



Ahead of the Curve: Navigating the Nuances of HB 4058

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Introduction to HB 4058



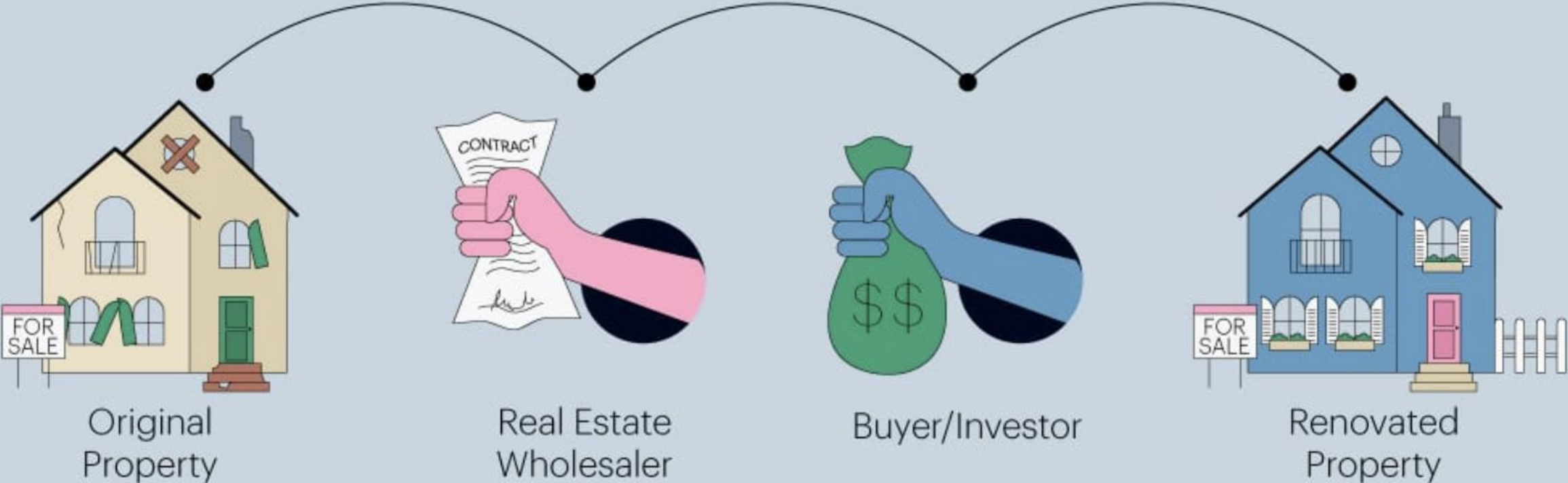
- **Effective Date:** January 1, 2025
- **Purpose of HB 4058:** To regulate residential property wholesaling and impose new requirements for real estate licensees.
- **Key Areas Covered:**
 1. Residential Property Wholesaling
 2. Buyer and Seller Representation Agreements
 3. Future Right to List Contracts

Residential Property Wholesaling



- **Definition:** Marketing residential property without holding legal title, typically through an equitable interest or option to purchase, where the marketer has:
 - Held such interest or option for fewer than 90 days; and
 - Invested less than \$10,000 in land development or improvement costs associated with the residential property.
- **Key Changes:**
 - Mandatory registration for all residential property wholesalers
 - Penalties for unregistered wholesaling: up to 364 days' imprisonment, \$6,250 fine, or both

WHOLESALE BUYING & SELLING PROCESS



Wholesaler Registration Requirements



- **Who Needs to Register:**
 - Individuals engaged in wholesaling who are not licensed real estate brokers
 - One act or transaction is sufficient to constitute wholesaling
- **Exemptions:**
 - Licensed real estate professionals (ORS 696.022), attorneys, certain fiduciaries, etc., provided they offer proper written disclosure to potential buyers or sellers in all residential property wholesale transactions

Wholesaler Registration Process



- **Requirements for Registration:**
 - High school diploma or GED
 - Must be at least 18 years of age
 - List all entities, business names under which the applicant conducts or will conduct wholesaling activities
 - Entities must be properly registered with state
- **Fees**
 - Initial registration: \$300
 - Subsequent renewals: \$300

Wholesaler Disclosure Requirements



- **Mandatory Written Disclosure:**
 - To potential buyers and sellers before entering into a contract for a wholesale transaction
 - To any individual licensed under ORS 696.022 who assists in marketing or listing the property or assists a buyer in purchasing the property
 - In all advertising related to the residential property
- **Disclosure Format:**
 - Must be in at least 10-point bold type
 - Must include specific language as prescribed by the Real Estate Commissioner

