



Oregon

Kate Brown, Governor

AGENDA ITEM NO.

I.C.

Real Estate Agency

Equitable Center

530 Center St. NE, Suite 100

Salem, Oregon 97301-2505

Phone: (503) 378-4170

Regulations Fax: (503) 373-7153

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www.oregon.gov/rea

Notice of Agenda

OREGON REAL ESTATE BOARD

Regular Meeting Agenda – via Zoom Meeting

Oregon Real Estate Agency

August 3, 2020

- I. BOARD BUSINESS – Chair Hunter**
 - A. Call to Order
 - B. Chair Hunter comments/Roll Call
 - C. Approval of the Agenda and Order of Business
 - D. Approval of 06.01.20, regular meeting minutes
 - E. Date of the Next Meeting: 10.05.20 to begin at 10am and location to be determined
- II. PUBLIC COMMENT – Chair Hunter**
 - 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. REQUESTS FOR WAIVERS – Chair Hunter. Waiver request log. None.**
- IV. PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER– Chair Hunter - Approval of petition log.**
 - A. Evergreen Capital, Trevor Calton to appear.
- V. BOARD ADVICE/ACTION – Commissioner Strode. None.**
- VI. NEW BUSINESS – Commissioner Strode**
 - A. Discussion re: HB 4213, Relating to evictions; and declaring an emergency. Prohibits residential and commercial evictions under specified conditions during emergency period.
- VII. COMMUNICATIONS – ADMINISTRATIVE ACTIONS SUMMARY – Chair Hunter**
- VIII. REPORTS – Chair Hunter**
 - A. Commissioner Strode
 - B. Agency division reports-Deputy Commissioner Higley
 1. Regulations and Administration, Deputy Commissioner Higley
 2. Land Development Division, Michael Hanifin
 3. Licensing and Education, Maddy Alvarado
- IX. ANNOUNCEMENTS – Chair Hunter.** Next board meeting: 10.05.20 to begin at 10am and location to be determined.
- X. ADJOURNMENT – Chair Hunter**

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



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OREGON REAL ESTATE BOARD

Regular Meeting Minutes - Teleconference

Oregon Real Estate Agency
Salem, OR 97301

Monday, June 1, 2020

BOARD MEMBERS PRESENT:

Marie Due
Debra Gisriel
Susan Glen
Jose Gonzalez
Dave Hamilton
Lawnae Hunter, Chair
Kim Hedding
Pat Ihnat
Alex MacLean, Vice Chair

OREA STAFF PRESENT:

Steve Strobe, Commissioner
Anna Higley, Deputy Commissioner
Mesheal Heyman, Communications Coordinator
Michael Hanifin, Land Development Manager
Maddy Alvarado, Customer Service Manager
Leandra Hagedorn, Board liaison

GUESTS PRESENT:

Barbara Geyer

I. BOARD BUSINESS – Chair Hunter

- A. Call to Order. Chair Hunter called the meeting to order at 10am.
- B. Chair Hunter comments/Roll Call. Chair Hunter asked the board liaison to take roll call, board members to introduce themselves, and explained the role/function of the board.
- C. Approval of the Agenda and Order of Business.
- D. Approval of 04.06.20 regular meeting minutes.
- E. Date of the Next Meeting: 8.3.20, to begin at 10am and venue to be determined.

II. PUBLIC COMMENT – Chair Hunter. None.

- 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. REQUEST FOR WAIVERS – Chair Hunter. None.

IV. PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER - Chair Hunter.

- A. Columbia Drain Company, Jim Peschka to appear by phone. Mr. Peschka appeared by phone and explained the course he provides covers the Property Management and Environmental Protection, which are acceptable course topics. Chair Hunter asked Mr. Peschka if he was familiar with the recordkeeping rules required for a continuing education provider and he responded that he was familiar. Mr. Hamilton asked Mr. Peschka if his class audience would be primarily commercial industry members and Mr. Peschka responded that residential side would eventually be included. Ms. Glen asked Mr. Peschka if he was marketing HOAs and he responded that he intends to in the future.

MOTION TO APPROVE COLUMBIA DRAIN COMPANY'S PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER BY DAVE HAMILTON

SECOND BY PAT IHNAT

MOTION CARRIED BY UNANIMOUS VOTE

V. BOARD ADVICE/ACTION – Commissioner Strobe. None.

VI. NEW BUSINESS - Commissioner Strobe.

VII. REPORTS – Chair Hunter.

- A. Commissioner Strobe
 - Future board meetings - Agency is planning to use Microsoft Teams as a visual platform
 - Regulations staff update - Two lead reviewers in place and investigators are adjusting to online investigations

Oregon Real Estate Agency Board Meeting

June 01, 2020

Page 2

- State level budget economic forecast - OREA is not a general funded agency but an “other funded”, the Agency will abide by the Governor’s mandate regarding budget issues.
 - OREN-J - Mesheal Heyman is working/coordinating with board members for article input
 - eLicense system update/replacement – Although replacement system has been postponed, the current system is solid
- B. Agency division report – Deputy Commissioner Higley
1. Regulations and Administration, Deputy Commissioner Higley. Ms. Higley explained that the Agency intends to move forward with an updated version of eLicense when the budget forecast is in place. She also summarized the statistics/information provided in written division report, explained that she and Commissioner Strode continue to oversee the Regulations Division, and provided the following staff updates:
 - New investigator, John Moore was onboarded at the end of April through online process/training
 - Deanna Hewitt retired effective Friday May 29 after 23 years with the Agency
 - Two vacancies, Regulations Division Manager & Compliance Coordinator will remain vacant until further notice
 - Meghan Lewis has been assigned lead worker duties
 2. Land Development, Michael Hanifin – Mr. Hanifin reported that the Agency held a hearing on permanent rulemaking on April 16, 2020 and moved forward with the permanent filing of temporary rules, which are effective as of today, June 1, 2020. He also summarized the statistics/information provided in written division report
 3. Education and Licensing, Maddy Alvarado – Ms. Alvarado summarized the statistics/information provided in written division report

VIII. ANNOUNCEMENTS – Chair Hunter. Next board meeting: 8.3.20 to begin at 10am and location to be determined.

IX. ADJOURNMENT – Chair Hunter

Respectfully submitted,

Respectfully submitted,

STEVE STRODE, COMMISSIONER

LAWNAE HUNTER, BOARD CHAIR

**AGENDA ITEM NO.
IV.**

OREGON REAL ESTATE BOARD - CEP LOG (2016-2020)

6.6.16	Kenneth Holman	WITHDRAWN	Mr. Holman withdrew his petition and indicated his intention to re-petition the board as a trade association at a later date.
6.6.16	CMPS Institute (Gibran Nicholas)	APPROVED	FACTS: Chair Hermanski asked CMPS to summarize the basis of their petition. Gibran Nicholas explained that CMPS Institute has provided education across the country and is approved in 10 states to provide CE to real estate agents. Mr. Nicholas also explained CMPS Institute offers the following acceptable course topics: advertising; regulation; consumer protection; real estate taxation; and finance. Chair Hermanski asked if they were familiar with the record keeping requirements and Ms. Nicholas responded that they are familiar with the record keeping requirements MOTION TO APPROVE CMPS INSTITUTE'S PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER BY MARCIA EDWARDS SECOND BY LAWNAE HUNTER MOTION CARRIED BY UNANIMOUS VOTE
10.3.16	Michelle Moore	APPROVED	FACTS: Ms. Moore explained that she had nine years of experience in providing continuing education courses covering the following topics: real estate consumer protection, risk management, dispute resolution, and negotiation, which are considered acceptable course topics. Dave Koch asked Ms. Moore if she was familiar with the record keeping requirements involved with being a provider and she responded that she was aware of the requirements. MOTION TO APPROVE BY DAVE KOCH SECOND BY LAWNAE HUNTER MOTION CARRIED BY UNANIMOUS VOTE
12.05.16	Brix Law LLP	APPROVED	FACTS: Laura Craska Cooper and Brad Miller appeared by phone and Mr. Miller explained Brix Law LP specializes in real estate and land use transactions and both he and Ms. Craska Cooper had an extensive amount of experience in the following areas: real estate leasing, acquisitions, development, financing, general business, and negotiations. Chair Hermanski asked Mr. Miller and Ms. Craska Cooper if they were familiar with the record keeping requirements as a certified education instructor and Mr. Miller responded that they were familiar this requirement.
02.06.17	Systems Effect LLC	APPROVED	FACTS: Mr. Jordan appeared by phone and explained that Systems Effect LLC is a distance learning company that has been in business since 2008 and is currently approved to provide real estate continuing education courses in Arizona, Kansas, Minnesota, Missouri, and Ohio. He also stated that the courses offered cover the following acceptable topics: Principal broker record keeping and supervision, trust accounts, agency relationships, misrepresentation, disclosure, contracts, appraisal, fair housing, risk management, water rights, environmental protection, land use, real estate law, negotiation, and others. Dave Koch asked Mr. Jordan if a tracking device was in place to monitor class time and he responded that there is a timer in place to verify that students meet the required course time. Alex MacLean asked Mr. Jordan if there is a resource for student assistance with questions they might have and Mr. Jordan responded that there is a FAQ information, email system, and staff available for students.
02.06.17	American Dream Real Estate School LLC	APPROVED	FACTS: Herbert Nagamatsu appeared by phone and explained that American Dream Real Estate School created, administered and delivered online courses and training programs to students since 2005. He also stated that the courses offered cover the following acceptable topics: Contracts, Risk Management, and real estate finance. Dave Koch asked Mr. Nagamatsu how he derived the questions for the courses and he responded that the topics covered meet with rule and law. Alex MacLean asked Mr. Nagamatsu how students communicate with instructors he responded that contact information for instructors is posted online for students. Mr. Koch asked Mr. Nagamatsu how class time was tracked and he responded timing mechanisms were in place behind the scenes. Mr. Koch also asked Mr. Nagamatsu to explain his record keeping process and he responded records are kept for minimum of 3 years and backup for seven years.
02.06.17	Asset Preservation Inc.	APPROVED	FACTS: Elisa Mas appeared by phone and explained that Asset Preservation, Inc. has provided 1031 exchange courses for continuing education to real estate professionals all over the nation for over 25 years and was also approved to teach continuing education courses in Texas, New York, Florida, Colorado, Washington, Oklahoma, New Jersey, and Arizona as well as Oregon, previously. She also stated that the courses offered cover the following acceptable topics: Real estate taxation and Real Estate Finance. Alex MacLean asked Ms. Mas when her company was certified and she responded approximately one year ago. Mr. MacLean also asked Ms. Mas if her company was currently certified and if not, to explain the gap in time. Ms. Mas explained the previous administrator was expired and now they want to be certified again.
02.06.17	Military Mortgage Boot Camp	APPROVED	FACTS: Mike Fischer appeared by phone and explained the current class offered is a 2 or 3 hour version which covers appraisal, VA assistance, and transaction coordination. Chair Edwards asked Mr. Fischer which acceptable topics were covered in the courses offered and he responded that consumer protection was the topic covered. Dave Hamilton stated he would like to see Oregon's program incorporated in the course and Mr. Fischer responded they could incorporate Oregon's program. Chair Edwards clarified that although, incorporating Oregon's program was not a requirement or contingency, it was encouraged.
02.06.17	Fairway Independent Mortgage Corp.	APPROVED	FACTS: Kate Myers appeared before the board and explained Fairway Independent Mortgage Corp. was one of the mortgage companies that is allowed to handle VA loans. Chair Edwards asked Ms. Myers which acceptable course topics are covered in their courses and she responded that real estate finance was the topic offered. Dave Koch asked Ms. Myers if there was a record keeping mechanism in place and she responded there is an administrator who would be assigned the record keeping duties
04.03.17	Envoy	APPROVED	FACTS: Mr. Varcak appeared by phone and explained he has taught first time home buyers courses and facilitated other trainings. He also said he teaches courses covering the topic of Real Estate Finance, which is an acceptable course topic. Mr. Varcak indicated that his goal was to provide a more structured training program through Envoy. Coni Rathbone asked Mr. Varcak if he has kept track of continuing education credits and he responded that although he had not kept track of credits in the past, he did review all the record keeping requirements and was prepared to follow them. Dave Koch of he intended to use instructors to provide variety of topics and Mr. Varcak responded that he did intend to utilize other instructors. Commissioner Bentley

			asked Mr. Varcak if he had considered being an instructor rather than a provider and Mr. Varcak responded that his company wanted to provide their own coursework.
04.03.17	Oregon Rental Housing Association Education Inc.	APPROVED	FACTS: Ms. Pate appeared and explained ORHA Education Inc. is seeking a grant to provide supplemental education to landlords, tenants, and public education. Chair Edwards asked Ms. Pate which location records would be kept and she responded that she believed the Salem office located on Commercial St. would house the records. Commissioner Bentley asked Ms. Pate to clarify the topics that would be offered and she explained she intended to offer courses covering the following topics: Property management, advertising, any type of fair housing issue, real contracts, business ethics, and dispute resolution, which are all acceptable course topics.
06.05.17	Mason McDuffie Mortgage Corp.	APPROVED	FACTS: Mason McDuffie Mortgage Corp., Jesse Rivera appeared by phone and explained that he used his experience as a former real estate agent and high school teacher as a way to build good relationships. Mr. Rivera also explained that he would be teaching the following topics during his classes: Real estate finance, contracts, advertising, how to manage brokers, and business ethics, which are acceptable course topics.
8.7.17	Real Estate Training Institute, a division of Certified Training Institution	APPROVED	FACTS: Real Estate Training Institute, a division of Certified Training Institution, Ms. Teri Francis and Jenny MacDowel appeared by phone and explained that CTI is a distance learning provider with a total of 16 real estate courses approved by ARELLO and cover the following topics: principal broker supervision responsibilities, agency relationships and responsibilities for broker, principal brokers, or property managers, disclosure requirements, consumer protection, real estate contracts, real estate taxation, fair housings laws or policy, business ethics, risk management, real estate finance, and environmental protections issues, which are acceptable course topics.
10.02.17	Housing and Community Services Agency of Lane County	APPROVED	Mr. Baker explained he is the landlord liaison at HACSA and is in charge of maintaining the line of communication with landlords. He also stated that HACSA manages the section 8 program for all of Lane County. Mr. Baker explained the courses he offers cover the following topics: fair housing laws and policies, risk management, & advertising regulations, which are acceptable course topics. Chair Edwards asked Mr. Baker if he was familiar with the recordkeeping requirements for continuing education providers. Mr. Baker responded based on the recordkeeping requirements HACSA intends to maintain records both electronically and paper. Farley: Have you been offering courses both and working under a provider? Baker-currently we are partnering with the rental owners association of Lane Co who is a licensed provider-the reason we are asking for our agency is basically not being able to offer classes to the public at large being able to only offer classes to members of the association as well as property managers having to pay for those credits-we want to offer those credits for free. Edwards: excellent resource in Lane County I appreciate your outreach efforts.
10.02.17	Lumos Academy	APPROVED	Ms. Mueller explained Lumos is designed to provide exemplary real estate education and our goal is really to do our best to raise the competency level of the brokers throughout the State-better educated broker is better for the client-currently we have 3 instructors. Ms. Mueller explained that the courses offered by Lumos cover the following course topics: principal real estate broker supervision responsibilities, agency relationship and responsibilities, misrepresentation in real estate transactions, advertising regulations, real estate disclosure requirements, real estate consumer protection, fair housing, business ethics, risk management, dispute resolution, real estate escrow, real estate economics, real estate law and regulations, and negotiation, which are considered acceptable course topics.
12.04.17	Jesse Rivera	APPROVED	Jesse Rivera appeared in person and explained that he has extensive experience as an instructor and the courses he currently offers include the following course topics: Contracts, compliance with social media, real estate finance, real estate valuation, & negotiation, which are considered acceptable course topics. Ms. Rathbone asked Mr. Rivera what other topics he would be offering and he responded that he planned on giving instruction on advertising.
12.04.17	Carl W. Salvo	APPROVED	Carl Salvo appeared by phone. Mr. Salvo explained that he had been in the industry since 1997 and has been asked by several industry members to teach classes. Chair Edwards asked Mr. Salvo if he was familiar with the record keeping requirements as a certified continuing education provider and he responded that he was familiar with the record keeping requirements. He also explained the courses he offered cover the following course topics: how rates are determined, loan estimation, & appraisals, which are acceptable course topics.
04.02.18	Stephanie Shapiro	APPROVED	FACTS: Ms. Shapiro explained she has been involved in some capacity of teaching since 2007. She also explained she has been teaching home energy classes and would like to expand her courses. Chair Farley asked Ms. Shapiro if her company provided services to real estate brokers and Ms. Shapiro indicated that she does provide services to real estate industry. Ms. Shapiro has taught courses under the following topics: consumer protection, disclosure requirements, and real estate law/regulation, which are acceptable course topics. MOTION TO APPROVE MS. SHAPIRO'S PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER BY DAVE HAMILTON SECOND BY ALEX MACLEAN MOTION CARRIED BY UNANIMOUS VOTE
04.02.18	Sirmon Training & Consulting Group – Jason Sirmon	APPROVED	FACTS: Sirmon Training & Consulting Group, Jason Sirmon will appear by phone. Mr. Sirmon explained that his goal was to educate licensees about veterans who are currently on active duty or recently discharged. Chair Farley asked Mr. Sirmon if he was aware he could provide courses as an instructor rather than an continuing education provider and Mr. Sirmon responded that his reason for his petition was based on his approval in 20 different states as a provider and since he is not an instructor it is difficult to manage out of state instructors. Mr. Sirmon offers courses that cover the following topics: NC Mandaotry Update, NC Broker-in-Charge Update, REBAC-Green and Sustainable Housing, REBAC-Short Sales and Foreclosures, Client-Level Negotiation, Commercial and Investment Real Estate, and Ethics in Today's Real Estate, which are acceptable course topics. MOTION TO APPROVE SIRMION TRAINING & CONSULTING GROUP'S PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER BY CONI RATHBONE SECOND BY DAVE HAMILTON MOTION CARRIED BY UNANIMOUS VOTE
6.4.18	Finance of America Mortgage	Approved	FACTS: Finance of America Mortgage, Austin Strode will appear in person. Christina Danish appeared by phone and explained the petition was based on the company specializing in reverse mortgages. She also explained that the company is responsible for educating the real estate professionals about

			reverse mortgage/home equity mortgage process. Chair Farley asked Ms. Danish if she was aware that her company could provide education in Oregon as an instructor and Ms. Danish responded she was not aware of this process. Ms. Danish explained the courses FAR offers cover the following topics: reverse mortgage and finance, which are considered acceptable course topics. MOTION TO APPROVE FINANCE OF AMERICA MORTGAGE'S PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER BY PAT IHNAT SECOND BY DEBRA GISRIEL MOTION CARRIED BY UNANIMOUS VOTE
10.8.18	Lumen Mortgage Corporation	APPROVED	FACTS: Lumen Mortgage Corporation, David Blackmon will appear by phone. Mr. Blackmon explained that he was the President of Lumen Mortgage Corporation and his company partners with title and escrow companies to provide continuing education courses specific to condominium financing options as well as investment properties. He also explained that the courses offered include the following topics: Real estate finance; Condominiums; and Unit Owner Associations. Chair Farley asked Mr. Blackmon if the classes he offers are through another continuing education provider and Mr. Blackmon responded confirmed. Chair Farley inquired as to the length and level of experience in providing education. Mr. Blackmon explained he had been offering condominium for the last year and prior to that he provided education regarding condominium financing and unit owner association for 10 years. Dave Koch asked Mr. Blackmon what resources he draws in order to teach classes regarding condominium and unit owner associations and he responded that the structure of the courses is shaped through condominium financing eligibility. Debra Gisriel asked Mr. Blackmon if he was familiar with the record keeping requirements required for continuing education providers and confirmed he was familiar with these requirements. MOTION TO APPROVE LUMEN MORTGAGE CORPORATION'S PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER BY DAVE HAMILTON SECOND BY LAWNAE HUNTER MOTION CARRIED BY UNANIMOUS VOTE
10.8.18	HD home Inspections LLC	APPROVED	HD home Inspections LLC, Russell Lucas will appear by phone. Mr. Lucas explained he provides education regarding building components and inspection issues and the acceptable course topic falls under Real estate property valuation, appraisal, or valuation and Real estate law or valuation. Pat Ihnat asked Mr. Lucas if he was familiar with the requirements involved in being a continuing education provider and he responded that he was familiar with the all requirements including recordkeeping. Dave Koch asked Mr. Lucas how many photos are involved in the inspections portion of the classes offered and Mr. Lucas responded he uses approximately 50 slides during his presentation. Jose Gonzalez asked Mr. Lucas to describe his interaction with first time buyers and Mr. Lucas explained that as an inspector he provides practical guidance and clarity for home buyers. MOTION TO APPROVE HD HOME INSPECTION'S PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER BY PAT IHNAT SECOND BY DAVE HAMILTON MOTION CARRIED BY UNANIMOUS VOTE
10.8.18	Scott Harris	APPROVED	Scott Harris will appear by phone. Mr. Harris explained he is a home inspector and engineer for many years. He also stated that he offers classes which include the following topics: Commercial real estate; Real estate property evaluation, appraisal, or valuation; Risk management; Real estate finance; Real estate development; and Real estate economics, which are all considered acceptable course topics. Mr. Koch asked Mr. Harris to give a brief profile of what the risk management course looked like and Mr. Harris responded these classes include information on how to find out about potential risks involved with properties. Mr. Koch also asked if Mr. Harris was aware of the recordkeeping requirements involved as a continuing education provider and Mr. Harris confirmed his awareness. DISCUSSION: Mr. Owens added that it is critical for licensees to consult with experts regarding home inspections. MOTION TO APPROVE SCOTT HARRIS'S PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER BY DAVE KOCH SECOND BY LAWNAE HUNTER MOTION CARRIED BY UNANIMOUS VOTE
12.10.18	Julia Felsman	APPROVED	Julia L. Felsman, Ms. Felsman explained she offers courses which include the following topics: Real estate taxation, real estate escrows, appraisals, real estate finance, RESPA, TILA, TRID, Condominium conversions, real estate investing, investment property analysis, economic trends, financial markets, and managing transactions, which are considered acceptable course topics. She also stated that she is very familiar with the record keeping requirements involved in being a continuing education provider. MOTION TO APPROVE JULIA FELSMAN'S PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER BY PAT IHNAT SECOND BY DAVE HAMILTON MOTION CARRIED BY UNANIMOUS VOTE
12.10.18	Chris Jacobsen	CONTINUED	Chris Jacobsen will appear by phone. Mr. Jacobsen explained offers courses that include the following topics: loan information, reverse mortgage, down payment assistance, home purchases, and rehabilitation loans. Chair Farley asked Mr. Jacobsen if he familiarized himself with the record keeping requirements associated with being a continuing education provider and Mr. Jacobsen responded that he had not reviewed the requirements. Lawnae Hunter suggested that Mr. Jacobsen's petition be revisited at the next board meeting. Chair Farley also recommended that Mr. Jacobsen's petition be continued to the 2.4.19 meeting agenda to allow him to review ORS Chapter 696 and OAR Chapter 863 regarding continuing education provider requirements.
12.10.18	Paul Davis	APPROVED	Paul Davis, Julie Peck will appear by phone. Ms. Peck explained she offers courses that include the following topics: property management, risk management, and commercial real estate, which are considered acceptable course topics. Chair Farley asked Ms. Peck if she was with the record keeping requirements associated with being a continuing education provider and she responded that she was very familiar with the requirements.

