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**PERMANENT ADMINISTRATIVE ORDER**

**REA 4-2024**

CHAPTER 863

REAL ESTATE AGENCY

**FILED**

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RULES:

863-005-0005, 863-015-0245, 863-017-0000, 863-017-0005, 863-017-0010, 863-017-0015, 863-017-0020, 863-017-0025

AMEND: 863-005-0005

RULE TITLE: Definitions

NOTICE FILED DATE: 10/18/2024

RULE SUMMARY: Definitions for purposes of division 5 unless the context requires otherwise.

RULE TEXT:

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 Real Estate 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 or an individual registered as a residential property wholesaler as provided in Oregon Laws 2024, chapter 3, section 1.

(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, or an applicant for a residential property wholesaler registration under Oregon Laws 2024, chapter 3, section 1 as someone from whom the Agency may require fingerprints in order for the agency to conduct a criminal records check.

STATUTORY/OTHER AUTHORITY: ORS 181.534, 696.022, 696.790

STATUTES/OTHER IMPLEMENTED: ORS 181.534, Oregon Laws 2024, chapter 3, section 3

ADOPT: 863-015-0245

RULE TITLE: Residential Property Wholesaling Disclosure Requirements for Brokers

NOTICE FILED DATE: 10/18/2024

RULE SUMMARY: Creating a new rule that provides disclosure requirements for brokers engaging in residential property wholesaling.

RULE TEXT:

(1) As used in this rule, "Residential Property Wholesaling" means to market residential property for which the marketer has only an equitable interest or option to purchase and, at the time of marketing, the marketer has:

(a) Held such interest or option for fewer than 90 days; and

(b) Invested less than \$10,000 in land development or improvement costs associated with the residential property.

(2) Covered Parties: A broker or principal broker conducting residential property wholesaling shall provide the residential property wholesaling written disclosure published on the Agency's website:

(a) To any potential buyers and sellers before entering into a written contract for a residential property wholesale transaction;

(b) To any broker or principal broker who is assisting a potential buyer in purchasing the property; and

(c) In all advertising related to the residential property that is the subject of a residential property wholesale transaction. Advertising on social media is exempt from the requirements of this rule if the advertising links to a separate page that complies with this rule.

(3) Standards for Proper Disclosure: The Real Estate Agency has established the standards for proper residential property wholesaling written disclosure requirements under this section. The disclosure must be in at least 10-point bold type and at a minimum must:

(a) State that the broker or principal broker:

(A) Is licensed;

(B) Will only have or only has an equitable interest in the property being sold;

(C) Will not have or does not have legal title to the property and therefore may not be able to directly transfer title to the buyer; and

(D) Might not be a licensed appraisal specialist and therefore might not be permitted to provide an opinion as to the value of the property.

(b) Include the following plain language definition of equitable interest: A person who has an "Equitable interest" in a property means someone that has contracted with the current owner for the right to buy the property at a later date even though they don't have legal title. The contract may allow the equitable interest holder to sell or transfer the right to purchase the property to someone else prior to close of escrow.

(c) Include the following statements:

(A) A broker or principal broker may assign equitable interest to another party prior to closing for profit.

(B) A seller or buyer who enters into a written contract for a residential property wholesale transaction may cancel the contract without penalty by delivery of a written notice of cancellation any time before 12 midnight at the end of the third business day after the receipt of the residential property wholesaling written disclosure. This right of cancellation may not be waived. Upon cancellation, all earnest money or deposits shall be returned to the person who provided the earnest money or deposit.

(C) If the broker or principal broker fails to provide a residential property wholesaling written disclosure to the seller before entering into a written contract for a residential property wholesale transaction, the seller may terminate the contract at any time without penalty and retain any earnest money or deposit paid to the seller or deposited in escrow by the broker or principal broker. An escrow agent may disburse the earnest money or deposit to the seller without the need for separate written instructions from the broker or principal broker if:

(i) The seller in writing asserts that the residential property wholesaling written disclosure was not provided to the seller before entering into the written contract for the residential property wholesale transaction and demands

disbursement to the seller of all deposits held by the escrow agent; and

(ii) The seller has provided the escrow agent with a written release and indemnification against all liability arising from the disbursement of the earnest money and deposits to the seller.

