. Outdated language.</p> <p>The Agency needs to maintain flexibility to issue a limited license; however, the language is unnecessary or unclear.</p>	ORS 696.532
Amendments to ORS 696.535		
Concept/Solution	Problem	Statute
<p>AMEND ORS 696.535 to clarify statutes.</p> <p>Existing language 696.535 Grounds for refusing, suspending or revoking license. (1) The Real Estate Commissioner may refuse to issue or may suspend or revoke any license by entering an order to that effect with the commissioner’s findings in respect thereto if, upon examination into the affairs of the applicant or licensee in the performance of routine duties, upon field examination or upon hearing, the commissioner determines that the applicant or licensee:</p>		

Amendments to ORS 696.535 (cont.)		
Concept/Solution	Problem	Statute
Amend ORS 696.531(1)(a) Replace “Has ... a deficit net worth” with “Is ... insolvent.” Suggested language: (a) Has Is , under generally accepted accounting principles, a deficit net worth insolvent ;	Net worth is not best method here – solvency is a better measure.	ORS 696.535
Amend 696.531(1) (b) Replace “unworthiness” with “untrustworthiness or incompetence.” Suggested language: (b) Has demonstrated unworthiness untrustworthiness or incompetence to transact the business of an escrow agent;	Existing language is unclear.	ORS 696.535
Amend 696.535(1)(c) to add “or any rule promulgated thereunder.” Suggested language: (c) Does not conduct business in accordance with law or has violated any provisions of ORS 696.505 to 696.590 or any rule promulgated thereunder ;	Add violated any provision of statute & rule (similar to 696.301(3)).	ORS 696.531
Amendments to ORS 696.585		
Concept/Solution	Problem	Statute
AMEND ORS 696.585(1) to expand statutes covered by 696.585 from just 696.505 to 696.545 to <u>all escrow statutes</u> in 696.505 to 696.590. 696.585 Civil penalties. (1) Any person who violates any provision of ORS 696.505 to 696.545 , 696.590 or any lawful rule or final order of the Real Estate Commissioner or any final judgment made by any court upon application of the commissioner, may be required to forfeit and pay to the General Fund of the State Treasury, a civil penalty in an amount determined by the commissioner of not more than \$3,000 for each offense.	ORS 696.585(1) should cover all escrow statutes from 696.505 to 696.590. This may have been a scrivener's error.	ORS 696.585
END OF LC 919-3		

NO FISCAL IMPACT

LEGISLATIVE CONCEPT

Agency No./Concept No. 919/4

Date April 3, 2008

- ◆ Attach a Fiscal Impact Estimate.
 - ◆ Attach detailed explanation of problem and solution, and draft language.
 - ◆ Deliver *original and six copies* including draft language and attachments to the Department of Administrative Services, 155 Cottage Street NE, Salem OR 97301-3965 *on or before April 4, 2008*.
-

Agency Real Estate

Division/Program N/A

Concept Subject/Title Escrow Licensing Program Changes

Contact Person _____

Phone No. _____

◆ BRIEF DESCRIPTION OF THIS CONCEPT:

Provides a number of minor program changes to the escrow statutes in ORS chapter 696. The statute relating to grounds for refusing or disciplining an escrow licensee under ORS 696.535 is amended to 1) update language in ORS 696.535(1); 2) provides for suspension or revocation of a license for failing to maintain a required surety bond; 3) provides for a sanction of reprimand; and 4) provides for sanction for licensees who commit an act of fraud or dishonesty outside the scope of conduct under the license. The concept also defines or redefines several terms. Clarify that an escrow agent must follow the written instructions of the principals to the transaction.

◆ PURPOSE OF THIS CONCEPT (DESCRIBE PROBLEM YOU ARE TRYING TO SOLVE AND SUGGESTED SOLUTION):

The purpose of the provisions amending the statute relating to grounds for refusing or disciplining an escrow licensee under ORS 696.535 is to 1) update language; 2) to allow for the suspension or revocation of a license for failing to maintain a required surety bond; 3) provides agency with flexibility to issue a reprimand, which is a lesser sanction than a suspension or revocation; 4) to provides for sanction for licensees who do untrustworthy acts outside the scope of conduct under the license, which parallels the existing statutes for real estate licensees and allows the agency to sanction a licensee who commits an act of fraud or dishonesty outside the scope of the license. The second purpose is to define or redefine terms used in the statutes, including definitions for "open escrow," "close/closing escrow," "escrow trust account," and "principal." The third purpose is to clarify the requirement that an escrow agent not only have a written escrow agreement, but that the escrow agent must follow the written instructions of the principals to the transaction.

