



# Oregon

Tina Kotek, Governor

## Real Estate Agency

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To: House Committee on Housing and Homelessness  
From: Steve Strode, Commissioner  
Date: February 5, 2024  
Subject: House Bill 4058

The Oregon Real Estate Agency (OREA) appreciates being consulted on technical matters relating to H.B. 4058. We are remaining neutral as this is a short-session bill and OREA has not conducted its own external partner engagement.

The mission of the Oregon Real Estate Agency is to provide quality protection for Oregon consumers of real estate, escrow, and land development services, balanced with a professional environment conducive to a healthy market atmosphere. As stated in our Guiding Principles in our Strategic Plan:

*"We regulate from a perspective of consumer and licensee impact. We are dedicated to adaptability as the practice evolves. In collaboration with our external partners, we continually evaluate our governing regulatory framework, within the context of the current market atmosphere."*

Outlined below are what we understand to be the bill's key objectives:

- **RESIDENTIAL PROPERTY WHOLESALING (SECTIONS 1 THROUGH 14)**: Wholesaling activity has received significant attention in Oregon as well as jurisdictions nationwide. OREA recognizes wholesaling as a legitimate business model that offers a service to home sellers that is different from the conventional listing and selling of their homes. Sellers are able to get their homes under contract quickly without further marketing and without further repairs as a condition of the sale. The issues that have caused concern involve lack of transparency and the lack of a clear understanding that a seller's sale contract may be sold to another investor prior to closing - sometimes at a substantial profit to the wholesaler who entered into the original agreement with the homeowner. The Agency has received complaints from consumers who have seen their homes being marketed online for a higher price prior to closing, and who felt they were not fully informed.

This bill introduces a new Wholesaling registration credential to be issued and regulated by OREA. Registration requirements include: an application, fee, and background check. Further this bill requires wholesale registrants to provide consumers with plain language disclosure statements and modifies Agency regulatory authority to administer civil penalties and administrative actions. Other jurisdictions have introduced legislation to regulate wholesalers and have taken a variety of approaches – from a light-touch approach requiring consumer



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disclosure statements only, to a more robust approach requiring full occupational licensure. Comparatively, this bill lands in the middle of the regulatory spectrum, by ensuring wholesalers successfully pass a background check – without mandating pre-licensing education and examinations.

The Oregon Real Estate Agency is a member of the Association of Real Estate Licensing Law Officials (ARELLO) and offering better consumer protection related to the practice of wholesaling has been a frequent topic at governance conferences. This bill appears to align with the direction of multiple jurisdictions nationwide.

- **REAL ESTATE LICENSEES (SECTIONS 15 THROUGH 20):** Historically on homes listed for sale, the listing agreement dictated the offer of compensation to both the seller's and buyer's agent. Only in the past few years has this offer of compensation to the buyer's agent become more transparent and appears on public facing websites. For years, the National Association of Realtors (NAR) along with state and local Realtor associations have considered it a best practice for their members to obtain a signed "Buyer Agency Agreement" when representing clients in the purchase of their homes. This written agreement outlines for the purchasing consumer how their agent is paid. It also offers the ability to negotiate their fee, and better describes the fiduciary duties and responsibilities that an agent has to the consumer. This new requirement mirrors the longstanding requirement that all seller listing agreements must be in writing. Some states have mandated the practice for both buyers and sellers; currently in Oregon only the listing service agreements need to be in writing.

OREA has observed recent developments in the industry and that NAR and local associations now appear ready to move from a voluntary best-practice to statutorily mandated approach. This solution appears to be effective, as states in which the practice has remained optional have failed to achieve widespread use.

- **FUTURE RIGHT TO LIST CONTRACTS (SECTION 21):** The real estate industry is a highly competitive space, and OREA does not approve or deny new business models. However, some new business models can lead to consumer complaints, or be widely perceived as predatory. In the past several years, one business model has formed that has received widespread attention.

The industry term to describe the business practice is Non-Title Record Agreements for Personal Service (NTRAPS) and have been dubbed pejoratively as "40-year listings." A firm will pay a homeowner a relatively small fee in exchange for signing a 40-year agreement. That agreement



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requires that should the homeowner decide to sell their home at any point for the next 40 years, the homeowner promises to use that same firm named in the NTRAPS agreement. A lien is then placed on the property by said firm. If the homeowner fails to use that company, they must still pay a termination fee to release the lien to sell their home. From what we have observed that termination fee is comparable to the cost of an actual listing commission; in terms of sheer dollar amounts, the homeowner may be faced with paying the equivalent of two commissions. This practice costs sellers significantly if they forget about the agreement, their heirs are unaware the agreement existed, or if they decide to list their home with a brokerage other than the one named in the NTRAPS agreement.

OREA has received 11 complaints from consumers, but the current business practice is not a violation of current statute or rules. In multiple states, their Departments of Justice have pursued litigation against the same company name as respondent here in Oregon, and/or the real estate regulatory agencies have adopted new statutes or rules. It is important to note that this bill prohibits the business practice going forward and does not affect existing liens. As OREA does not have regulatory authority over the enforceability of existing property liens, we would need to defer to the Oregon Department of Justice about what action, if any, is possible for consumers who have already entered into such agreements.

Respectfully submitted,  
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