			MOTION TO APPROVE PAUL DAVIS'S PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER BY LAWNAE HUNTER SECOND BY DAVE KOCH MOTION CARRIED BY UNANIMOUS VOTE
02.04.19	Matt Fellman	APPROVED	Matt Fellman.. Mr. Fellman appeared before the board and explained that he offers the following topics in his classes: Consumer Protection, Real Estate Contracts, and Dispute Resolution, which are all considered acceptable course topics. MOTION TO APPROVED MATT FELLMAN'S PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER BY DAVE KOCH SECOND BY PAT IHNAT MOTION PASSED BY UNANIMOUS VOTE
02.04.19	Chris Jacobsen	APPROVED	Chris Jacobsen continued from 12.10.18 board meeting to allow Mr. Jacobsen to research ORS Chapter 696 and OAR Chapter 863 regarding CEP responsibilities. Mr. Jacobsen appeared by phone and explained that he had reviewed the rules and laws regarding provider responsibilities. DISCUSSION: Dave Hamilton stated that the board needed to be more selective in approving continuing education provider petitions. Debra Gisriel indicated she was not able to find a reason to deny Mr. Jacobsen's petition. Mr. Owens clarified that as industry practitioners, the board uses their knowledge and discretion to make these decisions. MOTION TO APPROVE CHRIS JACOBSEN'S PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER BY DAVE KOCH SECOND BY DEBRA GISRIEL MOTION CARRIED BY SEVEN AYES (JEF FARLEY, DEBRA GISRIEL, SUSAN GLEN, JOSE GONZALEZ, DAVE KOCH, PAT IHNAT, AND ALEX MACLEAN) AND ONE NAY (DAVE HAMILTON)
02.04.19	Kathy Kemper-Zanck	APPROVED	Kathy Kemper-Zanck. Ms. Kemper-Zanck appeared by phone and explained she had 11 years of experience as a mortgage broker and 3 as an educator. She also explained the primary course she offers covers the topic of Real Estate Finance, which is considered an acceptable course topic. Ms. Kemper indicated she could provide education on the following topics in the future: Advertising Regulations, Real Estate Contracts, Real Estate Property Evaluation, Appraisal or Valuation, Real Estate Title, Real Estate Escrows, and Condominiums, which are all considered acceptable course topics. MOTION TO APPROVE KATHY KEMPER-ZANCK'S PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER BY DAVE KOCH SECOND BY ALEX MACLEAN MOTION CARRIED BY UNANIMOUS VOTE
6.3.19	Old Republic Exchange Company, Ashley Stefan	APROVED	Ashley Stefan appeared by phone. Pat Ihnat commented on Old Republic Title Company being a sister company in Portland Metro area. Dave Koch asked since it is an exchange company would classes be exchange-related. Ihnat asked who the instructor is, if they are an employee of the exchange company, and if classes would be live. Susan Glen asked about other classes and if they would offer classes besides 1031 exchange courses. DISCUSSION: Debra Gisriel asked question about criteria for approval. Jef Farley responded it changes depending on board members, explained history and considerations. Gisriel commented historically seem market driven. Pat Ihnat said if course quality poor, brokers will say so. Lawnae Hunter said she wrestled with this also. Agrees with Ihnat that it is self-regulating. Steve Strobe commented we approve providers, not instructors. Will convene continuing education workgroup later this year. Hunter said wants to be on workgroup and commented on other states requirements. Commented on requirement to be timed online for CE. Strobe said good conversations to have at workgroup. Jose Gonzalez commented if someone calls his office to teach, can tell right away if it is for marketing. Asked to keep in mind availability for small office. Dave Koch said he inquires whether applicants understand record keeping requirements and if instructor is qualified. Ihnat said live instruction is so much better. MOTION TO APPROVE OLD REPUBLIC EXCHANGE COMPANY'S PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER BY DAVE KOCH SECOND BY LAWNAE HUNTER MOTION CARRIED BY UNANIMOUS VOTE
10.7.19	Nonprofit Home Inspections	APPROVED	Nonprofit Home Inspections, Charles Lewis to appear in person. Mr. Lewis appeared in person and explained that Nonprofit Home Inspections is a nonprofit 501(c) (3) organization with the goal of making home inspections and the benefits of home inspections available to all. He also stated that another component to the organization is home inspector training. Chair Farley asked Mr. Lewis what the qualifications are for someone to be eligible for a home inspection. Mr. Lewis responded it is based on income. Ms. Gisriel asked Mr. Lewis if he was familiar with the recordkeeping requirements for certified education providers and Mr. Lewis responded that he was familiar with the requirements. Vice Chair Hunter asked Mr. Lewis if his organization has a board of directors and he responded that they did. Mr. Hamilton asked Mr. Lewis where the organization receives funding from and he responded the majority of funding comes from the fees for services. Ms. Ihnat asked Mr. Lewis if he would be the instructor providing the continuing education and he indicated that he would be one of the instructors. Nonprofit Home Inspections offer courses that include the following topics: Real estate property evaluation, appraisal, or valuation, and environmental protection issues in real estate, which are all considered acceptable course topics. MOTION TO APPROVE NONPROFIT HOME INSPECTIONS'S PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER BY DAVE KOCH SECOND BY DAVE HAMILTON MOTION CARRIED BY UNANIMOUS VOTE
10.07.19	Andrew Varcak	APPROVED	Andrew Varcak, Mr. Varcak to appear by phone. Mr. Varcak appeared by phone and explained that he has been in the mortgage business for over 15

			<p>years, previously approved through another company, and had since become an independent instructor. Chair Farley asked Mr. Varcak if he was familiar with the recordkeeping requirements for certified education providers and he responded that he was familiar with the requirements. Ms. Ihnat asked Mr. Varcak if he was responsible for recordkeeping at his previous company and he responded that he was responsible for recordkeeping and turned all those records over to the regional manager with the understanding that the records must be maintained. Mr. Varcak offers courses that include the following topics: Real estate property evaluation, appraisal, or valuation, which are considered acceptable course topics.</p> <p>MOTION TO APPROVE ANDERW VARCAK’S PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER BY DAVE KOCH SECOND BY LAWNAE HUNTER MOTION CARRIED BY UNANIMOUS VOTE</p>
10.07.19	Green Training USA	APPROVED	<p>Green Training USA, Kelly Caplenas to appear by phone. Ms. Caplenas appeared by phone and explained Green Training USA has focused on making home owners and agents aware of the importance of energy efficiency, clean air, and healthy homes. Chair Farley asked Ms. Caplenas if she was familiar with the recordkeeping requirements for certified education providers and she responded that her staff is familiar with the recordkeeping requirements. Chair Farley also asked Ms. Caplenas if her company was strictly an online provider and she responded that the company was not strictly an online provider. Mr. Koch asked Ms. Caplenas if her company had a timing system in place to track student activity and she responded that a system was in place to track student activity. Vice Chair Hunter asked Ms. Caplenas what type of training Green Training USA provided other than continuing education and Ms. Caplenas responded that the company has provided training on various energy efficiency measures. Green Training USA offers courses that include the following topics: Real estate property evaluation, appraisal, or valuation, and environmental protection issues in real estate, which are considered acceptable course topics. Ms. Higley and Ms. Alvarado stated that the Agency would provide an updated draft of the petition to include more information for petitioners to consider at the 12.2.19 board meeting for the board to review. DISCUSSION: Mr. Koch stated the energy audit requirement in Portland makes this topic very relevant. He also explained that Ms. Caplenas has shown a clear understanding of and has a system in place for recordkeeping.</p> <p>MOTION TO APPROVE GREEN TRAINING USA’S PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER BY DAVE KOCH SECOND BY PAT IHNAT MOTION CARRIED BY 6 AYES (JEF FARLEY, LAWNAE HUNTER, PAT IHNAT, DEBRA GISRIEL, DAVE KOCH, AND JOSE GONZALEZ) AND 1 ABSENTIA (DAVE HAMILTON)</p>
10.07.19	Oregon State Credit Union	APPROVED	<p>Oregon State Credit Union, Lyndora Taylor to appear by phone. Ms. Taylor appeared by phone and explained that OSCU has been providing community education for more than 15 years. Chair Farley asked Ms. Taylor if OSCU has been actively teaching classes under other certified education providers and she responded that they have not. He also asked if the courses would be live courses with instructors and Ms. Taylor responded that the courses would be live with instructors. Mr. Koch asked Ms. Taylor if she was prepared to meet the recordkeeping requirements for certified education providers and she said that she is familiar with the recordkeeping requirements. He also asked if the courses that will be offered were already offered for the benefit of consumers and she responded that the courses will be specifically for realtors. Mr. Farley asked if Ms. Taylor would be personally instructing the courses and she responded that she along with other staff members would be instructing. OSCU will offer courses that include the following topics: Real estate finance, real estate property evaluation, appraisal, or valuation, which are all considered acceptable course topics.</p> <p>MOTION TO APPROVE OREGON STATE CREDIT UNION’S PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER BY JOSE GONZALEZ SECOND BY DAVE HAMILTON MOTION CARRIED BY UNANIMOUS VOTE</p>
12.2.19	Alethea “Tia” Politi	APPROVED	<p>Alethea “Tia” Politi to appear in person. Ms. Politi explained her background included property management, rental owner, and president of the Rental Owners Association of Lane County, Board Secretary for the Oregon Rental Housing Association as well as a non-profit called ORHA Education Inc. Chair Hunter asked Ms. Politi if she was familiar with the guidelines for continuing education providers and asked her to give a brief overview of her classes. Ms. Politi responded that her classes she was currently teaching related to property management, ethics, conflict resolution, record keeping, fair housing laws/rules, and renters rehab. Chair Hunter also asked Ms. Politi if she was aware of the record keeping requirements for continuing education providers and Ms. Politi responded that she was aware. Mr. Hamilton asked Ms. Politi if she worked with several other organizations as an instructor and why she wanted to become a provider. Ms. Politi responded that she had been working with other organizations and becoming a provider would allow her to provide continuing education credit for the associations that were not providers. She also stated that she intended on establishing a business and offer customized trainings for property management and real estate companies. Mr. MacLean asked Ms. Politi if she offered her classes online or in person and she responded that her classes are in person. Ms. Politi offers classes that cover principal broker or property manager record-keeping and property management, which are considered acceptable course topics. Ms. Barnes asked Ms. Politi if she planned on becoming a CEP as an individual or a LLC and Ms. Politi responded her preference would be a LLC. DISCUSSION: Mr. MacLean stated that Ms. Politi demonstrated that she is well qualified to become a certified education provider. Ms. Glen stated continuing education for property managers is much needed.</p> <p>MOTION TO APPROVE ALETHEA “TIA” POLITI’S PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER BY ALEX MACLEAN SECOND BY DAVE HAMILTON MOTION CARRIED BY UNANIMOUS VOTE</p>
12.2.19	Richard Gann	APPROVED	<p>Richard Gann to appear by phone. Mr. Gann explained that his business relies heavily on referrals from real estate agents/brokers, accountants, and other</p>

			<p>professionals. He also stated that his goal is to provide continuing education to the real estate community in particular with regard to commercial real estate and taxation. Ms. Gisriel asked Mr. Gann to provide specific learning objectives included in his classes that would fall under the acceptable course topics and also if he was familiar with the record keeping requirements for continuing education providers. Mr. Gann responded that he had extensive experience with continuing education record keeping. Mr. Hamilton asked Mr. Gann if he was currently working with real estate organizations that provide similar courses to licensees and Mr. Gann said the content he provided was not the same but unique. Ms. Barnes asked Mr. Gann if he planned on becoming a continuing education provider as an individual or as a business and he responded that he would be providing continuing education as an individual. Ms. Glen asked Mr. Gann what format he offered his classes through and he responded his content was totally educational. Mr. Gann offers classes that cover the following topics: Real estate taxation, real estate economics, and real estate law or regulation, which are considered acceptable course topics. DISCUSSION: Ms. Gisriel stated the motivation for becoming continuing education provider should be education rather than business development.</p> <p>MOTION TO APPROVE RICHARD GANN'S PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER BY ALEX MACLEAN SECOND BY SUSAN GLEN MOTION CARRIED BY 7 AYES (MARIE DUE, DEBRA GISRIEL, JOSE GONZALEZ, KIM HEDDINGER, LAWNAE HUNTER, AND ALEX MACLEAN) AND 1 NAY (DAVE HAMILTON)</p>
02.03.20	Bernard Black	APPROVED	<p>Bernard Black, B.C.E., will appear in person. Mr. Black explained he had over 35 years of experience in the pest management field, a board certified entomologist, provided education on pest control to Oregon Real Estate Inspection Association, and wishes to offer a course to real estate agents familiarizing them with pest control related to sale of homes. Mr. Black will offer courses covering the following topics: Property management, real estate consumer protection, commercial real estate, and risk management, which are all considered acceptable course topics.</p> <p>MOTION TO APPROVE BERNARD BLACK'S PETITION TO QUALIFY A CONTINUING EDUCATION PROVIDER BY DAVE HAMILTON SECOND BY JOSE GONZALEZ MOTION CARRIED BY UNANIMOUS VOTE</p>
06.01.20	Columbia Drain Company	APPROVED	<p>Mr. Peschka appeared by phone and explained the course he provides covers the Property Management and Environmental Protection, which are acceptable course topics. Chair Hunter asked Mr. Peschka if he was familiar with the recordkeeping rules required for a continuing education provider and he responded that he was familiar. Mr. Hamilton asked Mr. Peschka if his class audience would be primarily commercial industry members and Mr. Peschka responded that residential side would eventually be included. Ms. Glen asked Mr. Peschka if he was marketing HOAs and he responded that he intends to in the future.</p> <p>MOTION TO APPROVE COLUMBIA DRAIN COMPANY'S PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER BY DAVE HAMILTON SECOND BY PAT IHNAT MOTION CARRIED BY UNANIMOUS VOTE</p>
08.03.20	Evergreen Capital		



**PETITION TO QUALIFY AS A
CONTINUING EDUCATION PROVIDER**

Rev. 1/2017

INSTRUCTIONS

To petition the Real Estate Board for approval of qualifications to become an applicant for certification as a continuing education provider, the petitioner must complete this form and submit it by e-mail to madeline.c.alvarado@state.or.us a least 21 days before the next scheduled Board meeting at which the applicant wishes the Board to act.

IMPORTANT:

- ▶ If the petitioner is an entity, the information provided must pertain to that entity. If the petitioner is an individual, the information provided must pertain to that individual.
- ▶ All information and documents submitted as part of this petition become part of the Board Packet, and therefore, public record.
- ▶ Petitioners will need to appear before the Board. This may be done in person or by phone. Once the Agency receives this completed petition, a letter will be sent to the petitioner with the date of the Board meeting the petitioner will need to attend.

If the Board approves this petition, the Agency will mail a letter to the petitioner, at the mailing address provided, confirming the Board's approval. The petitioner may then apply for certification as a continuing education provider under OAR 863-020-0030.

PETITIONER

Name Evergreen Capital Phone Number 503-704-4999

Physical Address 12660 SW Evergreen St. Address Cont. _____

City Beaverton State OR Zip Code 97005 County Washington

E-mail trevor@evergreen.llc

Mailing Address (if different) _____ Address Cont. _____

City _____ State _____ Zip Code _____ County _____

AUTHORIZED CONTACT PERSON

Prefix _____ First Name Trevor Last Name Calton

Phone Number 503-704-4999 E-mail trevor@evergreen.llc

Indicate who will appear before the board on behalf of the Petitioner: Trevor T. Calton

AGENCY USE ONLY

Approved by Board YES NO

Review Date _____

PETITION TO QUALIFY AS A CONTINUING EDUCATION PROVIDER, Continued

QUALIFICATION INFORMATION

Provide below sufficient information about the petitioner to allow the Board to determine whether the petitioner qualifies for certification. **If the petitioner is an entity, the information provided must pertain to that entity. If the petitioner is an individual, the information provided must pertain to that individual.**

Information **MUST** include one or both of the following:

- ▶ Petitioner's demonstrated expertise and experience in providing educational courses to real estate licensees.
- ▶ Petitioner's demonstrated experience and expertise in two or more course topics eligible for continuing education credit under OAR 863-020-0035.

You may attach up to **three (3)** additional pages if necessary.

I was previously a CE provider approved by this Board in 2012. For the past several years, I also taught Real Estate Finance in the Portland State University Center for Real Estate, which is also an approved CE provider. I am now also teaching Real Estate Finance privately and would like to re-submit my petition for approval under my LLC.

Thank you,

Trevor T. Calton, MBA

Evergreen Capital Advisors LLC

trevor@evergreen.llc

503-704-4999

AUTHORIZATION AND ATTESTATION

- ▶ I hereby certify that I am authorized to submit this form on behalf of the petitioner and that the information is true and accurate, to the best of my knowledge.
- ▶ I acknowledge that petitioner, or authorized individual on petitioner's behalf, has read, understands and is ready to comply with the statutory and administrative rule provisions applicable to certified continuing education providers.
- ▶ I attest that petitioner knows and understands the responsibilities of a certified continuing education provider under OAR 863-020-0050.
- ▶ I attest that petitioner knows and understands the requirements of an instructor under ORS 696.186 and the information required on a continuing education instructor qualification form under OAR 863-020-0060.

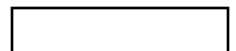
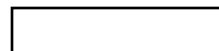
Trevor T. Calton

Date 5/1/2020

Printed Name of Authorized Individual



Signature of Authorized Individual



ADMINISTRATIVE ACTIONS
Reported
5/20/2020 through 7/21/2020

REVOCATIONS

Webber, Ziebert Cynthia (Springfield) Property Manager 930400183, Final Order dated June 9, 2020, issuing a revocation.

Kopp, Sherry Patricia (Beaverton), Principal Broker, 201107057, Stipulated Final Order dated July 10, 2020 issuing a revocation.

Howard, Mary M (Seaside), Principal Broker, 851100210, Final Order By Default dated July 14, 2020 issuing a revocation.