◆ POLICY IMPLICATIONS:

The concept impacts escrow agents. The concept is the result of a significant collaborative effort by the agency and the escrow industry through a series of work groups. If not enacted, it would be a disappointment to the working groups.

◆ PARTNERS OR OTHER AGENCIES AFFECTED:

Agency:

Person you talked to about concept:

Phone:

No state or local impacted

◆ KNOWN SUPPORT

The concept is a result of a significant collaborative effort of the agency and the escrow industry. More than 18 individuals participated in the working group. The concept is supported by all participants and the Oregon Real Estate Board.

◆ KNOWN OPPOSITION:

None.

◆ THIS CONCEPT: (Do not skip answers. Enter *none* or *N/A* as needed.)

Revises or repeals ORS 696

Adds new sections to ORS Chapter 696

Check one: NO Major program change YES Minor program change
YES Technical correction/housekeeping only

Was previously proposed in: Year N/A as Bill No. N/A

Why are you proposing it again (what changed)? N/A

Is a PLACEHOLDER? No **XX** Yes Expected date of completion: _____

Reason not completed: N/A

Is due to legal decision: Case cite: or AGO No./date (*attach copy*)

Raises fees or assessments? No **XX** Yes (*attach Fiscal Impact Estimate and form 107BF22*)

Imposes or adds to unfunded mandate on local governments? No **XX** Yes (*attach Fiscal Impact Estimate*)

Has other fiscal, revenue, or position impacts? No **XX** Yes (*attach Fiscal Impact Estimate*)

Have you discussed this Concept with your Attorney General liaison? No **XX** Yes

APPROVED FOR DRAFTING

Department of Administrative Services

Date

Governor's Office

Date

Legislative Concept No.: 919/4
Detailed explanation of problem and solution, and draft language.

AMEND ORS 696.535 Grounds for refusing, suspending or revoking license.

Existing Language:

696.535 Grounds for refusing, suspending or revoking license. (1) The Real Estate Commissioner may refuse to issue or may suspend or revoke any license by entering an order to that effect with the commissioner's findings in respect thereto if, upon examination into the affairs of the applicant or licensee in the performance of routine duties, upon field examination or upon hearing, the commissioner determines that the applicant or licensee:

- (a) Has, under generally accepted accounting principles, a deficit net worth;
 - (b) Has demonstrated unworthiness to transact the business of an escrow agent;
 - (c) Does not conduct business in accordance with law or has violated any provisions of ORS 696.505 to 696.590;
 - (d) Has committed fraud in connection with any transaction governed by ORS 696.505 to 696.590;
 - (e) Has made any misrepresentations or false statement of an essential or material fact to, or concealed any essential or material fact from, any person in the course of the escrow business;
 - (f) Has knowingly made or caused to be made to the commissioner any false representation of a material fact, or has suppressed or withheld from the commissioner any information the applicant or licensee possesses that, if submitted, would have disqualified the applicant or licensee from original or renewed licensing under ORS 696.505 to 696.590;
 - (g) Has failed to account to the principals or persons entitled thereto in a real estate transaction for the moneys, documents or other things of value received in the transaction;
 - (h) Has not delivered, after a reasonable time, to persons entitled thereto, moneys, documents or other things of value held or agreed to be delivered by the licensee, as and when paid for and due to be delivered;
 - (i) Has caused uncompensated material loss to principals by engaging in a pattern of failures to act with neutrality between principals in multiple escrows;
 - (j) Has refused to permit an examination by the commissioner of the escrow agent's books and affairs, or has refused or failed, within a reasonable time, to furnish any information, records or files or make any report that may be required by the commissioner under the provisions of ORS 696.505 to 696.590; or
 - (k) Has been convicted of a felony or any misdemeanor that is substantially related to the escrow agent's competency or trustworthiness to engage in the business of an escrow agent.
- (2) It is sufficient cause for refusal or revocation of a license in case of a partnership or corporation or any unincorporated association, if any member of a partnership or any officer or director of the corporation or association has been guilty of any act or omission which would be cause for refusing or revoking the registration of an individual agent.