(D) If the broker or principal broker fails to provide a residential property wholesaler written disclosure to the seller or buyer, and if the purchase and sale agreement is terminated as a result, the broker or principal broker shall be liable for damages incurred by seller and buyer.

(E) In any mediation or arbitration proceeding or civil action between buyer and seller, between buyer and broker or principal broker, or between seller and broker or principal broker that arises due to the broker's or principal broker's failure to provide a residential property wholesaling written disclosure before entering into a written contract for a residential property wholesale transaction as prescribed under this section, the prevailing party is entitled to recover all reasonable attorney fees, costs and expenses incurred at trial, on appeal, at mediation and at arbitration from the broker or principal broker.

(F) How to file a complaint. If you believe a real estate licensee or a residential property wholesaler has violated any governing statute or rule, you may file a complaint with the Oregon Real Estate Agency (OREA). OREA will review the complaint. In most cases, other people involved in the case, including the respondent, will be contacted. Based on the information received, OREA will determine whether to start an investigation.

STATUTORY/OTHER AUTHORITY: Oregon Laws 2024, chapter 3, section 3

STATUTES/OTHER IMPLEMENTED: Oregon Laws 2024, chapter 3, section 2

ADOPT: 863-017-0000

RULE TITLE: Applicability and Purpose

NOTICE FILED DATE: 10/18/2024

RULE SUMMARY: Creating a new rule that provides applicability and purpose of the division.

RULE TEXT:

(1) This division sets forth the requirements and process for registering residential property wholesalers, as those terms are defined in Oregon Laws 2024, chapter 3, section 1 and 2.

(2) The purpose of this division is to specify the requirements for obtaining the desired residential property wholesaling registration.

STATUTORY/OTHER AUTHORITY: Oregon Laws 2024, chapter 3, section 3

STATUTES/OTHER IMPLEMENTED: Oregon Laws 2024, chapter 3, sections 1 and 2

ADOPT: 863-017-0005

RULE TITLE: Definitions

NOTICE FILED DATE: 10/18/2024

RULE SUMMARY: Creates new rule that provides definitions for division 17.

RULE TEXT:

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

- (1) "Agency" means the Real Estate Agency with powers pursuant to ORS 696.385.
- (2) "Agency-approved form" means an electronic or paper form approved by the Real Estate Agency.
- (3) "Commissioner" means the Real Estate Commissioner described in ORS 696.375.
- (4) "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.
- (5) "Registered Name" means the name of a residential property wholesaler as it appears on the current, valid registration issued to the registrant pursuant to Oregon Laws 2024, chapter 3, section 3.
- (6) "Residential Property Wholesaler" means any individual who engages in residential property wholesaling and is registered as a residential property wholesaler under Oregon Laws 2024, chapter 3, section 3.
- (7) "Residential Property Wholesaling" means to market residential property for which the marketer has only an equitable interest or option to purchase and, at the time of marketing, the marketer has:
  - (a) Held such interest or option for fewer than 90 days; and
  - (b) Invested less than \$10,000 in land development or improvement costs associated with the residential property.

STATUTORY/OTHER AUTHORITY: Oregon Laws 2024, chapter 3, section 3

STATUTES/OTHER IMPLEMENTED: Oregon Laws 2024, chapter 3, section 2 and 3

ADOPT: 863-017-0010

RULE TITLE: Registration Application Content

NOTICE FILED DATE: 10/18/2024

RULE SUMMARY: Creating new rule that provides content of registration applications.