SUSPENSIONS

REPRIMANDS

Dieter, Rosalie A (Harbor) Principal Broker 200407126, Stipulated Order dated June 11, 2020, issuing a reprimand.

Conrad, Shelley Gretchen (Klamath Falls) Broker 990400237, Stipulated Order dated June 11, 2020, issuing a reprimand.

McVay, Mathew Kent (Klamath Falls) Property Manager, 200404125, Final Order By Default dated June 30, 2020, issuing a reprimand.

Friesen, Noelle P. (Portland) Property Manager, 201212448, Stipulated Order dated July 6, 2020, issuing a reprimand with education.

CIVIL PENALTIES

Expired — Late Renewal civil penalties are computed using each 30-day period as a single offense. The civil penalty for the first 30-day period can range from \$100-\$500, with each subsequent 30-day period ranging from \$500-\$1,000. ORS 696.990

**BEFORE THE
REAL ESTATE AGENCY
STATE OF OREGON**

IN THE MATTER OF: CYNTHIA WEBBER, Licensee) FINAL ORDER)) OAH Case No. 2018-ABC-02279) Agency Case No. 2014-714 and 2015-286
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Administrative Law Judge (ALJ) Dove L Gutman heard the matter below and issued a Proposed Order on April 1, 2020 recommending that the Agency revoke Respondent’s Property Management License. Respondent did not file any exceptions to the Proposed Order.

The Real Estate Agency having considered the record, and having reviewed the Proposed Order, now adopts and incorporates by reference the attached Proposed Order dated April 1, 2020 into this Final Order thereby revoking Respondent Cynthia Webber’s Property Management License No. PM930400183.

IT IS HEREBY ORDERED that Webber’s property manager license is revoked.

Dated this 9th day of June 2020.

DocuSigned by:

 D141D267DDE14A0...
 Steven Strode
 Real Estate Commissioner

Date of Service: 06/09/2020

NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days of the service of this order. Judicial review is pursuant to the provisions of ORS 183.482 to the Oregon Court of Appeals.

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
REAL ESTATE AGENCY**

IN THE MATTER OF:) **PROPOSED ORDER**
)
CYNTHIA WEBBER) OAH Case No. 2018-ABC-02279
) Agency Case No. 2014-714 and 2015-286

HISTORY OF THE CASE

On August 7, 2018, the Real Estate Agency (REA or Agency) issued a Notice of Intent to Revoke to Cynthia Webber (Respondent). On August 15, 2018, Respondent requested a hearing.

On December 6, 2018, REA referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) Samantha Fair to preside at hearing.

On January 22, 2019, Senior ALJ Jennifer Rackstraw, on behalf of ALJ Fair, convened a prehearing telephone conference. Senior Assistant Attorney General Catriona McCracken represented REA. Selena Barnes and Meghan Lew appeared on behalf of REA. Respondent did not appear. The hearing was scheduled for September 11 through September 13, 2019.

On April 11, 2019, the OAH reassigned the case to Senior ALJ Gutman.

On September 4, 2019, the REA filed an Expedited Motion for Protective Order (Motion), and Protective Order. On September 9, 2019, Respondent indicated that she had no objection to the Motion. On September 9, 2011, ALJ Gutman granted the Motion and issued the Protective Order.

On September 11, 2019, a hearing was held in Eugene, Oregon. ALJ Gutman presided. Respondent represented herself. Ms. McCracken represented REA. Ms. Lewis appeared on behalf of REA. Respondent, Deanna Hewitt, Frances Hlawatsch and Ms. Lewis provided testimony.

On September 12, 2019, the hearing continued. ALJ Gutman presided. Respondent represented herself. Ms. McCracken represented REA. Ms. Lewis appeared on behalf of REA. Ms. Lewis and Respondent provided testimony. The record closed on September 12, 2019.

ISSUES

1. Whether, by allowing multiple tenants’ security funds to be used to repair Barker’s rental property, Respondent violated ORS 696.301(12) (2011) and ORS 696.301(3) as it

incorporates OAR 863-025-0030(1)(a), (b), (c), and (d) (2011).¹

2. Whether, by disbursing tenants' security deposit funds to a single owner, Respondent violated ORS 696.301(12) (2011) and ORS 696.890(3)(a), (b), (c), (e), and (f) (2011).

3. Whether, by failing to use the required identifying language in the account name for security deposits account ending in #2415, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(4) (2014).

4. Whether, by failing to timely produce and provide the requested records for clients' trust account ending in #7643 and security deposits account ending in #2415, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0035(2)(a) (2014).

5. Whether, by failing to use the required identifying language in the account name for clients' trust account ending in #7643, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(2) (2014).

6. Whether, by failing to have the required transaction descriptions and identifying codes for all entries in the receipts and disbursements journal, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0040(2)(a)(C), and (c) (2014).

7. Whether, by failing to have the required transaction dates or descriptions on the owners' ledger, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(b)(B), (D), (c)(A), and (E) (2014).

8. Whether, by failing to balance all three clients' trust account reconciliations for account ending in #7643 for the months of February, March and April 2015, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(20)(b) (2014).

9. Whether Respondent failed to resolve the difference of \$2,889.06 on the February 2015 reconciliation in a timely manner by the March 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014).

10. Whether Respondent failed to completely resolve the deficiency from the February 2015 reconciliation in a timely manner by the April 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014).

11. Whether Respondent failed to completely resolve the deficiency from the February 2015 reconciliation in a timely manner by the May 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014).

12. Whether, by failing to maintain the registered business name with the Oregon

¹ The citations herein refer to administrative rules in effect at the time of the alleged violations.

Secretary of State, Respondent violated ORS 696.301(3) as it incorporates OAR 863-024-0095(1) (2013 and 2014).

13. Whether Respondent failed to assign an identifying code to the property management agreement signed with Marlin Lay (Lay), in violation of ORS 696.301(3) as it incorporates OAR 863-025-0020(2)(k) (2013).

14. Whether, between June 2, 2014 through April 6, 2015, Respondent failed to include the required detail on tenant ledger for unit #11, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(c), (d)(B), (C), (D), (e)(A), (B), (C), (D), and (E) (2014).

15. Whether, between April 21, 2014 through April 23, 2015, Respondent failed to include required details on the tenant ledger for unit #6, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(c), (d)(B), (C), and (D) (2013 and 2014).

16. Whether, by failing to provide a corrected owner statement to Lay, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0055(4) (2013).

17. Whether Respondent failed to include identifying information on Lay's owner ledger for time period of April 2, 2015 through May 29, 2015, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(a), and (b)(C) (2013 and 2014).

18. Whether, by failing to properly account for receipts and disbursements of clients' trust funds on the owners' and tenant ledgers, Respondent violated ORS 696.890(4)(c), (d), and (e) (2013 and 2015).

19. Whether Respondent failed to timely deliver the tenant agreements requested by Lay in violation of ORS 696.301(3) as it incorporates OAR 863-025-0068(2) (2014).

20. Whether, by failing to properly account for the \$455, Respondent demonstrated incompetence in violation of ORS 696.301(12) (2015).

21. Whether Respondent demonstrated incompetence in performing any act for which Respondent is required to hold a license, in violation of ORS 696.301(12) (2011, 2013, and 2015).

22. Whether Respondent's property manager license should be revoked. ORS 696.301(12) (2011, 2013, and 2015).

EVIDENTIARY RULING

Exhibits A1 through A10, offered by REA, were admitted into the record without objection.²

² REA withdrew pages 49 and 50 of Exhibit A9, and pages 4, 5, 17, 20 and 22 of Exhibit A10.

FINDINGS OF FACT

Background information

1. Cynthia Webber (Respondent) is licensed as a Property Manager, License No. PM930400183, with the REA in Oregon. Respondent's license was issued on May 16, 2008. Respondent is doing business under the registered business name of Preferred Professional Property Management (PPPM). PPPM is located at 380 Q Street in Springfield, Oregon. PPPM was previously located at 107 West Q Street in Springfield, Oregon. (Test. of Webber; Exs. A7 at 9, A8 at 10.)

2. On January 4, 2010, Respondent registered PPPM with the Oregon Secretary of State as a DBA (doing business as). On April 4, 2013, Respondent cancelled the registration. In 2013, Respondent registered PPPM with the Oregon Secretary of State as an LLC. In 2015, Respondent dissolved the LLC. Between 2015 and 2019, Respondent did not maintain PPPM's registered business name with the Oregon Secretary of State. In 2019, Respondent registered PPPM with the Oregon Secretary of State as a DBA. Respondent did not update the filings with REA. (Test. of Webber; Ex. A8 at 17-18.)

3. Dorothy Ziebert (Ziebert), Respondent's mother, was licensed as a Principal Broker, License No. PB780402930, with REA in Oregon. Ziebert's license was issued on September 1, 2012.³ During the relevant times at issue in this matter, Ziebert was doing business under the registered business name of Preferred Northwest Realty (PNR). Ziebert also owned and operated a maintenance and repair company. (Test. of Webber; Exs. A7 at 10, 15, A8 at 11.)

4. Respondent and Ziebert were partners in business. Respondent was 49 percent shareholder in PPPM. Ziebert was 51 percent shareholder in PPPM. Ziebert handled most of PPPM's field work, including property inspections and showing rentals to prospective clients. Ziebert also managed PPPM's bookkeeping and accounting records. Respondent was responsible for clerical work and client relations. (Test. of Webber; Ex. A7 at 2, 10, 15.)

5. Prior to October 15, 2014, there was no written delegation of authority between Ziebert and Respondent. Prior to October 15, 2014, Ziebert's license was not associated with PPPM, and PPPM was not affiliated with PNR. (Test. of Webber; Exs. A7 at 2, 10, A8 at 11.)

2012 behavior with tenants' security deposit funds

6. In 2012, PPPM managed a rental home located at 35 E. C Street in Halsey, Oregon. Ziebert's close friend, Phyllis Barker (Barker), owned the home. On or about April 9, 2012, Barker's home sustained major damage from a storm. Barker's insurance company paid \$17,867.20 for the damage. There was a shortfall amount of \$10,780. Barker did not have sufficient funds in her owner account to cover the out of pocket costs of the repairs. Because Barker was her close friend, Ziebert decided to use security deposit funds from PPPM's tenants to pay Barker's shortfall amount. Respondent was aware of Ziebert's decision. Respondent

³ Ziebert's license was revoked on December 16, 2019. (*In the Matter of Dorothy D. Ziebert, OAH Case No. 2018-ABC-02277, Final Order by Default, dated December 16, 2019.*)

knew it was wrong to use the tenants' security deposit funds for Barker's repairs. (Test. of Webber; Ex. A7 at 2-3, 17, 20.)

7. On May 4, 2012, Ziebert transferred \$10,780 via check #456 out of PPPM's tenants' security deposit account ending in #2293 and into Barker's owner's account. The description noted on the internal record of disbursement for the check entry was "[trust 7643] PPPM Barker." The funds from the check were used to pay the outstanding repair costs on Barker's home. (Test. of Webber; Ex. A7 at 3, 17, 41-42.)

8. Ziebert and Respondent did not get permission from PPPM's tenants to use their funds for Barker's property repair. Ziebert and Respondent did not get permission from the property owners to use the tenants' funds for Barker's property repair. Ziebert and Respondent did not notify PPPM's tenants or the property owners of their actions. (Test. of Webber.)

9. Ziebert and Respondent considered the \$10,780 to be a loan. Ziebert and Respondent did not have a written contract, payment plan or promissory note with Barker regarding the debt. Ziebert and Respondent did not require Barker to put up any collateral for the loan. Ziebert and Respondent planned to withhold a portion of Barker's monthly owner draws and apply those funds to the security deposit account to repay Barker's debt. (Test. of Webber; Ex. A7 at 3, 17.)

10. Ziebert and Respondent did not start withholding a portion of Barker's monthly owner draws to repay the loan until July 9, 2014. (Test. of Webber; Ex. A7 at 21.)

2014 audit and subsequent investigation

11. On May 22, 2014, REA sent a letter to Respondent notifying her that PPPM had been randomly selected for a mandatory mail in audit of its Clients' Trust Account Security Deposits ending in #2293. REA requested documentation for the month of February 2014. (Test. of Hewitt; Ex. A9 at 53.)

12. On June 20, 2014, REA received PPPM's response to the mail in audit. REA Compliance Specialist Danette Rozell, in the Regulations Division, reviewed the documentation submitted. Ms. Rozell noted that Ziebert, whose license was not associated with PPPM, had responded to the audit instead of Respondent. Ms. Rozell also noted several areas of concern in the documentation provided, including that there was no security deposit ledger provided, there was insufficient detail on the receipts and disbursement journal, there was no copy of a signed notice of clients' trust account, and there was incorrect verbiage on the security deposits account. Ms. Rozell contacted both Ziebert and Respondent by phone and notified them of the areas of concern and requested additional documentation. (Test. of Hewitt; Exs. A7 at 2, A9 at 53.)

13. On June 30, 2014, REA received PPPM's second packet of information that was in response to Ms. Rozell's request for additional documentation. Ms. Rozell noted that the documents that were submitted were still missing detailed information. Ms. Rozell also noted that the check register, security deposit ledgers, and trust account reconciliation did not balance. Ms. Rozell contacted Ziebert and explained the deficiencies. (Ex. A10 at 53.) Ms. Rozell then sent an email to Respondent, notifying her of the deficiencies and requesting additional

information, as follows:

Corrected accounting documents were received by fax today from you on your mail in audit process. This is the second packet of information to date received and the corrections are still not sufficiently supplied to address the account concerns.

The check register you provided does not detail the owner and tenant names to reflect who you are receiving funds from and what owner they are being received on behalf of. You need to provide all detail as reflected in Oregon Administrative Rule (OAR) 863-025-0040 for a check register detail and/or receipts and disbursement journal.

The total you are reporting on the check register is not the same total you are reporting on your trust account reconciliation report and does not balance to your security deposit ledger. In fact there are three different totals that do not balance at all.

You must show the exact accounting detail for the month of February 2014 and report in writing any differences that have occurred during the month and why this account is not in balance.

The security deposit ledger does not reflect any dates and [] your reporting totals per owner on the actual report provided are not totaled correctly. You are reporting \$9,685.09 on your report ledger and only totaling up to \$7,685.09 for owner by the name of "Barker." Please reference [] OAR 863-025-0050 for tenant ledger requirements and OAR 863-025-0025(21) for the required three components in balancing a Clients' Trust Account Security Deposits.

Your overall total on the actual report is showing a ledger balance of \$38,345.93 and that actual machine tape balance shows \$48,342.16 with a difference of \$9,996.23. Then the actual trust account reconciliation report is showing \$35,620.29 and in fact does not balance to your security deposit report ledger or the check register you have provided, and is off by \$2,725.64.

Your verbiage for your account also needs to reflect Clients' Trust Account Security Deposits. At this time it is not correct as it reads Preferred Professional PM Security Trust. This verbiage will need to be updated to be able to close your audit and it needs to be corrected on the bank statement, checks, and deposit slips. OAR 863-025-0010(16) explains the correct verbiage requirement per authority of the law in Oregon Revised Statute (ORS) 696.241.

You also need to provide a copy of your “Notice of Clients’ Trust Account” form per ORS 696.245, and this form is available from our web site under forms and publications, available to print and both the licensee and the banker at your bank need to sign this document. What you provided are not the copies requested by the OREA requirement.

Please call me directly to discuss your accounting corrections or if you have further questions on providing balanced report detail information needed. An explanation of all corrections needs to be in writing.

(Ex. A10 at 18-19.) That same day, Ms. Rozell sent a second email to Respondent, notifying her that because she was the licensed property manager for PPPM, she personally needed to respond to the mail in audit process for PPPM, not Ziebert. Ms. Rozell also notified Respondent that she needed to sign the trust account reconciliation and provide the required accounting documents to bring the audit to a close. Ms. Rozell gave Respondent until July 7, 2014, to provide the requested documentation. (*Id.* at 23.)

14. On July 1, 2014, Ms. Rozell notified Respondent that all of the corrected documents needed to be submitted to REA no later than close of business on July 8, 2014. (Ex. A10 at 15.)

15. On July 9, 2014, after receiving PPPM’s third packet of information, Ms. Rozell sent an email to Respondent notifying her of corrections and documentation that still needed to be provided. The email stated, in part:

Attached is the document/form * * * “Notice of Clients’ Trust Account,” which must be signed by both you as the licensee and the bank. Please reference Oregon Revised Statute (ORS) 696.241 and 696.245 for verbiage and form detail requirement by law.

* * * If you wish to change your affiliation in any way this can be done through our licensing division directly * * *.

You need more information to be provided for just the month of February 2014 for what transactions took place for your “Security Deposit Ledger” with a beginning balance, an ending balance, and daily detail for all specific tenant and owner accounting detail. I have a document that does show only three transactions for the month of February 2014 for your check register, however completed information for your tenant ledger needs to provide dates, with the actual beginning balance, and detail of what has occurred by tenant on behalf of each owner, with a balance of your actual check register and bank statement balance to match as you have already provided on your “Trust Account Reconciliation.”

Reference: Oregon Administrative Rule (OAR) 863-025-0050
Tenant Ledger

You must correct your verbiage for your account as follows, with no abbreviations. Please reference ORS 696.241, and OAR 863-025-0010(16), which is the definition of a:

Clients' Trust Account Security Deposits

The above information is exactly how your verbiage on your account needs to read on your bank statement, checks, deposit slips, and the eLicense program with no abbreviations.

The correct verbiage for your operating Clients' Trust Account, should be with no abbreviations and exactly the same on all bank statements, checks, deposit slips, and the eLicense program per the definition of OAR 863-025-0010(4). The information in our eLicense program is correct for this account, however I would like you to make sure it is correct on [] your other accounting documents a[s] stated.

We need an explanation of the \$28.00 fee that was taken from the bank account on February 6, 2014 for a stop item charge. Your explanation needs to be provided in writing and we need documentation that this was handled with corrective action at the bank. You may provide this explanation as a separate document or provide the information on a new signed "Trust Account Reconciliation."

This account is a multiple owner account with multiple tenants and must be reconciled per OAR 863-025-0025(21).

Please submit all corrections by close of business on Monday, July, 14, 2014.

(Ex. A10 at 12-13.)

16. On July 16, 2014, after receiving additional information from Respondent, Ms. Rozell emailed Respondent and notified her of the following:

Thank you for your faxed documents regarding your mail in audit for the month of February 2014 for your Clients' Trust Account Security Deposits, account ending in 2293.

The Oregon Real Estate Agency (OREA) has been able to accept

the signed "Notice of Clients' Trust Account" as requested, and your explanation for the fees that were withdrawn by the bank, for a stopped item charge, have been adjusted on June 20, 2014, in the amount of \$28.00.

On behalf of the OREA and according to OAR 863-025-0040 (Record of Receipts and Disbursements) and OAR 863-025-0050 (Tenant Ledger), [you must] provide a chronological detail of the date the funds were received, the purpose of the funds received, and any disbursements that have occurred while identifying each tenant and each owner with the proper codes for whom these transactions represent.

The concern is that you are holding \$35,620.29 in a security deposit ledger without any detail or dates for accounting detail requirements.

I am also in receipt of two forms submitted requesting an affiliated and subsidiary business name change, and copies of these forms have been provided to our licensing Program Specialist, Madeline Alvarado (Maddy) for her review.

Maddy spoke with you and your mother last Friday, July 11, 2014, by phone in regards to deciding on a licensing change for your registered business. However, the issue is that you need to decide on only one specific change request as you cannot submit both requests. Maddy suggested you and your mother speak with an attorney in regards to your changes if you do not understand or know how you would like to proceed. The request then needs to be addressed to the licensing division directly as they cannot be handled in the regulations division.

I am including both Maddy from the licensing division, and my immediate lead Compliance Manager, Deanna Hewitt (Deanna), in this email as I believe Deanna has also spoken with you recently regarding the audit and the licensing issues specified in this email and have also been addressed in prior email correspondence.

The OREA needs to request your security deposit ledger with all accounting detail be provided by Monday, July 21, 2014.

The audit cannot be finalized and closed until these accounting requirements have been successfully submitted.

(Ex. A10 at 10-11.) On July 21, 2014, Respondent notified Ms. Rozell that she had a family emergency and would not be back in the office until July 29, 2014. (*Id.* at 7.)

