



OREGON LAND TITLE ASSOCIATION

2024 Regular Session - House Bill 4058 – Property Wholesaler Legislation

House Bill 4058 Relating to regulated real estate activities; creating new provisions; and amending ORS 696.010, 696.581, 696.730, 696.800, 696.805, 696.810, 696.815 and 696.840.

The purpose of HB 4058 is to regulate residential property wholesaling and impose new requirements for real estate licensees. Property Wholesaling is defined in the act as 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 of improvement costs associated with residential property.

Key changes created by the act are:

- Mandatory registration for all residential property wholesalers
- Penalties for unregistered wholesaling: up to 364 days' imprisonment, \$6,250 fine, or both

Wholesaler Registration Requirements and Process:

Who needs to register?

- Individuals engaged in wholesaling who are not licensed real estate brokers
- One act or transaction is sufficient to constitute wholesaling and will trigger the registration requirement

Who is exempt from registration?

- Licensed real estate professionals (ORS 696.022), attorneys, certain fiduciaries, etc., provided they offer proper written disclosures to potential buyers or sellers in all residential property wholesale transactions

Requirements for Registration:

- High school diploma or GED
- Must be at least 18 years of age
- List all entities and 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: \$30

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 residential property

Disclosure Format:

- Must be in at least 10-point bold type
- Must include specific language as prescribed by the Real Estate Commissioner

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's 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 (Residential Only)

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

Effective Date: January 1, 2025