Concept/Solution	Problem	Statute
AMEND ORS 696.535 "Grounds for refusing, suspending or revoking license" for escrow licensee.	Currently, 696.535(1) language is outdated and confusing; 696.535 does not allow sanction for failure to maintain a bond; no provision for lesser sanction of reprimand; no provision for licensees who do untrustworthy acts outside the scope of conduct under the license.	ORS 696.535

AMEND ORS 696.535

Concept/Solution	Problem	Statute
<p>1. Update and clarify ORS 696.535(1):</p> <p>696.535(1) The Real Estate Commissioner may refuse to issue or may suspend or revoke any license by entering an order to that effect with the commissioner’s findings in respect thereto if, upon examination into the affairs of the applicant or licensee in the performance of routine duties, upon field examination or upon hearing, the commissioner determines that the applicant or licensee:</p> <p>Suggested language: As example, this language parallels language in ORS 696.301 (for grounds for discipline of real estate licensees): <i>Delete current language and replace with:</i></p> <p>696.535 Grounds for refusing license; grounds discipline. (1) The Real Estate Commissioner may suspend or revoke the license of an escrow agent, reprimand an escrow agent licensee or deny the issuance or renewal of an escrow agent license to an applicant who has done any of the following:</p>	<p>Issue: language is confusing--"upon examination into the <u>affairs</u> of the applicant or licensee <u>in the performance of routine duties</u>, upon <u>field examination</u> or <u>upon hearing</u>.</p> <p>“Upon hearing” is confusing because, in order to take administrative action, a licensee always has an opportunity for a hearing.</p> <p>The only disciplinary options available are to suspend or revoke a license. Provides for a lesser sanction of “reprimand;”; parallels language for real estate licensees (see ORS 696.301)</p>	<p>ORS 696.535</p>
<p>2. Add new language to 696.535 that failure to maintain a surety bond under 696.525, or other surety under 696.527 is grounds for suspending or revoking license. Suggested language:</p> <p>(XX) Failed to maintain a maintain a surety bond required under 696.525, or other surety required under 696.527;</p>	<p>Surety bond is required for licensees; clarify that failure to maintain is grounds for suspending or revoking license.</p>	<p>ORS 696.535</p>
<p>3. Add language to 696.535 that parallels the concept in 696.301(14) where agency may sanction licensee for acts committed outside of licensed activity that show untrustworthiness.</p> <p>Suggested language: As example, this language parallels language in ORS 696.301(14) (grounds for discipline of real estate licensees):</p> <p>(XX) "Committed an act of fraud or engaged in dishonest conduct substantially related to the fitness of the applicant or licensee to engage in the activities of an escrow agent, without regard to whether the act or conduct occurred in the course of professional real estate activity."</p>	<p>There are no provisions for suspending or revoking an escrow agent's license if the licensee committed and act of fraud or engaged in dishonest conduct outside the scope of a license. Escrow agents must be held to high standards of care.</p>	<p>ORS 696.535</p>

AMEND ORS 696.578 AND ORS 696.505

Concept/Solution	Problem	Statute
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AMEND ORS 696.578 Deposit and designation of money held in escrow; treatment of earnings on escrow account; notice.

Existing language reads:

696.578 Deposit and designation of money held in escrow; treatment of earnings on escrow account; notice. (1) All money deposited in escrow to be delivered upon the close of the escrow or upon any other contingency shall be deposited and maintained in a bank authorized to do business within this state and kept separate, distinct and apart from funds belonging to the escrow agent. Such funds, when deposited, are to be designated as trust funds, escrow accounts, or under some other appropriate name indicating that the funds are not the funds of the escrow agent.

(2) Trust funds received by an escrow agent may be placed by the agent in a federally insured interest-bearing bank account, designated a clients' trust account, but only with the prior written approval of all parties having an interest in the trust funds. The earnings of such interest-bearing account may inure to the benefit of the escrow agent if expressly approved in writing before deposit of the trust funds by all parties having an interest in the trust funds.

(3) With prior written notice to all parties who have an interest in the trust funds, an escrow agent may place trust funds received by the escrow agent in a federally insured interest-bearing bank account that is designated a clients' trust account and the earnings of which inure to the benefit of a public benefit corporation, as defined in ORS 65.001, for distribution to organizations and individuals for first-time homebuying assistance and for development of affordable housing. The escrow agent shall select a qualified public benefit corporation to receive the interest earnings.