RULE TEXT:

(1) Before the Agency will accept any documents or information relating to an applicant's qualifications, an applicant for a residential property wholesaler registration must apply and pay the fee required under this rule using an online application process that is available through the Agency's website.

(2) The registration application includes:

(a) The applicant's legal name as defined in OAR 863-017-0005, mailing address, email address and phone number.

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

(c) The applicant's Social Security Number as required by ORS 25.785 and ORS 305.385.

(d) Certification by the applicant that the applicant has a high school diploma, or a certificate for passing an approved high school equivalency test such as the General Educational Development (GED) test or the international equivalent.

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

(f) A list of all entities, business names and assumed business names under which the applicant has conducted or will conduct residential property wholesaling activity, along with evidence that all business names and assumed business names are registered with the Secretary of State and all entities, including foreign entities, are authorized by the Secretary of State to transact business in this state.

(g) For a residential property wholesaler registration 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 or registration revoked or suspended; or

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

(h) Any other information the Commissioner considers necessary to evaluate the applicant's trustworthiness and competency to engage in residential property wholesaling in a manner that protects the public interest.

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

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

STATUTORY/OTHER AUTHORITY: Oregon Laws 2024, chapter 3, section 3

STATUTES/OTHER IMPLEMENTED: Oregon Laws 2024, chapter 3, section 2 and 3

ADOPT: 863-017-0015

RULE TITLE: Background Check Application and Fingerprint

NOTICE FILED DATE: 10/18/2024

RULE SUMMARY: Creating new rule that provides a background check application and fingerprint process.

RULE TEXT:

- (1) An applicant for a Residential property wholesaler registration 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.
- (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) 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 registration applicants and submit the fingerprints to the Oregon State Police for Oregon and nationwide criminal history checks.
  - (b) A registration applicant may only submit fingerprints required by the Agency through the fingerprint services provider.
  - (c) A registration applicant must pay the fee for fingerprinting, directly to the fingerprint services provider.
  - (d) A registration applicant must provide fingerprints according to the requirements and instructions of the fingerprint services provider.
  - (e) A registration applicant must have submitted a registration application to the Agency before providing fingerprints.
- (4) As provided in ORS 181A.225, 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 registrant 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 registration application is incomplete and terminate the application.

STATUTORY/OTHER AUTHORITY: Oregon Laws 2024, chapter 3, section 3

STATUTES/OTHER IMPLEMENTED: Oregon Laws 2024, chapter 3, section 3



ADOPT: 863-017-0020

RULE TITLE: Term of Registration

NOTICE FILED DATE: 10/18/2024

RULE SUMMARY: A new rule that describes the term of registration as a residential property wholesaler.

RULE TEXT:

- (1) A new residential property wholesaler registration shall be for a period of not more than 13 months and a renewal of such registration shall be for a period of not more than 12 months from the expiration of the prior registration.
- (2) A residential property wholesaler registration expires on June 30 each year. A registrant may not engage in residential property wholesaling after a registration expires.
- (3) The Agency may renew a residential property wholesaler registration when the agency has received the following:
  - (a) The renewal fee authorized by ORS 696.270; and
  - (b) An online renewal
- (4) If the registrant fails to renew a license by the end of the renewal period but wishes to engage in residential property wholesaling, the registrant must submit a new initial registration application pursuant to OAR 863-017-0010 and pay all the required fees.

STATUTORY/OTHER AUTHORITY: Oregon Laws 2024, chapter 3, section 3

STATUTES/OTHER IMPLEMENTED: Oregon Laws 2024, chapter 3, section 3

ADOPT: 863-017-0025

RULE TITLE: Disclosure Requirements

NOTICE FILED DATE: 10/18/2024

RULE SUMMARY: Creates new rule that provides disclosure requirements for residential property wholesaler registrants.