Written Disclosure Requirements



- **The disclosure must state:**
 - The individual is a residential property wholesaler
 - The wholesaler has only an equitable interest in the property being sold
 - The wholesaler does not have legal title to the property and may not be able to transfer title directly
 - The wholesaler may not be a licensed real estate broker or appraiser and may not engage in professional real estate or appraisal activities

Contract Termination Rules



- **Buyer's and Seller's Right to Cancel:**
 - May cancel the contract without penalty by delivering written notice before midnight at the end of the third business day after receiving the wholesaler written disclosure
 - The right to cancel may not be waived
- **Failure to Provide Disclosure**
 - If the wholesaler fails to provide disclosure, the seller may terminate the contract at any time without penalty and retain any earnest money or deposit

Contract Termination – Escrow

- **An escrow agent may disburse earnest money or deposits to the seller without separate written instructions from the wholesaler if the following conditions are met:**
 - **Written Assertion by Seller:** The seller provides a written statement asserting that the wholesaler failed to provide the required written disclosure before entering into the contract for the wholesale transaction.
 - **Demand for Disbursement:** The seller explicitly demands the disbursement of all deposits held by the escrow agent.
 - **Release and Indemnification:** The seller provides the escrow agent with a written release and indemnification against all liability arising from disbursing the earnest money and deposits to the seller.

Wholesaler Disciplinary Action

- **Possible Actions by the Real Estate Commissioner:**
 - Suspend or revoke wholesaler license
 - Deny the issuance or renewal of a license
- **Penalties:**
 - First offense: \$1,000 to \$2,500
 - Second and subsequent offenses: \$2,500 to \$5,000
 - Additional civil penalties may apply based on the amount profited from violations
 - Civil penalties are in addition to and not in lieu of any criminal penalties

Written Representation Agreements



- **New Requirements:**
 - Real estate licensees must have written agreements for buyer or seller representation
 - Agreements must specify duration (cannot exceed 24 months) and legal obligations
 - Agreements must be entered into before the representation begins
 - Must state if the agreement is exclusive or nonexclusive
- **Compensation Disclosure:**
 - Before sharing compensation, agents must disclose the amount and terms to their respective clients

Common Questions - Written Representation Agreements



- **Applicability:**
 - Not applicable to commercial property or transactions involving five or more residential dwelling units
- **Dual Agency:**
 - Must have a written listing agreement with the seller and a written representation agreement with the buyer for dual agency

HB 4058 & NAR Settlement Overview



- **HB 4058:**
 - Written representation agreements required
 - Representation agreement must be entered into before representation begins
 - Must state whether exclusive or nonexclusive
 - The must not last more than two years
 - Before agreeing to share compensation between a listing agent and a buyer's agent, the agent must disclose to the respective clients the amount and terms of the shared compensation
- **NAR Settlement:**
 - MLS is prohibited from displaying offers of agent compensations on the MLS
 - MLS participants working with buyers must enter into written agreements with those buyers
 - The agreement must specify and conspicuously disclose the amount or rate of compensation, and the amount must be objectively ascertainable and may not be open-ended
 - The compensation received by the agent from any source may not exceed the amount or rate agreed to in the agreement with the buyer

Future Right to List Contracts



- **Definition:**

- A contract granting the right to list residential real estate in the future, including any document recorded in the county where the real estate is located relating to the contract.
- Excludes wills or trust instruments directing a personal representative or trustee to use a specific real estate licensee or firm.

- **Limitations:**

- Cannot exceed 24 months
- Does not apply to contracts with corporations, LLCs, or partnerships

Future Right to List (Bad Example)

MV Realty Homeowner Benefit Agreement:

1. That by that certain MVR Homeowner Benefit Agreement, dated as of Effective Date (the "Agreement") by and between Company and Property Owner, Property Owner has agreed to grant Company the exclusive right to act as listing agent for any sale of the Property Owner's property should the Property Owner decide to sell such property during the term of the Agreement, which property is legally described as follows (the "**Property**"): .

Lot 8, Block [REDACTED], as platted and recorded in [REDACTED] Oregon Plat Records, in Lane County, Oregon

17-04-11-21-00102-000

~~205 Blackfoot Avenue Eugene, OR, 97404~~

***SEE EXHIBIT A FOR LEGAL DESCRIPTION**

2. The term of the Agreement began on the Effective Date (the "Commencement Date") and expires on the earlier of: (i) the date the Property is sold in accordance with the Agreement, and (ii) the date that is **forty (40) years** after the Commencement Date (the "Term"), unless otherwise terminated in accordance with its terms.

Questions



ANY QUESTIONS?