17. On August 7, 2014, REA Compliance Manager Deanna Hewitt and Ms. Rozell conducted a telephone conference with Respondent to discuss the continued deficiencies and areas of concern of PPPM's mandatory mail in audit of its Clients' Trust Account Security Deposits ending in #2293. Ms. Hewitt discussed with Respondent that she had not changed the verbiage on the account, and that she had not provided sufficient accounting documentation to balance the security deposits ledger to the check register and the bank statement for the month requested. Ms. Hewitt also discussed with Respondent three separate ledger transactions that needed identification, including a \$40 transaction, a \$10,780 transaction, and a \$600 transaction. Respondent explained that the \$40 transaction was unidentified funds, the \$10,780 transaction was given to Barker for storm repairs, and the \$600 transaction could not be identified. Ms. Hewitt asked Respondent to provide her tenant ledgers for identifying how she was tracking funds received from tenants and to provide the dates of the transactions for rents and security deposits. Ms. Hewitt also asked Respondent to provide who the tenants were for the other owners listed on the security deposit ledger and to provide the dates that the funds were received. Ms. Hewitt gave Respondent until August 18, 2014, to submit the requested documentation and corrections. (Exs. A7 at 12-13, A9 at 52.)

18. On August 20, 2014, after not receiving all of the requested documentation and corrections from Respondent, Ms. Hewitt and REA Regulations Division Manager Selina Barnes referred Respondent's mandatory mail in audit case for a full investigation. Ms. Hewitt flagged various areas of concern for investigation, including the \$10,780 that was given to Barker, and the insufficient accounting details on Respondent's ledgers, accounts and forms. (Test. of Hewitt; Exs. A9 at 51, A10 at 6.)

19. On September 17, 2014, REA Financial Investigator Frances Hlawatsch was assigned to conduct the investigation of PPPM's failed audit. At the start of the investigation, Ms. Hlawatsch confirmed that Ziebert's principal broker license was not associated with PPPM, and PPPM was not affiliated with PNR. Ms. Hlawatsch also reviewed the documents prepared in the failed audit. (Test. of Hlawatsch; Ex. A7 at 2.)

20. On October 15, 2014, Ziebert filed documentation with REA to associate her license with PPPM and to affiliate PNR with PPPM. (Ex. A8 at 11.)

21. On January 26, 2015, Ms. Hlawatsch interviewed Respondent and Ziebert at their office location at 107 W. Q Street in Springfield. During the interview, Ms. Hlawatsch learned that PPPM and PNR operated out of the same office. Ms. Hlawatsch asked Respondent about the structure of the businesses and the duties delegated to each licensee. Respondent stated that she and Ziebert co-owned PPPM. Respondent explained that she had a disability, which limited her mobility. Respondent stated that Ziebert handled most of the field work and, up until October 2014, also managed the company's bookkeeping and accounting. Respondent stated that in October 2014, she and Ziebert hired a bookkeeper, Sue Harris, to manage PPPM's bookkeeping and accounting.⁴ Ms. Hlawatsch asked Ziebert about her license affiliation and pointed out that she had conducted property management activity in the past for PPPM. Ziebert admitted that she had conducted professional activity for both PPPM and PNR, stating that she

⁴ At the time of interview, there was no written delegation of authority on file for Harris. (Ex. A7 at 2.)

was entitled to do so because she had an ownership interest in both. When Ms. Hlawatsch asked to see a written delegation of authority for Ziebert, Respondent and Ziebert were unable to produce one. (Test. of Hlawatsch; Ex. A7 at 2, 14-16.) Ms. Hlawatsch asked about the \$10,780 payout to Barker. Ziebert stated that Barker's rental home had sustained major damage in a storm, and that she decided to use security deposit funds from multiple tenants to pay the repairs that were not covered by Barker's insurance. When Ms. Hlawatsch asked to see the paid invoices for the repair work, Ziebert was unable to produce them. (Test. of Hlawatsch; Ex. A7 at 17.) When Ms. Hlawatsch pointed out that the tenants' deposits were not hers to lend, Ziebert stated that, "the tenants all know and trust me and [] they would not have been uncomfortable with the situation." (*Id.*) Respondent told Ms. Hlawatsch that she knew it was wrong to use tenant security money for the repairs. Respondent stated that Barker had been making payments towards the balance and was down to about \$4,000 outstanding. Respondent stated that the payment was \$1,500 per month and that she transferred the funds out of Barker's owner account. Respondent admitted that she had forgotten to do this on more than one occasion. Respondent stated that Barker had a reserve amount of approximately \$4,000 in her owner account. When Ms. Hlawatsch asked if the \$4,000 could be transferred to replenish the tenants' security deposit account, Respondent was hesitant but eventually said that it could be done. (Test. of Hlawatsch; Ex. A7 at 17-18.) Ms. Hlawatsch then asked about the \$600 transaction amount that had not been explained in the audit. Respondent stated it was just an accounting error, and Ziebert stated it was "bad math." Ms. Hlawatsch asked about the \$40 transaction amount that had not been explained in the audit. Respondent stated it was the result of depositing a rent check that had been placed on stop payment. (Test. of Hlawatsch; Ex. A7 at 18.) At the close of the interview, Respondent agreed to determine the remaining amount of Barker's debt and then transfer that amount into the security deposit account to make the tenants' deposits whole. Respondent also agreed to have this completed by February 15, 2015, and to provide an accounting of the payments previously made on Barker's debt. (Test. of Hlawatsch; Ex. A7 at 4.)

22. On February 10, 2015, Respondent emailed Ms. Hlawatsch a document titled "Barker Ledger" as proof that the \$10,780 had been repaid. The document was in the form of a handwritten note reflecting five payments purportedly made as follows:

	Pmt [sic]	BAL [sic]
5/4/12		10,780
7/9/14	1,000	9,780
8/8/2014	1,000	8,780
12/[5]/2014	1,000	7,780
1/7/2015	1,500	6,280
2/9/2015	6,280	0

(Ex. A7 at 21, 42.) Attached to the ledger was a copy of a check that was dated February 9, 2014, and made out to "PPPM CLIENT DPST TRUST" in the amount of \$6,280. (*Id.* at 22.)

23. On February 26, 2015, Ms. Hlawatsch issued a letter to Respondent requesting that she prepare and provide three-way reconciliations for PPPM's clients' trust⁵ and tenants' security

⁵ A property manager must reconcile each clients' trust account within 30 calendar days of the bank statement date. The three components that must reconcile are the bank statement balance, adjusted for

deposits⁶ accounts for the month of February 2015. Ms. Hlawatsch notified Respondent that she had until March 9, 2015, to provide the requested documentation. Ms. Hlawatsch also notified Respondent that if she did not timely provide the documentation, she could be sanctioned by the Agency. (Test. of Hlawatsch; Ex. A7 at 23-24.)

24. On March 9, 2015, Respondent, through Ziebert, faxed Ms. Hlawatsch a three-way reconciliation of PPPM's tenants' security deposits account ending in #2415 for the month of February 2015. The reconciliation form was prepared by Harris, and was approved by Ziebert on March 9, 2015.⁷ The reconciliation form contained four parts: part one was the bank statement balance; part two was the checkbook or journal of receipts and disbursement balance; part three was the ledger balance; and part four was the reconciliation summary.⁸ Parts one, two and three of the reconciliation were reported as balanced at \$51,341.32 on the bank statement date of February 27, 2015. Respondent, through Ziebert, attached a copy of the bank statement for the security deposits account ending in #2415. The account name on the bank statement was "Cynthia Ziebert Webber DBA Preferred Professional Property Management Client Trust Acct [sic] Security Dep [sic]."⁹ The bank statement had an ending balance of \$51,341.32 on February 27, 2015, which supported the amount listed in part one of the reconciliation. Respondent did not provide any supporting documentation for the amounts listed in parts two and three of the reconciliation.¹⁰ Respondent did not submit a three-way reconciliation of PPPM's clients' trust account ending in #7643 for the month of February 2015. (Test. of Hlawatsch; Ex. A7 at 4, 26-27.)

25. On March 10, 2015, Respondent, through Ziebert, faxed Ms. Hlawatsch a second copy of the three-way reconciliation of PPPM's tenants' security deposits account ending in #2415 for the month of February 2015. Respondent, through Ziebert, attached the same bank

outstanding checks and other reconciling bank items; the balance of the record of receipts and disbursements or the check register as of the date of the bank statement; and the sum of all positive owners' ledgers as of the date of the bank statement. *See*, OAR 863-025-0025(20) (2014).

⁶ A property manager must reconcile each security deposits account within 30 calendar days of the bank statement date. The three components that must reconcile are the bank statement balance, adjusted for outstanding checks and other reconciling bank items; the balance of the record of receipts and disbursements or the check register as of the date of the bank statement; and the sum of all positive balances of individual security deposits and fees held in the security deposits account. *See*, OAR 863-025-0025(21) (2014.)

⁷ Harris used REA's reconciliation form. (*See, e.g.*, Ex. A7 at 26.)

⁸ Part four of the reconciliation form required the property manager to document any differences between the reported amounts in parts one through three; provide an explanation for the differences; and document the corrective action taken to resolve the differences. (*See, e.g.*, A7 at 26.)

⁹ The account name was not in compliance with the labeling requirement set forth in OAR 863-025-0010(16) (2014). (Test. of Hlawatsch, Lewis.)

¹⁰ Respondent was supposed to submit supporting documentation for all three parts of the reconciliation. (Test. of Hlawatsch.)

statement to the reconciliation. Respondent did not provide any supporting documentation for the amounts listed in parts two and three of the reconciliation. Respondent did not submit a three-way reconciliation of PPPM's clients' trust account ending in #7643 for the month of February 2015. (Test. of Hlawatsch; Ex. A7 at 4, 31-32.)

26. On March 11, 2015, Ms. Hlawatsch notified Respondent and Ziebert by email that the reconciliation for PPPM's tenants' security deposits account ending in #2415 was incomplete. Ms. Hlawatsch notified Respondent that she needed to submit supporting documentation for the amounts listed on the reconciliation, explaining that the completed form with a bank statement was not enough. Ms. Hlawatsch also notified Respondent that she needed to submit a three-way reconciliation for PPPM's clients' trust account. (Ex. A7 at 4, 36-37.)

27. On March 11, 2015, Respondent, through Ziebert, faxed Ms. Hlawatsch a copy of one page from PPPM's security deposit account's receipt and disbursement journal. The journal page showed Barker's payment of \$6,280 on February 9, 2015, with a description of "[trust 7643]/POA LOAN." (Ex. A7 at 38.) The journal page also showed an ending balance of \$51,341.32 on February 16, 2015. (*Id.*) Respondent, through Ziebert, also faxed Ms. Hlawatsch a copy of a blank check from Siuslaw Bank with the account name of "Clients' Trust Account Security Deposits Preferred Professional Property Management." Respondent did not submit any supporting documentation for the amount reported in part three of the reconciliation. (Test. of Hlawatsch; Ex. A7 at 4, 34-39.)

28. On March 12, 2015, Respondent, through Ziebert, faxed Ms. Hlawatsch a third copy of the three-way reconciliation of PPPM's tenants' security deposits account ending in #2415 for the month of February 2015. Respondent, through Ziebert, attached a copy of PPPM's security deposit account's receipt and disbursement journal, which listed transactions for the period of January 2, 2012 through February 16, 2015, and displayed a running balance. The journal showed an ending balance of \$51,341.32 on February 16, 2015. Ms. Hlawatsch noted that the transactions were broken down by property but that the purpose and/or descriptions of the funds for each transaction was not always clear. Ms. Hlawatsch also noted that the transactions were not in order by date and lacked the detail required by REA. Respondent did not submit any supporting documentation for the amount reported in part three of the reconciliation. (Test. of Hlawatsch; Ex. A7 at 5, 42-52.)

29. On April 27, 2015, Ms. Hlawatsch emailed Respondent and Ziebert a follow-up request for documentation, stating in part:

While finalizing your report and reviewing your file I noticed that we never received the requested February 2015 reconciliation on your clients' trust account (owner account). You did submit a reconciliation and supporting documents for the Security Deposit account, thank you. The document request letter dated 2/26/15 requested reconciliation on both accounts. Can you fax that to me today?

Also please review the Agency's online record of your Siuslaw

Valley Bank account. I attached a print out for reference. It appears you entered the routing number rather than the account number, which is what we require. When you log into eLicense under PPPM's record, update the section under "client trust account." If you need specific instruction please contact our licensing Dept. who can walk you through the process.

(Test. of Hlawatsch; Ex. A7 at 5, 53.)

30. On April 30, 2015, Respondent faxed Ms. Hlawatsch a three-way reconciliation of PPPM's clients' trust account ending in #7643 for the month of February 2015. The reconciliation was prepared by Harris, and was approved by Respondent on March 9, 2015. The account name was listed as "Real Estate Trust Account" on the reconciliation form. Parts one and two were reported to be reconciled at \$1,644.15 on the bank statement date of February 28, 2015. Part three was left blank. No supporting documentation was provided with the faxed submission. (Test. of Hlawatsch; Ex. A7 at 5, 54.)

31. On May 8, 2015, Respondent, through Harris, faxed Ms. Hlawatsch a copy of PPPM's clients' trust account bank statement for account ending in #7643. The account name on the bank statement was "Preferred Professional Property Managem [sic] Real Estate Trust Account."¹¹ The bank statement listed an ending balance of \$1,644.45 on February 28, 2015.¹² (Ex. A7 at 5, 60-61.) The fax cover sheet contained a note from Harris that stated, "Please clarify the 'ledger' documentation you indicated you need."¹³ (*Id.* at 59.)

32. On May 12, 2015, Respondent, through Harris, faxed Ms. Hlawatsch a three-way reconciliation packet for PPPM's clients' trust account ending in #7643 for the months of February through April 2015. Each packet included a reconciliation form, a bank statement, a receipts and disbursement journal, and a report meant to serve as an owner's ledger. The clients' trust account ending in #7643 held funds for multiple properties. (Test. of Hlawatsch; Ex. A7 at 5, 65-99.)

33. The three-way reconciliation for PPPM's clients' trust account ending in #7643 for the month of February 2015 was prepared by Harris, and was approved by Ziebert on May 12, 2015. The account name was listed as "Real Estate Trust Account" on the reconciliation form. The bank statement date was listed as February 28, 2015. Part one of the reconciliation listed a bank statement balance of \$1,644.45. Part two listed a receipts and disbursement journal balance of \$<9,765.62>. Part three listed a ledger balance of \$5,232.11. (Ex. A7 at 65.) Part four listed

¹¹ The account name was not in compliance with the labeling requirement set forth in OAR 863-025-0010(4) (2014). (Test. of Hlawatsch, Lewis.)

¹² The bank statement ending balance of \$1,644.45 did not match the purported reconciled amount of \$1,644.15 on the reconciliation form submitted on April 30, 2015. (*See*, Ex. A7 at 54, 60.)

¹³ As the licensed property manager, Respondent should have known the ledger documentation that was required by REA. (Test. of Hlawatsch.)

the reported difference between the three parts as \$<2,889.06> with the following explanation:

During the month of February, an error in computing was discovered in the property management software. We have been in contact with technical assistance for correction. We are researching other software programs. This computer error interfered with the ability to balance. We have corrected the errors internally.

(*Id.*) Part four did not detail the corrective actions or good faith efforts taken to resolve the difference.¹⁴ (*Id.*) The account name on the bank statement attached to the reconciliation was “Preferred Professional Property Managem [*sic*] Real Estate Trust Account.” (*Id.* at 67.) The receipts and disbursement journal attached to the reconciliation contained several entries that did not identify the purpose of the funds and the person who tendered the funds (*i.e.*, transaction descriptions), or the identifying codes for each receipt, deposit or disbursement. (*Id.* at 70-71.) The owner’s ledger attached to the reconciliation did not contain transaction dates or transaction descriptions (*i.e.*, the purpose of the funds and the identity of the person who tendered the funds, or the purpose of the disbursement) for every entry. (*Id.* at 72-75.)

34. The three-way reconciliation for PPPM’s clients’ trust account ending in #7643 for the month of March 2015 was prepared by Harris, and was approved by Ziebert on May 12, 2015. The account name was listed as “Real Estate Trust Account” on the reconciliation form. The bank statement date was listed as March 31, 2015. Part one of the reconciliation listed a bank statement balance of \$9,313.33. Part two listed a receipts and disbursement journal balance of \$9,313.33. Part three listed a ledger balance of \$10,899.99. (Ex. A7 at 76.) Part four listed the reported difference between the three parts as \$1,586.66 with the explanation of “Continued correction from February 2015 discovery.” (*Id.*) Part four did not detail the corrective actions or good faith efforts taken to resolve the difference. (*Id.*) The account name on the bank statement attached to the reconciliation was “Preferred Professional Property Managem [*sic*] Real Estate Trust Account.” (*Id.* at 78.) The receipts and disbursement journal attached to the reconciliation contained several entries listed as “RENT INCOME” that did not identify the tenant who paid the rent or the identifying code of the property for which the rent was paid. (*Id.* at 81-82.) The owner’s ledger attached to the reconciliation did not contain transaction dates or transaction descriptions (*i.e.*, the purpose of the funds and the identity of the person who tendered the funds, or the purpose of the disbursement) for every entry. (*Id.* at 83-86.)

35. The three-way reconciliation for PPPM’s clients’ trust account ending in #7643 for the month of April 2015 was prepared by Harris, and was approved by Ziebert on May 12, 2015. The account name was listed as “Real Estate Trust Account” on the reconciliation form. The bank statement date was listed as April 30, 2015. Part one of the reconciliation listed a bank statement balance of \$11,232.46. Part two listed a receipts and disbursement journal balance of \$11,232.46. Part three listed a ledger balance of \$12,189.12. (Ex. A7 at 87.) Part four listed the reported difference between the three parts as \$956.66 with the explanation of “Continued

¹⁴ A property manager must take corrective action to resolve all adjustments made in a reconciliation prior to the next reconciliation or document the good faith efforts the property manager has taken to resolve the adjustment. (See, OAR 863-025-0025(22) (2014); test. of Hlawatsch.)

correction from February 2015 discovery.” (*Id.*) Part four did not detail the corrective actions or good faith efforts taken to resolve the difference. (*Id.*) The account name on the bank statement attached to the reconciliation was “Preferred Professional Property Managem [*sic*] Real Estate Trust Account.” (*Id.* at 89.) The receipts and disbursement journal attached to the reconciliation contained several entries listed as “RENT INCOME” that did not identify the tenant who paid the rent or the identifying code of the property for which the rent was paid. (*Id.* at 92-93.) The owner’s ledger attached to the reconciliation did not contain transaction dates or transaction descriptions (*i.e.*, the purpose of the funds and the identity of the person who tendered the funds, or the purpose of the disbursement) for every entry. (*Id.* at 96-99.)

36. On June 10, 2015, Ms. Hlawatsch spoke with Harris about the reconciliations received thus far, including the rental income entries. Harris explained that PPPM collected rent and then lumped the payments together into daily deposits. When asked about how the detail for the payments were tracked, Harris indicated that PPPM had the detail recorded on daily deposit slips. Ms. Hlawatsch requested that Harris submit this documentation. (Test. of Hlawatsch; Ex. A7 at 7.) In a follow-up email, Ms. Hlawatsch notified Harris of the following:

Just to recap, we will expect to receive [] balanced 3 way reconciliations from you for the month of May. We require one for the owners’ account and one for the security deposit account. Be sure to submit the signed form along with all supporting documents (bank statement, check register, tenant ledger and owner ledger). As we discussed earlier, the detail that is required to be present in the report can be found in OAR 863 chapter 25 – property management section. Some key areas to review:

863-025-0015(1)(2)(3)(5) – Written delegation of authority
863-025-0040 – Records of receipts and disbursements (please review the entire section)
863-025-0050 – Tenant ledgers (please review the entire section)
863-025-0055 – Owner ledger (please review the entire section)
863-025-0065(5) – Deposits and funds received

You can easily gain access to these rules by clicking the web link below. * * * .

(Ex. A7 at 129-130.)

37. On June 17, 2015, Ms. Hlawatsch notified Respondent and Ziebert that the duties Harris was performing for PPPM required a written delegation of authority per OAR 863-025-0015. Ms. Hlawatsch requested that Respondent and Ziebert read the rule, prepare the written delegation of authority, and provide a copy of it to REA. (Ex. A7 at 128-129.)

38. On June 22, 2015, Respondent, through Harris, faxed a packet of documents to Ms. Hlawatsch. The packet included a three-way reconciliation for PPPM’s clients’ trust account

ending in #7643 for the month of May 2015.¹⁵ The packet also included a bank statement, a receipts and disbursement journal, a copy of the report that had previously been used and submitted as the owner's ledger, a copy of a new report that listed each individual owners' monthly transactions and was meant to serve as the owner's ledger for the May 2015 reconciliation, and a written delegation of authority signed by Respondent and Ziebert. (Ex. A7 at 6, 100-125.) The reconciliation was prepared by Harris, and was approved by Ziebert on June 22, 2015. The account name was listed as "Real Estate Trust Account" on the reconciliation form. The bank statement date was listed as May 31, 2015. Part one of the reconciliation listed a bank statement balance of \$21,478.37. Part two listed a receipts and disbursement journal balance of \$21,478.37. Part three listed a ledger balance of \$21,295.03. (*Id.* at 101.) Part four listed the reported difference between the three parts as \$183.34 with the following explanation:

Phyllis Barker has had rents come in after the owner payout. She also has a reserve of \$4,000.