(4) Any bank services, as defined by rule by the Real Estate Commissioner, provided to the escrow agent shall not be considered to affect the impartiality or neutrality of the escrow agent. Such services are permitted with approval in the written closing instructions of the principals.

(5) Clients' trust funds may be invested in secured obligations of the United States, if:

(a) The depositing principal gives prior written approval to the escrow agent for such investment after receiving written disclosure as may be required by rule adopted by the commissioner;

(b) The depositing principal releases the escrow agent from any liability for loss of such funds;

(c) The depositing principal agrees that any loss of funds shall not be a claim against the bond, deposit, letter of credit or personal guarantee of the agent under ORS 696.525 and 696.527; and

(d) The escrow agent does not have any interest in the investment or earnings from the investment.

(6) If the funds to be invested represent earnest money in a transaction, both principals in the transaction must give prior written approval for the investment and are both considered depositing principals.

SEE NEXT PAGE

AMEND ORS 696.578 AND ORS 696.505 (CONT.)

Concept/Solution	Problem	Statute
<p>Amend ORS 696.505</p> <p>696.505 Definitions for ORS 696.505 to 696.590. As used in ORS 696.505 to 696.590, unless the context requires otherwise:</p> <p>(1) "Collection escrow" means an escrow in which the escrow agent:</p> <p>(a) Receives:</p> <p>(A) Installment payments;</p> <p>(B) Instruments evidencing or securing an obligation; or</p> <p>(C) Instruments discharging the security interest; and</p> <p>(b) Disburses the payments or delivers the instruments upon specified conditions pursuant to the written instructions of an obligor and obligee.</p> <p>(2) "Commissioner" means the Real Estate Commissioner.</p> <p>(3) "Compensation" means any fee, commission, salary, money or valuable consideration for services rendered or to be rendered as well as the promise thereof and whether contingent or otherwise.</p> <p>(4) "Escrow" means any transaction wherein any written instrument, money, evidence of title to real or personal property or other thing of value is delivered, for the purpose of paying an obligation or effecting the sale, transfer, encumbrance or lease of real or personal property, to a person not otherwise having any right, title or interest therein, to be held by that person as a neutral third party until the happening of a specified event or the performance of a prescribed condition, when it is then to be delivered by the neutral third party to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, bailor or any agent or employee of any of them pursuant to the written instructions of the principals to the transaction.</p> <p>(5) "Escrow agent" means any person who engages in the business of receiving escrows for deposit or delivery and who receives or is promised any fee, commission, salary or other valuable consideration, whether contingent or otherwise, for or in anticipation of performance.</p> <p>(6) "Principal" means:</p> <p>(a) The buyer and seller, lessor and lessee and the exchanging parties in an escrow transaction involving the sale, lease, lease-option or exchange of real property or personal property; and</p> <p>(b) The borrower in an escrow transaction involving the refinancing of real or personal property, including but not limited to the refinancing of an obligation secured by a land sale contract requiring a deed to be delivered as part of such refinancing.</p> <p>(7) "Real estate closing escrow" means an escrow where the escrow fee is paid in whole or in part by the principals to a real estate transaction and wherein the unpaid purchase price is delivered to an escrow agent for disbursal pursuant to the written instructions of the principals to the transaction simultaneously on the transfer of specified title to the real property.</p> <p>(8) "Subservicer" means an escrow agent, a financial institution or a trust company, as those terms are defined in ORS 706.008, or a collection agency registered under ORS 697.015 when providing, pursuant to written instructions, a portion of the escrow services for an escrow to an escrow agent, or a person in the business of receiving escrows under the laws of another state, that would otherwise provide the escrow services directly to the principals.</p>		
<p>1. Amend ORS 696.505 to add definition of "open escrow."</p> <p>Concept for definition: An escrow is "open" upon the first receipt by the escrow agent of funds, property or documents for an escrow.</p>	<p>"Open escrow" where "open" is a verb and "open escrow" where "open" is an adjective describing an escrow account is used through the escrow statutes.</p> <p>These terms need to be defined in the definition section of ORS 696.505.</p>	<p>ORS 696.505</p>

AMEND ORS 696.578 AND ORS 696.505 (CONT.)