RULE TEXT:

(1) Covered Parties: Residential property wholesalers shall provide the residential property wholesaler written disclosure published on the Agency's website:

(a) To any potential buyers and sellers before entering into a written contract for a residential property wholesale transaction;

(b) To any individual licensed under ORS 696.022 who is engaged to assist the residential property wholesaler in marketing or listing the property;

(c) To any individual licensed under ORS 696.022 who is assisting a potential buyer in purchasing the property; and

(d) In all advertising related to the residential property that is the subject of a residential property wholesale transaction. Advertising on social media is exempt from the requirements of this rule if the advertising links to a separate page that complies with this rule.

(2) Standards for Proper Disclosure: The Real Estate Agency has established the standards for proper residential property wholesaler written disclosure requirements under this section. The disclosure must be in at least 10-point bold type and at a minimum must:

(a) State that the residential property wholesaler or, if applicable, the entity on behalf of which the residential property wholesaler is conducting residential property wholesaling:

(A) Is a residential property wholesaler;

(B) Will only have or only has an equitable interest in the property being sold;

(C) Will not have or does not have legal title to the property and therefore may not be able to directly transfer title to the buyer;

(D) Might not be a licensed real estate broker or principal broker and therefore might not be permitted to engage in professional real estate activity; and

(E) Might not be a licensed appraisal specialist and therefore might not be permitted to provide an opinion as to the value of the property.

(b) Include the following plain language definition of equitable interest.:

A person who has an "Equitable interest" in a property means someone that has contracted with the current owner for the right to buy the property at a later date even though they don't have legal title. The contract may allow the equitable interest holder to sell or transfer the right to purchase the property to someone else prior to close of escrow.

(c) Include the following statements:

(A) A wholesaler may assign equitable interest to another party prior to closing for profit.

(B) A seller or buyer who enters into a written contract for a residential property wholesale transaction may cancel the contract without penalty by delivery of a written notice of cancellation any time before 12 midnight at the end of the third business day after the receipt of the residential property wholesaler written disclosure. The right of cancellation may not be waived. Upon cancellation, all earnest money or deposits shall be returned to the person who provided the earnest money or deposit.

(C) If the residential property wholesaler fails to provide a residential property wholesaler written disclosure to the seller before entering into a written contract for a residential property wholesale transaction, the seller may terminate the contract at any time without penalty and retain any earnest money or deposit paid to the seller or deposited in escrow by the residential property wholesaler. An escrow agent may disburse the earnest money or deposit to the seller without the need for separate written instructions from the residential property wholesaler if:

(i) The seller in writing asserts that the residential property wholesaler written disclosure was not provided to the seller

before entering into the written contract for the residential property wholesale transaction and demands disbursement to the seller of all deposits held by the escrow agent; and

(ii) The seller has provided the escrow agent with a written release and indemnification against all liability arising from the disbursement of the earnest money and deposits to the seller.

(D) If the residential property wholesaler fails to provide a residential property wholesaler written disclosure to the seller or buyer, and if the purchase and sale agreement is terminated as a result, the wholesaler shall be liable for damages incurred by seller and buyer.

(E) In any mediation or arbitration proceeding or civil action between buyer and seller, between buyer and residential property wholesaler or between seller and residential property wholesaler that arises due to the residential property wholesaler's failure to provide a residential property wholesaler written disclosure before entering into a written contract for a residential property wholesale transaction as prescribed under this section, the prevailing party is entitled to recover all reasonable attorney fees, costs and expenses incurred at trial, on appeal, at mediation and at arbitration from the residential property wholesaler.

(F) How to file a complaint. If you believe a real estate licensee or a residential property wholesaler has violated any governing statute or rule, you may file a complaint with the Oregon Real Estate Agency (OREA). OREA will review the complaint. In most cases, other people involved in the case, including the respondent, will be contacted. Based on the information received, OREA will determine whether to start an investigation.

STATUTORY/OTHER AUTHORITY: Oregon Laws 2024, chapter 3, section 3

STATUTES/OTHER IMPLEMENTED: Oregon Laws 2024, chapter 3, section 5