Part IV difference is a continued correction from February 2015 discovery.

(*Id.*) Part four did not detail the corrective actions or good faith efforts taken to resolve the difference. (*Id.*) The account name on the bank statement attached to the reconciliation was "Preferred Professional Property Managem [*sic*] Real Estate Trust Account." (*Id.* at 103.) The receipts and disbursement journal contained more detail than the previous months, including payee names, transaction descriptions, and some identifying codes, but still had entries listed as "RENT INCOME" that did not identify the tenant who paid the rent or the identifying code of the property for which the rent was paid. (*Id.* at 107-108.) The old owners' ledger report did not contain transaction dates or transaction descriptions. (*Id.* at 111-114.) The new owner's ledger report did not contain a beginning balance but did provide transaction detail and a final balance. (*Id.* at 115-124.) The written delegation of authority granted permission to Harris and Bill Maas, an accountant, to speak with representatives of REA but did not specifically describe Harris' duties. (*Id.* at 125.)

39. On July 9, 2015, Ms. Hlawatsch sent a follow-up email to Respondent and Ziebert about the May 2015 reconciliation, stating, in part:

First, I'd like to thank you for authorizing Sue to speak with me. She has been a big help and I am happy to keep the authorization in our file. However, the document submitted does not meet the requirements of OAR 863-025-0015(5), which states: "Policies must include provisions that specify the production and maintenance of all reports, records and documents required under this division." Please create a document which specifically authorizes Sue to conduct the duties outlined in the OAR. The effect[ive] date should be the date you authorized her to [do] the

¹⁵ Respondent, through Harris, did not submit a three-way reconciliation for PPPM's security deposits account. (Ex. A7 at 100-125.)

work, basically the day she started working with you.

Regarding the reconciliation's supporting documents, we still need more detail to meet the Administrative Rule requirements. Your check register lacks detail on the aggregated rent deposits. Sue explained that you may deposit several rent payments on any given day[.] [T]hat is understandable. Your check register currently identifies these deposits as "RENTAL INCOME." This is insufficient. Do you keep itemized deposit slips for each daily deposit that shows exactly which owners received payments and from which tenants? If that information is not on the deposit slips then you should be keeping a separate document. Please see OAR 863-025-0040(6), which states:

A property manager may aggregate individual deposits or individual disbursements and record the aggregated total in the record of receipts and disbursements or check register only if the property manager:

- (a) Aggregates the deposits or disbursements on a daily basis;
- (b) Maintains a separate report that details the individual deposits or disbursements, which states the information for each deposit and disbursement as required in section (2) of this rule; and
- (c) Preserves and maintains the detailed report as a required record.

Finally, you submitted two documents to serve as the owners' ledger. The itemized document does not include a beginning balance as required. Can this be added to that report? If so, the problem would be solved. You may want to contact your software provider to learn how you can do this. The second document, a list of owners' running balances, lacks detailed dates and transaction descriptions and is therefore rendered useless. Please get the itemized ledger corrected to show each month['s] beginning balance. Please review the owners' ledger requirements per OAR 863-025-0055(3) which states:

All owners' ledgers must contain at least the following information:

- (d) The balance after each recorded entry.

Please let me know when I can expect these items to be corrected.

(Ex. A7 at 127-128.)

40. On July 14, 2015, Respondent emailed Ms. Hlawatsch the following response:

Here is the explanation to your questions. Each of our owners are assigned a specific number and each of their units have corresponding numbers to identify them each separately. When we receive rent from that tenant, it is itemized on each deposit slip with their individually assigned code number. Please see the attached.

Our property management program does not allow us to obtain a beginning balance although it does give us an ending balance each month which is then used as the beginning balance for each month. There is no way around this. When an entry is made the ledger shows the running balance after each transaction.

Dorothy has already provided you with the authorization for Sue Harris and also Bill Maas to speak with you.

(Ex. A7 at 126.) Respondent attached a copy of a deposit slip and detail report which provided the deposit detail information that the receipt and disbursement journal lacked. The document contained the date, amount and property along with the payer information for each daily deposit. (*Id.* at 133-134.) Ms. Hlawatsch determined Respondent was still not in compliance with REA's requirements. (Test. of Hlawatsch; Ex. A7.)

41. On August 4, 2015, Ms. Hlawatsch prepared an investigative report documenting her findings for REA. (Ex. A7.)

2014 behavior with client Marlin Lay

42. In April 2014, Marlin Lay (Lay) owned property located at 725 28th Street in Springfield, Oregon (Mar Shell Court or the property).¹⁶ The property consisted of a single family residence, five recreational vehicle spaces, and ten mobile homes. Lay also had a workshop on the property, which he visited occasionally. (Test. of Lewis; Ex. A8 at 2.)

43. Sometime prior to April 14, 2014, Lay sought a new property manager for the property. Lay was referred to PPPM by a friend. Lay and his wife, Shelly Lay, met with Respondent and Ziebert to discuss PPPM's services. Lay also showed the property to Ziebert before agreeing upon terms. (Test. of Lewis; Ex. A8 at 2.)

44. On April 14, 2014, Lay and Respondent signed a property management agreement (PMA) authorizing PPPM, as Lay's Agent, to lease/rent and manage the property, commencing

¹⁶ Lay had owned the property for approximately 20 years and was retired. (Ex. A8 at 2.)

on April 14, 2014 and terminating on April 14, 2015.¹⁷ (Ex. A8 at 19-22.) Section 4 (C) of the PMA, under “Authority of Agent,” stated, in part: “The expense to be incurred for any one item of alteration or repair shall not exceed the sum of \$400 (four hundred dollars) for any one expenditure unless authorized by Owner, except under such circumstances as Agent shall deem to be an emergency.” (*Id.* at 20.) Section 5 (H) of the PMA, under “Owner Agrees,” stated, in part: “As Agent’s compensation for services, Owner shall pay Agent at the rate of Ten percent (10%) of all rental income collected by Agent or any other party of person during the term of this agreement.” (*Id.* at 21.) The PMA did not contain an identifying code. (Test. of Lewis; Ex. A8 at 19-22.)

a. Making repairs that exceeded \$400 without authorization

45. In June 2014, Lay noticed that rental unit #4, a mobile home on the property, sat vacant for over a month. Lay also observed that work was being done on unit #4 in June and July 2014. Lay became alarmed when he received invoices with his owner statements from PPPM showing that over \$5,000 had been charged for labor and repairs on unit #4.¹⁸ Lay did not give Respondent or Ziebert authorization for expenditures over \$400 for unit #4. Lay contacted PPPM and spoke with Ziebert and told her that he should have been notified for approval of the repairs on unit #4. Lay told Ziebert that the trailers were not worth repairing unless it was a patch or two. Lay told Ziebert that it was foolish to spend thousands of dollars on the trailer, and that the money was not PPPM’s to spend. Lay also told Ziebert, “Don’t do this again.” (Test. of Lewis; Ex. A8 at 3, 43-44.)

46. Lay’s owner statement for June 2014 showed he was charged \$1,156.78 in parts and \$3,086.56 in labor for repairs to unit #4. Lay’s owner statement for July 2014 showed he was charged \$776.89 in parts and \$222.58 in labor for repairs to unit #4. The total expense for unit #4 was \$5,242.81. (Test. of Lewis; Ex. 8 at 3, 24-39.)

47. In November and/or December 2014, Lay received invoices with his owner statements from PPPM showing that over \$4,000 for labor and repairs had been charged for repairs on rental unit #16, a mobile home on the property.¹⁹ Lay did not give Respondent or Ziebert authorization for expenditures over \$400 for unit #16. (Test. of Lewis; Ex. A8 at 3, 45-79.)

48. Lay’s owner statement for November 2014 showed he was charged \$1,675.23 in supplies and \$1,233.25 in labor for repairs to unit #16. Lay’s owner statement for December

¹⁷ Although the PMA contained a termination date, it also contained the following caveat: “This Agreement shall continue until either party terminates same by delivering written notice to the other party at least forty-five (45) days prior to the date specified in the termination.” (Ex. A8 at 19.)

¹⁸ The owner statements and attached invoices show that the parts were purchased at Jerry’s, a local hardware store, and that the labor was performed by Lance Montgomery and John Graham. (Ex. A8 at 24-39.) Lance Montgomery is a related to Ziebert and Respondent. (*Id.* at 82.)

¹⁹ The owner statements and attached invoices show that the supplies were purchased from Jerry’s, and the labor was performed by Lance Montgomery and John Graham. (Ex. A8 at 45-79.)

2014 showed he was charged \$156.32 in supplies and \$1,185 in labor for repairs to unit #16. The total expense for unit #16 was \$4,249.80. (Test. of Lewis; Ex. A8 at 3, 45-79.)

b. Rent received but not shown on the owner statement

49. During the relevant period of May 1, 2014 through May 31, 2015, Cleason Hoggatt (Hoggatt) rented unit #6 on the property. The rent for unit #6 was \$430 per month, and the security deposit at move-in was \$350. (Ex. A8 at 99.)

50. On April 23, 2015, PPPM received a check in the amount of \$430 for unit #6 for the rental period of May 1, 2015 to May 30, 2015. In the tenant ledger for unit #6, Respondent documented that rent had been received in the amount of \$430 by check. Respondent did not document the check number, the identity of the person who tendered the check, or the date the check was deposited. (Test. of Lewis; Ex. A8 at 6, 99.)

51. Lay's owner statement dated May 11, 2015 showed that PPPM charged Lay a management fee of \$43 for unit #6 on April 23, 2015. The owner statement did not show that Lay's account had been credited in the amount of \$430 for the rent received from unit #6 on April 23, 2015. Lay contacted Respondent requesting that she correct the error and send him an updated owner statement. Lay never received a corrected owner statement from Respondent. (Test. of Lewis; Ex. A8 at 6, 94.)

c. Security deposit of tenant who trashed the rental unit

52. During the relevant period of April 25, 2014 through April 30, 2015, Nicholas Stoval (Stoval) rented unit #11 on the property. The rent for unit #11 was \$495 per month, and the security deposit at move-in was \$495. (Ex. A8 at 93.) The tenant ledger for unit #11 showed cash received of \$990 on April 25, 2014, for rent of \$495 and a security deposit of \$495. The funds were identified with receipt #847014. (*Id.*)

53. On April 6, 2015, PPPM received \$260 for unit #11 for the rental period of April 1, 2015 to April 30, 2015. In the tenant ledger for unit #11, Respondent documented that rent had been received in the amount of \$260 on April 6, 2015, and that a balance of \$235 was owed. Respondent did not document how the \$260 had been tendered (*i.e.*, by check, cash or money order), the identity of the person who tendered the funds, or the date the funds were deposited. (Ex. A8 at 93.) The entry on April 6, 2015 was the final entry in the tenant ledger. (*Id.*)

54. On April 23, 2015, Stoval notified Ziebert that he had lost his job and would be moving out of unit #11. Stoval told Ziebert to use his security deposit for the remaining rent owed in April. Stoval promised to clean the unit and be out on May 1, 2015. (Ex. A8 at 91.) Respondent and Ziebert did not view the unit after Stoval left. (*Id.* at 13.)

55. Sometime in May 2015, Lay entered unit #11 and found that Stoval had left the unit a complete mess. Lay found rotting food, dirty dishes and furniture left behind in the unit. Lay also found that the unit was infested with fleas. Lay took four truckloads of trash out of the unit to the dump. (Ex. A8 at 13, 42-43.)

56. Lay's owner statement dated May 29, 2015 showed that PPPM credited Lay's account on May 13, 2015, in the amount of \$495 for the security deposit from unit #11.²⁰ The owner statement also showed that PPPM charged Lay on May 14, 2015, with a management fee of \$49.50 and a late fee of \$55 for unit #11. (Ex. A8 at 89.)

d. Termination of PMA

57. Sometime prior to May 12, 2015, Lay told Ziebert that he decided to sell the mobile homes on the property and wanted to give the tenants the first opportunity to purchase. Lay went to the property and informed the tenants that he planned to sell the trailers and that they could buy the trailers if they wanted to. (Ex. A8 at 84.)

58. On May 12, 2015, Respondent signed a document attesting that all keys to the property were released to Lay. (Ex. A8 at 87.)

59. On May 13, 2015, Lay gave Respondent and Ziebert a 45-day written notice terminating the PMA. The notice stated, in part:

This is a 45 day written termination notice of management for MarShell Court located at 725 28th St. Springfield, Oregon effective immediately.

Please make arrangements with Marlin Lay (owner) to pick up all necessary paperwork and materials concerning MarShell Court such as contracts, keys, security deposits and any money owned to Marlin Lay/MarShell Court.

Please do not speak or have any contact with tenants! MarShell Court is under new Management.

(Ex. A8 at 85.)

60. On May 14, 2015, Ziebert faxed Lay the following statement regarding his cancellation notice:

Hello Shelly & Marlin: just a quick note to let you know that we sent out a correct form regarding our cancellation of the current & in force property management agreement. We will follow the letter of the Law on this final go around with your business. If you read your contract correctly you will find the format that we will be following which, by the way is all in the Oregon State Law book of Real Estate and Property Management. I suggest you read it.

²⁰ Respondent did not document in the tenant ledger for unit #11 the date the security deposit funds were disbursed, the amount, the check number, the payee, or the purpose of the disbursement. (Ex. A8 at 93.)

I have informed my attorney, Bryce Jessen, of the situation and you will be receiving correct documentation and forms that will be followed in this transaction. I have already notified him of your taking the keys from the office and not bringing them back as you promised to do and he has informed me that I must report this to the State of Oregon Real Estate Commission. This could cause a full audit on your business by the State of Oregon Real Estate Commission, Property Management Division.

Documents can be drawn up and the cost will be shared 50/50. Immediately upon your signature at the attorney's office the current contract null & void.

Otherwise the deposit monies will not be transferred until the 45 day period expires. You have zero access to them and we will not release them until all tenants have been NOTIFIED BY US on what is happening and again ALL rules and State regulations will be followed.

(Ex. A8 at 88; emphasis in original.)

61. On May 19, 2015, Lay submitted a second termination notice titled "Mutual Termination," pursuant to Ziebert's request that stated, in part:

This letter is to terminate the management contract between Marlin Lay and Preferred Professional Property Management company. As of May 29, 2015, the contract will be mutually terminated. I Marlin Lay request copies of all rental contracts and to have the security deposits turned over to Keystone Real Estate, 1501 18th suite 100 Springfield Or. 97477 no later than June 5, 2015.

(Ex. A8 at 86.) On May 20, 2015, Ziebert signed the mutual termination notice. On May 21, 2015, Respondent signed the mutual termination notice. (*Id.* at 108.)

e. Request for copies of 30-day notices

62. On June 1, 2015, Lay, through his wife, emailed Respondent and requested copies of the thirty-day notices from the tenants in rental units #4, #6, #7, and #14. (Ex. A8 at 102.)

63. On June 1, 2015, Ziebert issued check #546 to Keystone Property Management in the amount of \$5,480 from the Clients' Trust Account Security Deposits, representing the eleven tenant security deposits remaining in the account. (Ex. A8 at 105-107.)

64. On June 4, 2015, Lay, through his wife, emailed Respondent and made a second request for copies of the thirty-day notices from the tenants in rental units #4, #6, #7, and #14.

Lay also requested that Respondent provide a copy of the tenant rental agreements, which had not been received by Lay's new property manager. (Ex. A8 at 103.)

65. On June 10, 2015, Ziebert faxed Lay's new property manager, stating the following about Lay's wife:

Steve – here's a little more of Shelly's email of today. She is really "something." If she continues I will have no alternative but to call the State and let them know how they handled the contract. Help!! Please.

(Ex. A8 at 104.)

66. Lay never received the documents that he requested from Respondent. (Ex. A8 at 14.)

2015 complaint and subsequent investigation

67. On June 24, 2015, REA received a complaint from Lay against Respondent and Ziebert. In the complaint, Lay alleged that Respondent and Ziebert used or took monies that did not belong to them, allowed tenants to move out without proper notice, refunded a security deposit to a tenant who owed rent and trashed the unit, and had repairs done to the property that exceeded the PMA limit of \$400 without getting his approval. Lay also alleged that Respondent and Ziebert failed to provide him with requested documentation. (Test. of Lewis; Ex. A8 at 2, 12.)

68. REA Financial Investigator Meghan Lewis was subsequently assigned to conduct the investigation. (Test. of Lewis.)

69. On December 21, 2015, Ms. Lewis interviewed Lay and his wife. (Test. of Lewis; Ex. A8 at 42-44.) Regarding the tenant who owed rent and trashed unit #11, Lay told Ms. Lewis that the tenant owed back rent of \$730, that the tenant did not give proper notice, that the tenant left the unit trashed, that PPPM gave the tenant back his security deposit, and that no rent had been collected from the tenant in May 2015 yet PPPM charged him a management fee and late fee in May 2015. Lay also told Ms. Lewis that he asked Respondent and Ziebert to refund the fees but they did not. (Test. of Lewis; Ex. A8 at 42-43.) Regarding PPPM not providing requested documentation, Lay told Ms. Lewis that five tenants moved out abruptly after the PMA was terminated, that PPPM gave all of those tenants their security deposits back, and that when he and his wife requested copies of the 30-day notices pertaining to those tenants, Respondent and Ziebert refused to provide them. (Test. of Lewis; Ex. A8 at 43.) Regarding rent not showing on his owner statement, Lay told Ms. Lewis that PPPM collected rent from unit #6 in April 2015, that his owner statement dated May 11, 2015 did not show that rent had been collected yet he was charged a management fee for that rent, and that when he reported the error to Respondent and asked for a corrected statement, Respondent never provided him with a corrected owner statement. (Test. of Lewis; Ex. A8 at 43.) Regarding the repairs done without approval, Lay told Ms. Lewis that Ziebert had repairs done to units #4 and #16 that exceeded the

\$400 limit in the PMA without notifying him or obtaining his authorization. Lay stated that he saw some repair work being done on the property but assumed it was under the \$400 amount because Ziebert never requested authorization from him to exceed that amount. Lay stated that he was shocked when he got the invoices. Lay stated that the trailers were not even worth the repair costs. Lay stated that he contacted Ziebert and told her not to do that again. (Test. of Lewis; Ex. A8 at 43-44.) Regarding PPPM's bookkeeping, Mrs. Lay told Ms. Lewis that the bookkeeping was confusing and hard to track, that the owner statement never had a running balance, and that they never understood how much money they had in the client trust account because of the accounting system that PPPM used. (*Id.* at 42.)

70. On February 19, 2016, Ms. Lewis interviewed Respondent and Ziebert about the complaints. (Test. of Lewis; Ex. A8 at 80-83.) Regarding the tenant in unit #11 that left the unit trashed, Respondent told Ms. Lewis that the tenant gave notice on April 16, 2015, and that she calculated his rent from April 16, 2015 to May 15, 2015 to be charged against his security deposit. Respondent told Ms. Lewis that she credited Lay's account with the security deposit on May 13, 2015. (Test. of Lewis; Ex. A8 at 6, 81.) Regarding the tenants that moved out abruptly without notice, Respondent and Ziebert told Ms. Lewis that a tenant can move out without any notice and that they were not obligated to provide 30-day notices to Lay. (Test. of Lewis; Ex. A8 at 81.) Regarding the rent for unit #6 not showing up on Lay's owner statement, Respondent admitted that she might not have sent Lay a corrected owner statement. Respondent then showed Ms. Lewis an owner ledger from her computer records that showed a credit of \$430 to Lay's account on April 23, 2015, for the rent received from unit #6. (Test. of Lewis; Ex. A8 at 82, 100.) Regarding the repairs made to units #4 and #16, Ziebert admitted that the repairs were never discussed with Lay, but stated that when she previewed the property before signing the PMA, she told Lay that there would need to be repairs done on the property to bring it up to code. (Test. of Lewis; Ex. A8 at 81-82.) Regarding the documents that Ms. Lay requested and never received, Ziebert told Ms. Lewis that she sent all of the documents to the new property manager. (*Id.* at 82-83.) Ms. Lewis asked Respondent to show her the report that indicated the final distributions to Lay and Keystone. Respondent produced a report titled "Transactions," that set forth receipts and disbursements for the dates of May 6 through May 29, 2015. On the report, Respondent circled the amount of \$131.95 on the transaction date of May 29, 2015, and stated that this amount was the final distribution to Lay. Respondent then circled the amount of \$9,647 at the bottom of the report and stated this was the amount of the check PPPM sent to Keystone.²¹ (Test. of Lewis; Ex. A9 at 2, 7.) The transaction report did not show a balance after each entry. The report contained three different month totals at the bottom of the report, including a month total of <\$9,192> following the May 2015 transactions; a month total of \$0 following a single voided transaction of \$0 on June 12, 2015; and a month total of <\$9,647> following a single transaction of \$455 on July 14, 2015, paid to PPPM by check #4842 for a "Management Fee." The report showed that there was no income received in June or July 2015 for which a management fee could be charged. The report also showed that the payment on July 14 2015, was after Keystone Management had taken over managing Lay's rental property. (Test. of Lewis; Ex. A9 at 2-3, 7.) At Ms. Lewis's request, Respondent produced a detailed owner ledger for Lay for the dates of April 2, 2015 through May 29, 2015, which set forth a balance following each transaction. The owner ledger was missing Lay's name and contained multiple receipts of

²¹ Respondent was incorrect. The amount paid to Keystone Management was \$5,480. (Ex. A8 at 106.)

funds that were missing a check number, cash receipts number or unique series of letters or numbers to establish an audit trail. The owner ledger also showed an ending balance of \$455 following the final transaction of May 29, 2015, that was owed to Lay. (Test. of Lewis; Exs. A8 at 7, 100-101, A9 at 3, 8-9.)