Concept/Solution	Problem	Statute
<p>2. Amend ORS 696.505 to create definition of "Escrow Trust Account." Amend ORS 696.578 to include "escrow trust account." Suggested language:</p> <p>"Escrow Trust Account" means a separate bank account that shall be designated as an Escrow Trust Account in which all trust funds received by the escrow agent on behalf of any other person shall be deposited.</p> <p>Amend ORS 696.578. Suggested language:</p> <p>ORS 696.578 (1) All money deposited in escrow to be delivered upon the close of the escrow or upon any other contingency shall be deposited and maintained in an escrow trust account in a bank authorized to do business within this state and kept separate, distinct and apart from funds belonging to the escrow agent. Such funds, when deposited, are to be designated as trust funds, escrow accounts, or under some other appropriate name indicating that the funds are not the funds of the escrow agent.</p> <p>Note to LC: Please review all other provisions in escrow statutes for consistency.</p>	<p>Clarify that funds held by an escrow agent must be placed in a trust account and not commingled with funds of the escrow agent. In addition, the bank must know that the account is, in fact, a trust account.</p>	<p>ORS 696.505 AND ORS 696.578</p>

AMEND ORS 696.578 AND ORS 696.505 (CONT.)

Concept/Solution	Problem	Statute
<p>3. Amend 696.505(5) "Principal": Incorporate definition of principal at OAR 863-050-0000(8) into statutory definition at 696.505(5).</p> <p>Existing language: (6) "Principal" means: (a) The buyer and seller, lessor and lessee and the exchanging parties in an escrow transaction involving the sale, lease, lease-option or exchange of real property or personal property; and (b) The borrower in an escrow transaction involving the refinancing of real or personal property, including but not limited to the refinancing of an obligation secured by a land sale contract requiring a deed to be delivered as part of such refinancing.</p> <p><u>Combine existing language</u> with the following (from administrative rule) and add "subservicer" to definition of "principal." Suggested language:</p> <p>(8) "Principal" means: (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 ; and (d) a subservicer, as defined in ORS 696.505(8)</p>	<p>Current rule definition of "principal" expands statute. Language should be in statute, not rule. Subservicers may be "principals," so add "subservicer" to definition of Principal in 696.505(5).</p>	<p>ORS 696.505</p>
<p>4. Amend ORS 696.505 to add definition of "closing escrow."</p> <p>Parallel language in "real estate closing escrow in ORS 696.505(7) but delete language and concepts related to "real estate." Suggested language:</p> <p>Use the following as a "model" (7) "Real estate closing escrow" means an escrow where the escrow fee is paid in whole or in part by the principals to a real estate transaction and wherein the unpaid purchase price is delivered to an escrow agent for disbursement pursuant to the written instructions of the principals to the transaction simultaneously on the transfer of specified title to the real property.</p>	<p>A significant number of escrows do not involve "real estate." The concept of "closing escrow" (a noun) or "close escrow" (verb) is used in statute, but not defined. Close escrow means the final disbursement of all monies, documents and property to the principals pursuant to the written escrow instructions.</p>	

AMEND ORS 696.581

Concept/Solution	Problem	Statute
<p>Existing language from 2008 SB 1001 for ORS 696.581: 696.581. (1) An escrow agent may not accept funds, property or documents in any escrow transaction without dated, written escrow instructions from the principals to the transaction or a dated executed agreement in writing between the principals to the transaction. (2) Except as provided in ORS 314.258, an escrow agent may not close an escrow or disburse any funds or property in an escrow without obtaining dated, separate escrow instructions in writing from the principals to the transaction adequate to administer and close the transaction or, in the case of disbursement, to disburse the funds and property.</p>		
<p>Amend 696.581 to add a requirement that an escrow agent must <u>follow</u> the “dated, written escrow instructions from the principals to the transaction or a dated executed agreement in writing between the principals to the transaction” in 696.581(1).</p> <p>Suggested language--<u>new</u> (2):</p> <p>Consider: An escrow agent must follow dated, written escrow instructions from the principals to the transaction or a dated executed agreement in writing between the principals to the transaction.</p> <p>And consider: An escrow agent shall use documents or other property deposited in escrow only in accordance with the dated written instructions of the principals to the escrow transactions or pursuant to order of a court of competent jurisdiction.</p>	<p>Clarify that escrow agents must not only receive written instructions, but that they must <u>follow</u> these instructions.</p>	<p>ORS 696.581</p>
<p>END OF LC 919/4</p>		

NO FISCAL IMPACT