71. Ms. Lewis subsequently reviewed additional records and documentation provided by the Lays and Respondent, including the PMA and the tenant ledgers. (*See*, Exs. A8, A9.) In her review of the PMA, Ms. Lewis noted that there was no identifying code associated to the PMA. Ms. Lewis also noted that although Respondent used the code “Mar Shell” in her computerized record keeping system, the code “Mar Shell” was not found on the PMA or the tenant ledgers. (Test. of Lewis; Ex. A8 at 3, 19-22.) In her review of the tenant ledger for unit #11, Ms. Lewis noted that there was required information that was missing from the tenant ledger. For the entries ranging from June 2014 through April 2015, the tenant ledger for unit #11 was missing an identifying code, the identity of the person who tendered the funds, a check number, cash receipt number or unique series of letters or numbers to establish an audit trail, and the date the funds were deposited. The tenant ledger for unit #11 was also missing the details regarding Respondent’s use of Stoval’s security deposit funds for rent owed on April 16, 2015, and the disbursement of those funds to Lay on May 13, 2015, including the date the security deposit funds were disbursed, the amount, the check number used, the payee, or the purpose of the disbursement. (Test. of Lewis; Ex. A8 at 6, 99.) In her review of the tenant ledger for unit #6, Ms. Lewis noted that there was required information that was missing from the ledger. For entries ranging from April 21, 2014 through April 23, 2015, the tenant ledger for unit #6 was missing an identifying code, the identity of the person who tendered the funds, a check number, cash receipt number or unique series of letters or numbers to establish an audit trail, and the date the funds were deposited. (Test. of Lewis; Ex. A8 at 6, 99.)

72. On March 17, 2016, Ms. Lewis emailed Respondent and Ziebert and requested that they provide any “written policy and delegation of authority” detailing “who does what” for PPPM. (Test. of Lewis; Ex. A9 at 39.) Ms. Lewis did not receive a response from Respondent and Ziebert. (Test. of Lewis.)

73. On March 21, 2016, Ms. Lewis emailed Respondent and Ziebert and requested that they provide an explanation for the disbursement on July 14, 2015, by check #4842 in the amount of \$455 to PPPM for management fees. Ms. Lewis also requested that Respondent and Ziebert provide a reconciliation of their clients’ trust account ending in #7643 for the months of June 2015 and July 2015. (Test. of Lewis; Ex. A9 at 3, 10.)

74. On March 25, 2016, Ms. Lewis received the requested reconciliations by fax. (Ex. A9 at 12-28.) The reconciliation for PPPM’s clients’ trust account ending in #7643 for June 2015 was prepared by Harris and approved by Ziebert on July 15, 2015. The account name was listed as “Real Estate Trust Account” on the reconciliation form. The bank statement date was listed as June 30, 2015. Part one listed a bank statement balance of \$17,122.69. Part two listed a receipts and disbursement journal balance of \$17,122.69. Parts three and four were left blank. (Ex. A9 at 12.) Respondent, through Harris, attached PPPM’s bank statement for the account ending in #7643 for June 2015, which supported the amount in part one of the reconciliation. The account name on the bank statement was “Preferred Professional Property Managem [*sic*]

Real Estate Trust Account.”²² (*Id.* at 14-17.) Respondent, through Harris, also attached three different transaction reports, which did not support the balance in part two of the reconciliation. (*Id.* at 18-21.) The first transaction report, dated March 25, 2016, showed the disbursement from Lay’s account on July 14, 2015, by check #4842 in the amount of \$455 to PPPM for “management fee.” (*Id.* at 18.) On that transaction report, Harris wrote the following note: “This report shows the computer error. There were no monies received to pay another owner payout. This was an internal error.” (*Id.*)

75. The reconciliation for PPPM’s clients’ trust account ending in #7643 for July 2015 was prepared by Harris and approved by Ziebert on August 17, 2015. The account name was listed as “Real Estate Trust Account” on the reconciliation form. The bank statement date was listed as July 31, 2015. Part one listed a bank statement balance of \$23,710.29. Part two listed a receipts and disbursement journal balance of \$23,710.29. Part three was left blank. (Ex. A9 at 22.) Part four had the following statement: “Part III is blank because client security deposits are held in a client deposit trust account. This account is an operating trust account.” (*Id.*) Respondent, through Harris, attached PPPM’s bank statement for the account ending in #7643 for July 2015, which supported the amount in part one of the reconciliation. The account name on the bank statement was “Preferred Professional Property Management [*sic*] Real Estate Trust Account.” (*Id.* at 24-27.) The bank statement also showed that check #4842 in the amount of \$455 was posted on July 16, 2015 with transaction #8950703266. (*Id.* at 25.) Harris also attached the same transaction report from the June reconciliation that contained her handwritten note asserting that the payout to PPPM was “an internal error.” (*Id.* at 28.) The transaction report did not support the amount in part two of the reconciliation. (*Id.*)

76. On March 29, 2016, Ms. Lewis prepared her first investigative report documenting her findings for REA. (Ex. A8.)

77. On April 4, 2016, Ms. Lewis notified Respondent and Ziebert by email of her concerns regarding their explanation for check #4842 and their incomplete reconciliations as follows:

Thank you for providing your monthly reconciliations for June 2015 and July 2015, and somewhat an explanation for check #4842 for \$455. I did want to follow up * * *. Please strongly consider my notes below, and feel free to respond to me with corrected reconciliations, as you move forward in your professional property management activity.

Check #4842 for \$455.00:

This check cleared your account ending #7643 on July 16, 2015, with bank reference number 8950703266. It does not appear to have been a computer entry error as Ms. Harris notes. The check was written and posted.

²² The account name was not in compliance with the labeling requirements set forth in OAR 863-025-0010(4) (2014). (Test. of Lewis.)

Please retrieve a copy of this check to verify to whom the funds were paid from owner Marlin Lay client trust funds. Were they management fees due Preferred Professional Property Management (PPPM)?

The “Transaction” report which I retrieved from [Respondent] during our visit on February 19, 2016, shows an ending balance of \$455.00 in Marlin Lay’s account on 5/29/16. A check is then written to PPPM on 7/14/2015 for \$455.00. This check shows as cleared your bank account ending in #7643 on 7/16/15.

The “Transaction” report dated March 25, 2016, which you submitted as supporting documentation for your reconciliations does not show the daily balance or the ending balance of \$455.00 for Marlin Lay’s owner ledger.

Clients’ Trust Account Reconciliations:

I want to apprise you that Part III should not be blank for either of your clients’ trust account reconciliations, unless you have separate client trust accounts for each of your owners, which I don’t believe is your case. I believe you have pooled “multiple owner” owner and security deposit accounts, and therefore this is a three way reconciliation. The entries here denote only two-way, which is deemed incomplete. Please review OAR 863-025-0025 Clients’ Trust Accounts in Property Management, Division 25 Oregon Administrative Rules.

For CTA #7643, Part III on the three way reconciliation form is the **total of the ledgers** for your client trust account – rental income (“operating” trust account per Ms. Harris) which means the “sum of all owner ledgers” as of the date of the bank statement, and as shown on the total of your owner ledgers.

For example, clients’ trust account – rental income #7643, if you have \$1,000.00 on owner ledger A, and \$5,000.00 on owner ledger B, and \$500.00 on owner ledger C, the total of owner ledgers to enter for Part III is \$6,500.00. If you reconcile the client trust account for owner A, B, and C, a balanced reconciliation would be \$6,500.00 for all parts: Part I, the bank statement, \$6,500.00 for Part II, the check register, and \$6,500.00 for Part III, **total of ledgers**.

For CTA #2415, Part III on the three way reconciliation form is for the **total of security deposits** for the security deposit account,

which means the “sum of the individual security deposits and fees held in the security deposits account” as of the date of the bank statement, and as shown on your tenant ledgers.

The same for a clients’ trust account – security deposits, #2415. For example, if the tenant A, has \$1,000.00 held as security deposit, tenant B has \$450.00, and tenant C has \$1,200.00 the total of security deposits is \$2,650.00. If you reconcile the security deposit trust account for tenant A, B, and C, a balanced reconciliation would be \$2,650.00 for all parts: Part I, the bank statement, \$2,650.00 for Part II, the check register, [] and Part III, \$2,650.00 for a **total of security deposits**.

Part I, the bank statement, Part II, the check register and Part III, owner ledger or security deposits ledger should all balance to the same amount. This form states this requirement! If the three parts do not balance, then in Part IV, you must write an explanation for the difference and take corrective action to resolve the difference before the next reconciliation period.

Please review your practices to ensure you are meeting Oregon Revised Statutes and Oregon Administrative Rules licensing requirements.

(Ex. A9 at 4, 29-31; emphasis in original.)

78. On April 7, 2016, Harris emailed Ms. Lewis the following response:

Attached please find scanned documentation that contains further explanation of the check #4842 as I think there may have been a misunderstanding in my previous notation. If the attached ledger is different than the one you received when you were in the office with [Ziebert] and [Respondent], I would appreciate a scanned copy of what you have for reference.

(Ex. A9 at 29.) The attached document stated, in part:

Attached please find a copy of the detailed transaction report that was sent to you by fax. It should look similar, if not the same, as the one provided to you when you were in this office.

You will see that at the end of May, after the final payout to Marlin Lay, the ledger balance was \$0.00. No rents came in after the account was brought to \$0.00. No further money is owed to Marlin Lay.

Then you see where the computer erroneously generated a check payable to Preferred Professional Property Management for management fees in the amount of \$455.00. Check #4842.

After that transaction, the ledger now shows a **negative** balance of \$455.00.²³ That check should never have been generated by the computer. There was not any money in the ledger to issue a check. Hence, my original description of “computer error.” Marlin Lay is not owed any money, especially when the account is in a negative. This is an internal error that is being corrected. We have alerted the software company of this error.

(*Id.* at 32; emphasis in original.)

79. Ms. Lewis subsequently prepared her own monthly ledger for Lay, documenting all of the rents received by PPPM, as well as all of the property management fees paid to PPPM. Ms. Lewis determined that after PPPM was paid all of its allowable fees, there was a balance owing to Lay of \$455. (Test. of Lewis; Ex. A9 at 33-38.) Ms. Lewis determined that Respondent and Ziebert had failed to properly account for the \$455 paid to PPPM by check #4843. Ms. Lewis also determined that Respondent’s and Ziebert’s actions demonstrated incompetence. (Test. of Lewis.)

80. On May 9, 2016, Ms. Lewis prepared her second investigative report documenting her findings for REA. (Ex. A9.)

CONCLUSIONS OF LAW

1. By allowing multiple tenants’ security funds to be used to repair Barker’s rental property, Respondent violated ORS 696.301(12) (2011) and ORS 696.301(3) as it incorporates OAR 863-025-0030(1)(a), (b), (c), and (d) (2011).

2. By disbursing tenants’ security deposit funds to a single owner, Respondent violated ORS 696.301(12) (2011) and ORS 696.890(3)(a), (b), (c), (e), and (f) (2011).

3. By failing to use the required identifying language in the account name for security deposits account ending in #2415, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(4) (2014).

4. By failing to timely produce and provide the requested records for clients’ trust account ending in #7643 and security deposits account ending in #2415, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0035(2)(a) (2014).

5. By failing to use the required identifying language in the account name for clients’ trust account ending in #7643, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(2) (2014).

²³ It is a violation for an owner ledger to show a negative balance for more than one day. (Test. of Lewis.)

6. By failing to have the required transaction descriptions and identifying codes for all entries in the receipts and disbursements journal, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0040(2)(a)(C), and (c) (2014).

7. By failing to have the required transaction dates or descriptions on the owners' ledger, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(b)(B), (D), (c)(A), and (E) (2014).

8. By failing to balance all three clients' trust account reconciliations for account ending in #7643 for the months of February, March and April 2015, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(20)(b) (2014).

9. Respondent failed to resolve the difference of \$2,889.06 on the February 2015 reconciliation in a timely manner by the March 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014).

10. Respondent failed to completely resolve the deficiency from the February 2015 reconciliation in a timely manner by the April 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014).

11. Respondent failed to completely resolve the deficiency from the February 2015 reconciliation in a timely manner by the May 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014).

12. By failing to maintain the registered business name with the Oregon Secretary of State, Respondent violated ORS 696.301(3) as it incorporates OAR 863-024-0095(1) (2013 and 2014).

13. Respondent failed to assign an identifying code to the property management agreement signed with Lay, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0020(2)(k) (2013).

14. Between June 2, 2014 through April 6, 2015, Respondent failed to include the required detail on tenant ledger for unit #11, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(c), (d)(B), (C), and (D) (2014).

15. Between April 21, 2014 through April 23, 2015, Respondent failed to include required details on the tenant ledger for unit #6, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(c), (d)(B), (C), and (D) (2014).

16. By failing to provide a corrected owner statement to Lay, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0055(4) (2013).

17. Respondent failed to include identifying information on Lay's owner ledger for time period of April 2, 2015 through May 29, 2015, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(a), and (b)(C) (2014).

18. By failing to properly account for receipts and disbursements of clients' trust funds on the owners' and tenant ledgers, Respondent violated ORS 696.890(4)(c), (d), and (e) (2013 and 2015).

19. Respondent failed to timely deliver the tenant agreements requested by Lay in violation of ORS 696.301(3) as it incorporates OAR 863-025-0068(2) (2014).

20. By failing to properly account for the \$455, Respondent demonstrated incompetence in violation of ORS 696.301(12) (2015).

21. Respondent demonstrated incompetence in performing any act for which Respondent is required to hold a license, in violation of ORS 696.301(12) (2011, 2013, and 2015).

22. Respondent's property manager license should be revoked.

OPINION

REA contends that Respondent violated its statutes and rules, and should have her property manager license revoked. REA bears the burden of proving its allegations by a preponderance of the evidence. ORS 183.450(2) and (5); *Reguero v. Teachers Standards and Practices Commission*, 312 Or 402, 418 (1991) (burden is on Commission in disciplinary action); *Dixon v. Board of Nursing*, 291 Or App 207, 213 (2018) (in administrative actions, the standard of proof that generally applies in agency proceedings, including license-related proceedings, is the preponderance standard.) Proof by a preponderance of the evidence means that the fact finder is convinced that the facts asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

The violations

1. *Whether, by allowing multiple tenants' security funds to be used to repair Barker's rental property, Respondent violated ORS 696.301(12) (2011) and ORS 696.301(3) as it incorporates OAR 863-025-0030(1)(a), (b), (c), and (d) (2011).*

REA contends that by allowing multiple tenants' security funds to be used to repair Barker's rental property, Respondent violated ORS 696.301(12) (2011) and ORS 696.301(3) as it incorporates OAR 863-025-0030(1)(a), (b), (c), and (d) (2011). Respondent contends to the contrary.

ORS 696.301, in effect in 2011, is titled "Grounds for discipline" and provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may

suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

* * * * *

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

* * * * *

(12) Demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

Pursuant to the authority cited above, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee who has disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency; or who has demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

The terms “incompetence” and “untrustworthiness” are not defined in REA’s statutes and rules. As such, the plain meanings of the terms are examined.

“Incompetence” means “the state or fact of being incompetent,” and “lack of physical, intellectual or moral ability.” *Webster’s Third New Int’l Dictionary* 1144 (unabridged ed. 2002). “Incompetent” means “one incapable of doing properly what is required.” *Id.*

“Untrustworthiness” means “the quality or state of being untrustworthy.” *Id.* at 2514. “Untrustworthy” means “not trustworthy” and “unreliable.” *Id.*

OAR 863-025-0030, in effect in 2011, is titled “Tenant Security Deposits” and provides in part:

(1) Except as provided in section (3) of this rule,²⁴ all tenants’ security deposits received by a property manager must be deposited and maintained in a security deposits account until:

(a) The property manager forwards the tenant’s security deposit to the owner of the property according to the terms of the tenant’s rental or lease agreement and the property management agreement;

(b) The property manager disburses the tenant’s security deposit for purposes authorized by the tenant’s rental or lease agreement

²⁴ The exception in section (3) is not applicable in this matter. *See*, OAR 863-025-0030(3).

and the property management agreement;

(c) The property manager refunds a deposit to the tenant according to the terms of the tenant's rental or lease agreement and the property management agreement; or

(d) The property management agreement is terminated and the property manager transfers the tenant's security deposit to the owner unless the owner directs the property manager, in writing, to transfer the security deposits and fees to another property manager, escrow agent or person.

As indicated above, all tenants' security deposits received by a property manager must be deposited and maintained in a security deposits account until: the property manager forwards the tenant's security deposit to the owner of the property according to the terms of the tenant's rental or lease agreement and the property management agreement; the property manager disburses the tenant's security deposit for purposes authorized by the tenant's rental or lease agreement and the property management agreement; the property manager refunds a deposit to the tenant according to the terms of the tenant's rental or lease agreement and the property management agreement; or the property management agreement is terminated and the property manager transfers the tenant's security deposit to the owner unless the owner directs the property manager, in writing, to transfer the security deposits and fees to another property manager, escrow agent or person.

In 2012, Respondent was a licensed property manager doing business under the registered business name of PPPM. At that time, Respondent managed a rental home in Halsey, Oregon, that was owned by Barker, a family friend. On April 9, 2012, Barker's rental home sustained major damage from a storm. Barker's home insurance did not cover all the damage, leaving a shortfall of \$10,780. Ziebert, who was 51 percent owner but whose license was not associated with PPPM, decided to use PPPM's tenants' security deposit funds to pay Barker's shortfall amount. Respondent was aware of Ziebert's decision and knew that it was wrong.

On May 4, 2012, Ziebert transferred \$10,780 via check #456 out of PPPM's tenants' security deposit account ending in #2293 and into Barker's owner account. Respondent allowed the transfer of funds to take place. The funds from the check were used to pay the outstanding repair costs on Barker's home. Respondent did not get permission from PPPM's tenants or property owners to use the tenants' funds for Barker. In addition, Respondent did not notify PPPM's tenants or property owners of the subsequent transfer and use of funds. Respondent engaged in actions that were not trustworthy and/or that lacked intellectual or moral ability. Respondent also engaged in actions that violated the affected tenants' rental agreements and the affected property owners' PMA's.

I find that Respondent's actions of allowing the transfer of multiple tenants' security deposits into Barker's owner account to be used to repair Barker's rental property did not comply with the tenant security deposits requirements set forth in OAR 863-025-0030(1) above. I find that Respondent did not forward the tenants' security deposits to the property owners according to the terms of the tenants' rental agreement and the PMA. I find that Respondent did not

disburse the tenants' security deposits for purposes authorized by the tenants' rental agreement and the PMA. I find that Respondent did not refund the tenants' security deposits according to the terms of the tenants' rental agreement and the PMA. I find that Respondent did not transfer the tenants' security deposits to the owner or to another property manager.

I conclude that by allowing multiple tenants' security funds to be used to repair Barker's rental property, Respondent violated ORS 696.301(12) (2011) and ORS 696.301(3) as it incorporates OAR 863-025-0030(1)(a), (b), (c), and (d) (2011). This is a basis for discipline under ORS 696.301.

2. Whether, by disbursing tenants' security deposit funds to a single owner, Respondent violated ORS 696.301(12) (2011) and ORS 696.890(3)(a), (b), (c), (e), and (f) (2011).

REA contends that by disbursing tenants' security deposit funds to Barker, Respondent violated ORS 696.301(12) (2011) and ORS 696.890(3)(a), (b), (c), (e), and (f) (2011). Respondent contends to the contrary.

ORS 696.301, in effect in 2011, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

* * * * *

(12) Demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

ORS 696.890, in effect 2011, is titled "Duties of Real Estate Property Managers" and provides, in part:

(3) A real estate property manager owes the property owner the following affirmative duties:

- (a) To deal honestly and in good faith;
- (b) To disclose material facts known by the property manager and not apparent or readily ascertainable to the owner;
- (c) To exercise reasonable care and diligence;

* * * * *

(e) To act in a fiduciary manner in all matters relating to trust

funds;

(f) To be loyal to the owner by not taking action that is adverse or detrimental to the owner's interest.

As indicated above, a real estate property manager owes the property owner the following affirmative duties: to deal honestly and in good faith; to disclose material facts known by the property manager and not apparent or readily ascertainable to the owner; to exercise reasonable care and diligence; to act in a fiduciary manner in all matters relating to trust funds; and to be loyal to the owner by not taking action that is adverse or detrimental to the owner's interest.

On May 4, 2012, Ziebert, with Respondent's knowledge, transferred \$10,780 out of PPPM's tenants' security deposits account ending in #2293 and into Barker's owner account to pay the outstanding repair costs on Barker's rental home. Respondent did not get permission from PPPM's property owners to use the tenants' funds for Barker. In addition, Respondent did not notify PPPM's property owners of the subsequent transfer and use of funds. Moreover, although Respondent considered the funds to be a loan to Barker, Respondent did not have a written contract, payment plan or promissory note with Barker regarding the debt. Furthermore, Respondent did not require Barker to provide collateral for the loan of funds. Respondent engaged in actions that were not trustworthy and/or that lacked intellectual or moral ability. Respondent also engaged in actions that did not safeguard the tenants' funds.

I find that Respondent did not deal honestly or in good faith with PPPM's property owners, and did not disclose material facts that were not apparent or readily ascertainable to the property owners. I find that Respondent did not exercise reasonable care and diligence regarding the property owners' interests and the tenants' funds. I find that Respondent did not act in a fiduciary manner in all matters related to the tenants' funds. I find that Respondent engaged in actions that were adverse and detrimental to PPPM's property owners' interests.

I conclude that by disbursing tenants' security deposit funds to a single owner (Barker), Respondent violated ORS 696.301(12) (2011) and ORS 696.890(3)(a), (b), (c), (e), and (f) (2011). This is a basis for discipline under ORS 696.301.

3. Whether, by failing to use the required identifying language in the account name for security deposits account ending in #2415, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(4) (2014).

REA contends that by failing to use the required identifying language in the account name for security deposits account ending in #2415, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(4) (2014). Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license

to an applicant who has done any of the following:

* * * * *

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0025, in effect in 2014, is titled “Clients’ Trust Account and Security Deposits Account Requirements” and provides, in part:

(4) Except as provided in section (7) of this rule, a property manager who receives security deposits on behalf of an owner must open and maintain a security deposits account, as defined in OAR 863-025-0010, that is separate from the property manager’s clients’ trust account.

As indicated above, except as provided in section (7) of OAR 863-025-0025, a property manager who receives security deposits on behalf of an owner must open and maintain a security deposits account, as defined in OAR 863-025-0010, that is separate from the property manager’s clients’ trust account.

“Security Deposits Account” means a federally insured clients’ trust account labeled as “Clients’ Trust Account – Security Deposits” on all bank records and checks that is established and maintained by a property manager, acting in a fiduciary capacity on behalf of an owner under a property management agreement, for depositing, holding and disbursing security deposit funds. OAR 863-025-0010(16) (2014).

On June 30 and July 9, 2014, during the mail in audit, Ms. Rozell notified Respondent that the correct language to use on her tenants’ security deposits account was “Clients’ Trust Account Security Deposits.” Ms. Rozell also notified Respondent of the pertinent administrative rule to review for the correct verbiage.

On March 9, 2015, during the full investigation, Respondent, through Ziebert, faxed Ms. Hlawatsch, as supporting documentation for the three way reconciliation of PPPM’s tenants’ security deposits account ending in #2415, a copy of the bank statement for the security deposits account ending in #2415. The account name on the bank statement was “Cynthia Ziebert Webber DBA Preferred Professional Property Management Client Trust Acct [*sic*] Security Dep [*sic*],” which was not in compliance with REA’s previous instructions to Respondent, nor REA’s administrative rule.

I find that, despite being notified in June and July 2014 of the correct identifying language to use on her security deposits account, Respondent used the wrong identifying language in March 2015 in the account name for her security deposits account ending in #2415. I also find that Respondent’s actions of continuing to use the wrong identifying language in the account name for her security deposits account indicate a lack of intellectual ability or an

inability to do properly what is required.

I conclude that by failing to use the required identifying language in the account name for security deposits account ending in #2415, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(4) (2014). This is a basis for discipline under ORS 696.301.

4. Whether, by failing to timely produce and provide the requested records for clients' trust account ending in #7643 and security deposits account ending in #2415, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0035(2)(a) (2014).

REA contends that by failing to timely produce and provide the requested records for clients' trust account ending in #7643 and security deposits account ending in #2415, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0035(2)(a) (2014). Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

* * * * *

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0035, in effect in 2014, is titled, "Records; Required Records; Maintenance; Production" and provides, in part:

(2) A property manager must produce records required under section (1) of this rule for inspection by the Agency as follows:

(a) When the Agency makes a request for production of property management records, the property manager must provide such records within no less than five banking days;

As indicated above, when the Agency makes a request for production of property management records, the property manager must provide such records within no less than five banking days.

On February 26, 2015, Ms. Hlawatsch issued a letter to Respondent requesting that she prepare and provide three-way reconciliations for her clients' trust and tenants' security deposits accounts for the month of February 2015. Ms. Hlawatsch notified Respondent that she had until March 9, 2015, to provide the requested documentation.

On March 9, 2015, Respondent, through Ziebert, faxed Ms. Hlawatsch a three-way reconciliation of PPPM's tenants' security deposits account ending in #2415 for the month of February 2015. The reconciliation form was prepared by Harris and approved by Ziebert. Parts one, two and three of the reconciliation were reported as balanced at \$51,341.32 on February 27, 2015. Respondent, through Ziebert, attached a printout of the bank statement for the account ending in #2415 to support the amount in part one of the reconciliation. The bank statement had an ending balance of \$51,341.32 on February 27, 2015. Respondent did not provide any supporting documentation for the amounts listed in parts two and three of the reconciliation. In addition, Respondent did not provide Ms. Hlawatsch with a three-way reconciliation of PPPM's clients' trust account ending in #7643 for the month of February 2015.

On March 10, 2015, Respondent, through Ziebert, faxed Ms. Hlawatsch a second copy of the three-way reconciliation of PPPM's tenants' security deposits account ending in #2415 for the month of February 2015. Respondent did not provide any supporting documentation for the amounts listed in parts two and three of the reconciliation. In addition, Respondent did not provide Ms. Hlawatsch with a three-way reconciliation of PPPM's clients' trust account ending in #7643 for the month of February 2015.

On March 11, 2015, Ms. Hlawatsch notified Respondent and Ziebert by email that the reconciliation for PPPM's tenants' security deposits account ending in #2415 was incomplete, and that Respondent needed to supply supporting documentation for the amounts listed on the reconciliation. Ms. Hlawatsch also notified Respondent that she needed to submit a three-way reconciliation for PPPM's clients' trust account.

On March 12, 2015, Respondent, through Ziebert, faxed Ms. Hlawatsch a third copy of the three-way reconciliation of PPPM's tenants' security deposits account ending in #2415 for the month of February 2015. Respondent, through Ziebert, attached a copy of PPPM's security deposit account's receipt and disbursement journal, which listed transactions for the period of January 2, 2012 through February 16, 2015, and displayed a running balance. The journal showed an ending balance of \$51,341.32 on February 16, 2015. Respondent did not submit supporting documentation for the amount reported in part three of the reconciliation. In addition, Respondent did not submit a three-way reconciliation for PPPM's clients' trust account.

On April 27, 2015, Ms. Hlawatsch notified Respondent by email that although she had received from Respondent a three-way reconciliation of the security deposits account with supporting documentation, she still had not received from Respondent a three-way reconciliation of the clients' trust account for the month of February 2015. Ms. Hlawatsch asked Respondent to fax her a reconciliation that day.

On April 30, 2015, Respondent faxed Ms. Hlawatsch a three-way reconciliation of PPPM's clients' trust account ending in #7643 for the month of February 2015. The reconciliation was prepared by Harris and approved by Respondent. Parts one and two of the reconciliation were reported to be reconciled at \$1,644.15 on February 28, 2015. Part three was left blank. Respondent did not provide supporting documentation for the amounts listed in the reconciliation.

I find that although Respondent provided a three-way reconciliation of PPPM's tenants' security deposits account ending in #2415 for the month of February 2015 to Ms. Hlawatsch on March 9, 2015, the reconciliation was incomplete and did not contain all of the supporting documentation required. I also find that Respondent did not provide a three-way reconciliation of PPPM's clients' trust account ending in #7643 for the month of February 2015 to Ms. Hlawatsch on March 9, 2015.

I find that Respondent failed to timely produce and provide the requested records for both the security deposits account ending in #2415 and the clients' trust account ending in #7643 to Ms. Hlawatsch by the due date of March 9, 2015. I also find that Respondent's actions indicate a lack of intellectual ability or an inability to do properly what is required.

I conclude that by failing to timely produce and provide the requested records for clients' trust account ending in #7643 and security deposits account ending in #2415, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0035(2)(a) (2014). This is a basis for discipline under ORS 696.301.

5. Whether, by failing to use the required identifying language in the account name for clients' trust account ending in #7643, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(2) (2014).

REA contends that by failing to use the required identifying language in the account name for clients' trust account ending in #7643, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(2) (2014). Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

* * * * *

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0025, in effect in 2014, provides, in part:

(2) A property manager must open and maintain at least one clients' trust account as defined in OAR 863-025-0010.

As indicated above, a property manager must open and maintain at least one clients' trust account as defined in OAR 863-025-0010.

“Clients’ Trust Account” means a federally insured bank account labeled as “Clients’ Trust Account” on all bank records and checks that is established and maintained by a property manager, acting on behalf of an owner under a property management agreement, for depositing, holding and disbursing funds received by the property manager on behalf of an owner, including application fees and application screening fees. OAR 863-025-0010(4) (2014).

On July 9, 2014, during the mail in audit, Ms. Rozell notified Respondent that the correct language to use on all bank statements, checks, and deposit slips for her operating clients’ trust account was “Clients’ Trust Account.” Ms. Rozell also notified Respondent of the pertinent administrative rule to review for the correct verbiage.

On May 8, 2015, during the full investigation, Respondent, through Harris, faxed Ms. Hlawatsch, as supporting documentation for the three-way reconciliation of PPPM’s clients’ trust account ending in #7643, a copy of the bank statement for the clients’ trust account ending in #7643. The account name on the bank statement was “Preferred Professional Property Managem [sic] Real Estate Trust Account,” which was not in compliance with REA’s previous instructions to Respondent, nor REA’s administrative rule.

I find that, despite being notified in July 2014 of the correct identifying language to use on her clients’ trust account, Respondent used the wrong identifying language in May 2015 in the account name for her clients’ trust account ending in #7643. I also find that Respondent’s actions of continuing to use the wrong identifying language in the account name for her clients’ trust account indicate a lack of intellectual ability or an inability to do properly what is required.

I conclude that by failing to use the required identifying language in the account name for clients’ trust account ending in #7643, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(2) (2014). This is a basis for discipline under ORS 696.301.

6. Whether, by failing to have the required transaction descriptions and identifying codes for all entries in the receipts and disbursements journal, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0040(2)(a)(C), and (c) (2014).

REA contends that by failing to have the required transaction descriptions and identifying codes for all entries in the receipts and disbursements journal, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0040(2)(a)(C), and (c) (2014). Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

* * * * *

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0040, in effect in 2014, is titled “Record of Receipts and Disbursements” and provides, in part:

(1) Except as provided in section (4) of this rule, a property manager must prepare and maintain a chronological record of receipts and disbursements or a check register for each client’s trust account and each security deposits account in which the manager must record each receipt of funds and each disbursement of funds.

(2) A record of receipts and disbursements or a check register must contain at least the following information:

(a) For each receipt of funds:

* * * * *

(C) The purpose of the funds and identity of the person who tendered the funds;

* * * * *

(c) If there is more than one property in a clients’ trust account, each entry for a receipt, deposit or disbursement must be identified with the applicable identifying code;

As indicated above, a property manager must prepare and maintain a chronological record of receipts and disbursements or a check register for each client’s trust account and each security deposits account in which the manager must record each receipt of funds and each disbursement of funds. In addition, for each receipt of funds, a record of receipts and disbursements or a check register must contain the purpose of the funds and identity of the person who tendered the funds. Moreover, if there is more than one property in a clients’ trust account, a record of receipts and disbursements or check register must contain the applicable identifying code for each receipt, deposit or disbursement.

On May 12, 2015, Respondent, through Harris, faxed Ms. Hlawatsch a three-way reconciliation packet for PPPM’s clients’ trust account ending in #7643 for the months of February through April 2015. Each packet included a reconciliation form, a bank statement, a receipts and disbursement journal, and a report meant to serve as an owner’s ledger. The clients’ trust account ending in #7643 held funds for multiple properties.

For the month of February 2015, the receipts and disbursement journal that was attached to the reconciliation contained several entries that did not identify the purpose of the funds and the person who tendered the funds (*i.e.*, transaction descriptions), or the identifying codes for each receipt, deposit or disbursement. In addition, for the months of March and April 2015, the receipts and disbursement journal that was attached to the reconciliations contained several entries listed as “RENT INCOME” that did not identify the tenant who paid the rent or the identifying code of the property for which the rent was paid.

I find that Respondent failed to document the required transaction descriptions and identifying codes for all entries in her receipts and disbursements journal for the months of February through April 2015. I also find that Respondent’s actions indicate a lack of intellectual ability or an inability to do properly what is required.

I conclude that by failing to have the required transaction descriptions and identifying codes for all entries in the receipts and disbursements journal, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0040(2)(a)(C), and (c) (2014). This is a basis for discipline under ORS 696.301.

7. Whether, by failing to have the required transaction dates or descriptions on the owners’ ledger, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(b)(B), (D), (c)(A), and (E) (2014).

REA contends that by failing to have the required transaction dates or descriptions on the owners’ ledger, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(b)(B), (D), (c)(A), and (E) (2014). Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

* * * * *

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0055, in effect in 2014, is titled “Owner Ledger” and provides, in part:

(3) All owner ledgers must contain at least the following information:

* * * * *

(b) For each deposit of funds:

* * * * *

(B) The purpose of the funds and identity of the person who tendered the funds;

* * * * *

(D) The date the funds were deposited;

(c) For each disbursement of funds:

(A) The date the funds were disbursed;

* * * * *

(E) The purpose of the disbursement;

As indicated above, for each deposit of funds, an owner's ledger must contain the purpose of the funds and the identity of the person who tendered the funds, and the date the funds were deposited. In addition, for each disbursement of funds, an owner's ledger must contain the date the funds were disbursed and the purpose of the disbursement.

As stated previously, on May 12, 2015, Respondent, through Harris, faxed Ms. Hlawatsch a three-way reconciliation packet for PPPM's clients' trust account ending in #7643 for the months of February through April 2015. Each packet included a reconciliation form, a bank statement, a receipts and disbursement journal, and a report meant to serve as an owner's ledger.

The owners' ledger that was attached to the reconciliations for all three months was missing the transaction dates for every entry. In addition, the owners' ledger was missing the required transaction descriptions for every deposit and disbursement of funds, including the purpose of the funds and the identity of the person who tendered the funds.

I find that Respondent failed to document the required transaction dates and descriptions for all entries in her owners' ledger for the months of February through April 2015. I also find that Respondent's actions indicate a lack of intellectual ability or an inability to do properly what is required.

I conclude that by failing to have the required transaction dates or descriptions on the owners' ledger, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(b)(B), (D), (c)(A), and (E) (2014). This is a basis for discipline under ORS 696.301.

8. Whether, by failing to balance all three clients' trust account reconciliations for account ending in #7643 for the months of February, March and April 2015, Respondent

violated ORS 696.301(3) as it incorporates OAR 863-025-0025(20)(b) (2014).

REA contends that by failing to balance all three clients' trust account reconciliations for account ending in #7643 for the months of February, March and April 2015, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(20)(b) (2014). Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

* * * * *

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0025, in effect in 2014, provides, in part:

(20) A property manager must reconcile each clients' trust account within 30 calendar days of the date of the bank statement pursuant to the requirements contained in this section.

(a) The reconciliation must have three components that are contained in a single reconciliation document:

(A) The bank statement balance, adjusted for outstanding checks and other reconciling bank items;

(B) The balance of the record of receipts and disbursements or the check register as of the date of the bank statement; and

(C) The sum of all positive owners' ledgers as of the date of the bank statement.

(b) The balance of each component in section (20)(a) of this rule must be equal to and reconciled with each other. If any adjustment is needed, the adjustment must be clearly identified and explained on the reconciliation document.

As indicated above, a property manager must reconcile each clients' trust account within 30 calendar days of the date of the bank statement. The reconciliation must have three components that are contained in a single reconciliation document: the bank statement balance,

adjusted for outstanding checks and other reconciling bank items; the balance of the record of receipts and disbursements or the check register as of the date of the bank statement; and the sum of all positive owners' ledgers as of the date of the bank statement. In addition, the balance of each component must be equal to and reconciled with each other. If any adjustment is needed, the adjustment must be clearly identified and explained on the reconciliation document.

As previously stated, on May 12, 2015, Respondent, through Harris, faxed Ms. Hlawatsch a three-way reconciliation packet for PPPM's clients' trust account ending in #7643 for the months of February through April 2015. Each packet included a reconciliation form, a bank statement, a receipts and disbursement journal, and a report meant to serve as an owner's ledger. The reconciliation forms were prepared by Harris, and were approved by Ziebert on May 12, 2015.

For the month of February 2015, part one of the reconciliation listed a bank statement balance of \$1,644.45 as of the bank statement date of February 28, 2015. Part two listed a receipts and disbursement journal balance of \$<9,765.62>. Part three listed a ledger balance of \$5,232.11. Part four listed the reported difference between the three parts as \$<2,889.06> with the explanation of "an error in computing." (Exhibit A7 at 65.) Part four did not detail the corrective actions or good faith efforts Respondent had taken to resolve the difference. The three components remained unbalanced through the following reconciliation.

For the month of March 2015, part one of the reconciliation listed a bank statement balance of \$9,313.33 as of the bank statement date of March 31, 2015. Part two listed a receipts and disbursement journal balance of \$9,313.33. Part three listed a ledger balance of \$10,899.99. Part four listed the reported difference between the three parts as \$1,586.66 with the explanation of "Continued correction from February 2015 discovery." (Exhibit A7 at 76.) Part four did not detail the corrective actions or good faith efforts Respondent had taken to resolve the difference. The three components remained unbalanced through the following reconciliation.

For the month of April 2015, part one of the reconciliation listed a bank statement balance of \$11,232.46 as of the bank statement date of April 30, 2015. Part two listed a receipts and disbursement journal balance of \$11,232.46. Part three listed a ledger balance of \$12,189.12. Part four listed the reported difference between the three parts as \$956.66 with the explanation of "Continued correction from February 2015 discovery." (Exhibit A7 at 87.) Part four did not detail the corrective actions or good faith efforts Respondent had taken to resolve the difference. The three components remained unbalanced through the following reconciliation.

I find that Respondent failed to reconcile the clients' trust account ending in #7643 within 30 calendar days of the date of the bank statement for the months of February through April 2015. I also find that Respondent's actions indicate a lack of intellectual ability or an inability to do properly what is required.

I conclude that by failing to balance all three clients' trust account reconciliations for account ending in #7643 for the months of February, March and April 2015, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(20)(b) (2014). This is a basis for discipline under ORS 696.301.

9. *Whether Respondent failed to resolve the difference of \$2,889.06 on the February 2015 reconciliation in a timely manner by the March 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014).*

REA contends that Respondent failed to resolve the difference of \$2,889.06 on the February 2015 reconciliation in a timely manner by the March 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014). Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

* * * * *

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0025, in effect in 2014, provides, in part:

(22) A property manager must take corrective action to resolve all adjustments made in a reconciliation prior to the next reconciliation or document the good faith efforts the property manager has taken to resolve the adjustment.

As indicated above, a property manager must take corrective action to resolve all adjustments made in a reconciliation prior to the next reconciliation or document the good faith efforts the property manager has taken to resolve the adjustment.

As detailed previously, on May 12, 2015, Respondent, through Harris, faxed Ms. Hlawatsch a three-way reconciliation packet for PPPM's clients' trust account ending in #7643 for the months of February through April 2015. Each packet included a reconciliation form, a bank statement, a receipts and disbursement journal, and a report meant to serve as an owner's ledger. The reconciliation forms were prepared by Harris, and were approved by Ziebert on May 12, 2015.

For the month of February 2015, part one of the reconciliation listed a bank statement balance of \$1,644.45 as of the bank statement date of February 28, 2015. Part two listed a receipts and disbursement journal balance of \$<9,765.62>. Part three listed a ledger balance of \$5,232.11. Part four listed the reported difference between the three parts as \$<2,889.06> with

the explanation of “an error in computing.” (Exhibit A7 at 65.) Part four did not detail the corrective actions or good faith efforts taken by Respondent to resolve the difference. The three components remained unbalanced through the following reconciliation.

For the month of March 2015, part one of the reconciliation listed a bank statement balance of \$9,313.33 as of the bank statement date of March 31, 2015. Part two listed a receipts and disbursement journal balance of \$9,313.33. Part three listed a ledger balance of \$10,899.99. Part four listed the reported difference between the three parts as \$1,586.66 with the explanation of “Continued correction from February 2015 discovery.” (Exhibit A7 at 76.)

I find that Respondent failed to resolve the difference of \$2,889.06 on the February 2015 reconciliation in a timely manner by the March 2015 reconciliation, and failed to provide detail of any attempted corrective actions or good faith efforts taken to resolve the difference. I also find that Respondent’s actions indicate a lack of intellectual ability or an inability to do properly what is required.

I conclude that by failing to resolve the difference of \$2,889.06 on the February 2015 reconciliation in a timely manner by the March 2015 reconciliation, and by failing to provide detail of any attempted corrective actions or good faith efforts taken to resolve the difference, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014). This is a basis for discipline under ORS 696.301.

10. Whether Respondent failed to completely resolve the deficiency from the February 2015 reconciliation in a timely manner by the April 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014).

REA contends that Respondent failed to completely resolve the deficiency from the February 2015 reconciliation in a timely manner by the April 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014). Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

* * * * *

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0025, in effect in 2014, provides, in part:

(22) A property manager must take corrective action to resolve all adjustments made in a reconciliation prior to the next reconciliation or document the good faith efforts the property manager has taken to resolve the adjustment.

As indicated above, a property manager must take corrective action to resolve all adjustments made in a reconciliation prior to the next reconciliation or document the good faith efforts the property manager has taken to resolve the adjustment.

As set forth previously, on May 12, 2015, Respondent, through Harris, faxed Ms. Hlawatsch a three-way reconciliation packet for PPPM's clients' trust account ending in #7643 for the months of February through April 2015. Each packet included a reconciliation form, a bank statement, a receipts and disbursement journal, and a report meant to serve as an owner's ledger. The reconciliation forms were prepared by Harris, and were approved by Ziebert on May 12, 2015.

For the month of February 2015, part one of the reconciliation listed a bank statement balance of \$1,644.45 as of the bank statement date of February 28, 2015. Part two listed a receipts and disbursement journal balance of \$<9,765.62>. Part three listed a ledger balance of \$5,232.11. Part four listed the reported difference between the three parts as \$<2,889.06> with the explanation of "an error in computing." (Exhibit A7 at 65.) Part four did not detail the corrective actions or good faith efforts Respondent had taken to resolve the difference. The three components remained unbalanced through the following reconciliation.

For the month of March 2015, part one of the reconciliation listed a bank statement balance of \$9,313.33 as of the bank statement date of March 31, 2015. Part two listed a receipts and disbursement journal balance of \$9,313.33. Part three listed a ledger balance of \$10,899.99. Part four listed the reported difference between the three parts as \$1,586.66 with the explanation of "Continued correction from February 2015 discovery." (Exhibit A7 at 76.) Part four did not detail the corrective actions or good faith efforts Respondent had taken to resolve the difference. The three components remained unbalanced through the following reconciliation.

For the month of April 2015, part one of the reconciliation listed a bank statement balance of \$11,232.46 as of the bank statement date of April 30, 2015. Part two listed a receipts and disbursement journal balance of \$11,232.46. Part three listed a ledger balance of \$12,189.12. Part four listed the reported difference between the three parts as \$956.66 with the explanation of "Continued correction from February 2015 discovery." (Exhibit A7 at 87.)

I find that Respondent failed to completely resolve the deficiency from the February 2015 reconciliation in a timely manner by the April 2015 reconciliation, and failed to provide detail of any attempted corrective actions or good faith efforts taken to resolve the difference. I also find that Respondent's actions indicate a lack of intellectual ability or an inability to do properly what is required.

I conclude that by failing to completely resolve the deficiency from the February 2015

reconciliation in a timely manner by the April 2015 reconciliation, and by failing to provide detail of any attempted corrective actions or good faith efforts taken to resolve the difference, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014). This is a basis for discipline under ORS 696.301.

11. Whether Respondent failed to completely resolve the deficiency from the February 2015 reconciliation in a timely manner by the May 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014).

REA contends that Respondent failed to completely resolve the deficiency from the February 2015 reconciliation in a timely manner by the May 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014). Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

* * * * *

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0025, in effect in 2014, provides, in part:

(22) A property manager must take corrective action to resolve all adjustments made in a reconciliation prior to the next reconciliation or document the good faith efforts the property manager has taken to resolve the adjustment.

As indicated above, a property manager must take corrective action to resolve all adjustments made in a reconciliation prior to the next reconciliation or document the good faith efforts the property manager has taken to resolve the adjustment.

As stated previously, on May 12, 2015, Respondent, through Harris, faxed Ms. Hlawatsch a three-way reconciliation packet for PPPM's clients' trust account ending in #7643 for the months of February through April 2015. Each packet included a reconciliation form, a bank statement, a receipts and disbursement journal, and a report meant to serve as an owner's ledger. The reconciliation forms were prepared by Harris, and were approved by Ziebert on May 12, 2015.

For the month of February 2015, part one of the reconciliation listed a bank statement balance of \$1,644.45 as of the bank statement date of February 28, 2015. Part two listed a receipts and disbursement journal balance of \$<9,765.62>. Part three listed a ledger balance of \$5,232.11. Part four listed the reported difference between the three parts as \$<2,889.06> with the explanation of “an error in computing.” (Exhibit A7 at 65.) Part four did not detail the corrective actions or good faith efforts Respondent had taken to resolve the difference. The three components remained unbalanced through the following reconciliation.

For the month of March 2015, part one of the reconciliation listed a bank statement balance of \$9,313.33 as of the bank statement date of March 31, 2015. Part two listed a receipts and disbursement journal balance of \$9,313.33. Part three listed a ledger balance of \$10,899.99. Part four listed the reported difference between the three parts as \$1,586.66 with the explanation of “Continued correction from February 2015 discovery.” (Exhibit A7 at 76.) Part four did not detail the corrective actions or good faith efforts Respondent had taken to resolve the difference. The three components remained unbalanced through the following reconciliation.

For the month of April 2015, part one of the reconciliation listed a bank statement balance of \$11,232.46 as of the bank statement date of April 30, 2015. Part two listed a receipts and disbursement journal balance of \$11,232.46. Part three listed a ledger balance of \$12,189.12. Part four listed the reported difference between the three parts as \$956.66 with the explanation of “Continued correction from February 2015 discovery.” (Exhibit A7 at 87.) Part four did not detail the corrective actions or good faith efforts Respondent had taken to resolve the difference. The three components remained unbalanced through the following reconciliation.

On June 22, 2015, Respondent, through Harris, faxed Ms. Hlawatsch a three-way reconciliation for PPPM’s clients’ trust account ending in #7643 for the month of May 2015. Part one of the reconciliation listed a bank statement balance of \$21,478.37. Part two listed a receipts and disbursement journal balance of \$21,478.37. Part three listed a ledger balance of \$21,295.03. Part four listed the reported difference between the three parts as \$183.34 with the explanation of “continued correction from February 2015 discovery.” (Exhibit A7 at 101.)

I find that Respondent failed to completely resolve the deficiency from the February 2015 reconciliation in a timely manner by the May 2015 reconciliation, and failed to provide detail of any attempted corrective actions or good faith efforts taken to resolve the difference. I also find that Respondent’s actions indicate a lack of intellectual ability or an inability to do properly what is required.

I conclude that by failing to completely resolve the deficiency from the February 2015 reconciliation in a timely manner by the May 2015 reconciliation, and by failing to provide detail of any attempted corrective actions or good faith efforts taken to resolve the difference, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014). This is a basis for discipline under ORS 696.301.

12. Whether, by failing to maintain the registered business name with the Oregon Secretary of State, Respondent violated ORS 696.301(3) as it incorporates OAR 863-024-0095(1) (2013 and 2014).

REA contends that by failing to maintain the registered business name with the Oregon Secretary of State, Respondent violated ORS 696.301(3) as it incorporates OAR 863-024-0095(1) (2013 and 2014).

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

* * * * *

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-024-0095, in effect in 2013, is titled “Business Name Registration” and provides, in part:

(1) Before conducting business in a name other than the licensee’s legal name, the property manager must register the business name with the Agency. For purposes of this rule, “business name” means an assumed name or the name of a business entity, such as a corporation, partnership, limited liability company, or other business entity recognized by law. A licensee must maintain the registered business name with the Oregon Secretary of State’s Corporation Division.

As indicated above, before conducting business in a name other than the licensee’s legal name, the property manager must register the business name with the Agency. A licensee must maintain the registered business name with the Oregon Secretary of State’s Corporation Division.

On January 4, 2010, Respondent registered PPPM with the Oregon Secretary of State as a DBA. On April 4, 2013, Respondent cancelled the registration. In 2013, Respondent registered PPPM with the Oregon Secretary of State as an LLC. In 2015, Respondent dissolved the LLC. Between 2015 and 2019, Respondent did not maintain PPPM’s registered business name with the Oregon Secretary of State. In 2019, Respondent registered PPPM with the Oregon Secretary of State as a DBA. Respondent did not update the filings with REA.

I find that between 2015 and 2019, Respondent failed to maintain the registered business name of PPPM with the Oregon Secretary of State. I also find that Respondent’s actions indicate a lack of intellectual ability or an inability of doing properly what is required.

I conclude that by failing to maintain the registered business name with the Oregon Secretary of State, Respondent violated ORS 696.301(3) as it incorporates OAR 863-024-0095(1) (2013 and 2014). This is a basis for discipline under ORS 696.301.

13. Whether Respondent failed to assign an identifying code to the property management agreement signed with Marlin Lay (Lay), in violation of ORS 696.301(3) as it incorporates OAR 863-025-0020(2)(k) (2013).

REA contends that Respondent failed to assign an identifying code to the property management agreement signed with Marlin Lay (Lay), in violation of ORS 696.301(3) as it incorporates OAR 863-025-0020(2)(k) (2013).

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

* * * * *

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0020, in effect in 2013, is titled “Property Management Agreements” and provides, in part:

(2) A property management agreement must include, but is not limited to:

* * * * *

(k) An identifying code;

As indicated above, a property management agreement (PMA) must include, but is not limited to, an identifying code.

In April 2014, Marlin Lay (Lay) owned property located at 725 28th Street in Springfield, Oregon (Mar Shell Court or the property). The property consisted of a single family residence, five recreational vehicle spaces, and ten mobile homes.

On April 14, 2014, Lay and Respondent signed a PMA authorizing PPPM, as Lay’s Agent, to lease/rent and manage the property, commencing on April 14, 2014. The PMA did not contain an identifying code.

I find that Respondent failed to assign an identifying code to the PMA signed with Lay. I also find that Respondent’s actions in not assigning an identifying code to the PMA indicate a lack of intellectual ability or an inability of doing properly what is required.

I conclude that by failing to assign an identifying code to the property management agreement signed with Lay, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0020(2)(k) (2013). This is a basis for discipline under ORS 696.301.

14. Whether, between June 2, 2014 through April 6, 2015, Respondent failed to include the required detail on tenant ledger for unit #11, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(c), (d)(B), (C), (D), (e)(A), (B), (C), (D), and (E) (2014).

REA contends that between June 2, 2014 through April 6, 2015, Respondent failed to include the required detail on tenant ledger for unit #11, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(c), (d)(B), (C), (D), (e)(A), (B), (C), (D), and (E) (2014). Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

* * * * *

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0050, in effect in 2014, is titled “Tenant Ledger” and provides, in part:

(1) Except as provided in section (3) of this rule, a property manager must prepare and maintain at least one tenants’ ledger for each tenant or individual from whom the property manager has received any funds under a property management agreement, whether or not the tenant has executed a written rental or lease agreement at the time of the payment of funds to the property manager.

* * * * *

(4) A tenant’s ledger must contain at least the following information:

* * * * *

(c) The identifying code;

(d) For each deposit of funds:

* * * * *

(B) The purpose of the funds and identity of the person who tendered the funds;

(C) The check number, cash receipt number or a unique series of letters and/or numbers that established an audit trail to the receipt of funds; and

(D) The date the funds were deposited;

(e) For each disbursement of funds:

(A) The date the funds were disbursed;

(B) The amount of funds disbursed;

(C) The check number or bank-generated electronic tracking number;

(D) The payee of the disbursement;

(E) The purpose of the disbursement;

As indicated above, a property manager must prepare and maintain at least one tenants' ledger for each tenant or individual from whom the property manager has received any funds under a property management agreement. A tenant's ledger must contain the identifying code. In addition, for each deposit of funds, a tenant's ledger must contain: the purpose of the funds and identity of the person who tendered the funds; the check number, cash receipts number or a unique series of letters and/or numbers that established an audit trail to the receipt of funds; and the date the funds were deposited. Moreover, for each disbursement of funds, a tenant's ledger must contain: the date the funds were disbursed; the amount of funds disbursed; the check number or bank-generated electronic tracking number; the payee of the disbursement; and the purpose of the disbursement.

During the period of April 25, 2014 through April 30, 2015, Stoval rented unit #11 on the property. The rent for unit #11 was \$495 per month, and the security deposit was \$495.

On April 6, 2015, PPPM received \$260 for unit #11 for the rental period of April 1, 2015 to April 30, 2015. In the tenant ledger for unit #11, Respondent documented that rent had been received in the amount of \$260 on April 6, 2015, and that a balance of \$235 was owed.

Respondent did not document how the \$260 had been tendered, the identity of the person who tendered the funds, or the date the funds were deposited. The entry on April 6, 2015 was the final entry in the tenant ledger.

On April 23, 2015, Stoval notified Ziebert that he had lost his job and would be moving out of unit #11. Stoval told Ziebert to use his security deposit for the remaining rent owed in April. Stoval promised to clean the unit and be out on May 1, 2015.

Sometime in May 2015, Lay entered unit #11 and found that Stoval had left the unit a complete mess. Lay found rotting food, dirty dishes and furniture left behind in the unit. Lay also found that the unit was infested with fleas. Lay took four truckloads of trash out of the unit to the dump.

Lay subsequently filed a complaint with REA alleging, among other things, that Respondent gave Stoval his security deposit back and then charged Lay with a management fee of \$49.50 and a late fee of \$55 for unit #11.

During the investigation, Respondent told Ms. Lewis that Stoval was paid up through April 15, 2015, and that she used his security deposit funds for rent effective April 16, 2015 to May 15, 2015. Respondent also told Lewis that she credited Lay's account with the security deposit on May 13, 2015. Respondent provided Ms. Lewis with a copy of the tenant ledger for unit #11. For the entries ranging from June 2, 2014 through April 6, 2015, the tenant ledger for unit #11 was missing the required details of an identifying code, the identity of the person who tendered the funds, a check number, cash receipt number or unique series of letters or numbers for funds to establish an audit trail, and the date the funds were deposited.

I find that between June 2, 2014 and April 6, 2015, Respondent failed to include the required details on the tenant ledger for unit #11. I also find that Respondent's actions indicate a lack of intellectual ability or an inability of doing properly what is required.

I conclude that by failing to include required details on the tenant ledger for unit #11 between June 2, 2014 through April 6, 2015, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(c), (d)(B), (C), and (D) (2014). This is a basis for discipline under ORS 696.301.

REA contends that Respondent also failed to include the required details on the tenant ledger for unit #11 regarding the disbursement of Stoval's security deposit funds in violation of ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(e)(A), (B), (C), (D), and (E) (2014).

However, Respondent's actions involving Stoval's security deposit funds took place *after April 23, 2015*, which is outside the time frame of "between June 2, 2014 and April 6, 2015" that is alleged in REA's Notice. Notice of Intent to Revoke at 10. Therefore, I do not have jurisdiction to determine if Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(e)(A), (B), (C), (D), and (E) (2014).

15. Whether, between April 21, 2014 through April 23, 2015, Respondent failed to

include required details on the tenant ledger for unit #6, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(c), (d)(B), (C), and (D) (2014).

REA contends that between April 21, 2014 through April 23, 2015, Respondent failed to include required details on the tenant ledger for unit #6, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(c), (d)(B), (C), and (D) (2014). Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

* * * * *

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0050, in effect in 2014, provides, in part:

(1) Except as provided in section (3) of this rule, a property manager must prepare and maintain at least one tenants' ledger for each tenant or individual from whom the property manager has received any funds under a property management agreement, whether or not the tenant has executed a written rental or lease agreement at the time of the payment of funds to the property manager.

* * * * *

(4) A tenant's ledger must contain at least the following information:

* * * * *

(c) The identifying code;

(d) For each deposit of funds:

* * * * *

(B) The purpose of the funds and identity of the person who tendered the funds;

(C) The check number, cash receipt number or a unique series of letters and/or numbers that established an audit trail to the receipt of funds; and

(D) The date the funds were deposited;

As indicated above, a property manager must prepare and maintain at least one tenants' ledger for each tenant or individual from whom the property manager has received any funds under a property management agreement. A tenant's ledger must contain the identifying code. In addition, for each deposit of funds, a tenant's ledger must contain: the purpose of the funds and identity of the person who tendered the funds; the check number, cash receipts number or a unique series of letters and/or numbers that established an audit trail to the receipt of funds; and the date the funds were deposited.

During the relevant period of May 1, 2014 through May 31, 2015, Hoggatt rented unit #6 on the property. The rent for unit #6 was \$430 per month.

On April 23, 2015, PPPM received a check in the amount of \$430 for unit #6 for the rental period of May 1, 2015 to May 30, 2015. In the tenant ledger for unit #6, Respondent indicated that rent had been received in the amount of \$430 by check. Respondent did not indicate the check number, the identity of the person who tendered the check, or the date the check was deposited.

Lay's owner statement dated May 11, 2015 showed that PPPM charged Lay a management fee of \$43 for unit #6 on April 23, 2015. The owner statement did not show that Lay's account had been credited in the amount of \$430 for the rent received from unit #6 on April 23, 2015.

During the subsequent investigation, Respondent provided Ms. Lewis with a copy of the tenant ledger for unit #6. For the entries ranging from April 21, 2014 through April 23, 2015, the tenant ledger for unit #6 was missing the required details of an identifying code, the identity of the person who tendered the funds, a check number, cash receipt number or unique series of letters or numbers to establish an audit trail, and the date the funds were deposited.

I find that that between April 21, 2014 and April 23, 2015, Respondent failed to include required details on the tenant ledger for unit #6. I also find that Respondent's actions indicate a lack of intellectual ability or an inability of doing properly what is required.

I conclude that by failing to include the required details on the tenant ledger for unit #6 between April 21, 2014 through April 23, 2015, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(c), (d)(B), (C), and (D) (2014). This is a basis for discipline under ORS 696.301.

16. Whether, by failing to provide a corrected owner statement to Lay, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0055(4) (2013).

REA contends that by failing to provide a corrected owner statement to Lay, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0055(4) (2013). Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

* * * * *

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0055, in effect in 2013, provides, in part:

(4) A property manager must report in writing to each owner any change in the owner's ledger. A monthly report, showing all receipts and disbursements for the account of the owner during the prior monthly period, is sufficient under this section. A copy of each such report must be preserved and filed in the property manager's records. If an annual report contains information not required to be provided by the property manager under these rules, the property manager must set forth such information separately.

As indicated above, a property manager must report in writing to each owner any change in the owner's ledger. A monthly report, showing all receipts and disbursements for the account of the owner during the prior monthly period, is sufficient under this section.

As stated previously, on April 23, 2015, PPPM received a check in the amount of \$430 for unit #6 for the rental period of May 1, 2015 to May 30, 2015. In the tenant ledger for unit #6, Respondent indicated that rent had been received in the amount of \$430 by check. Respondent did not indicate the check number, the identity of the person who tendered the check, or the date the check was deposited.

Lay's owner statement dated May 11, 2015 showed that PPPM charged Lay a management fee of \$43 for unit #6 on April 23, 2015. The owner statement did not show that Lay's account had been credited in the amount of \$430 for the rent received from unit #6 on April 23, 2015. Lay contacted Respondent requesting that she correct the error and send him an updated owner statement. Lay never received a corrected owner statement from Respondent.

I find that Respondent failed to report in writing to Lay the correction she made to his

owner's ledger. I also find that Respondent's actions indicate a lack of intellectual ability or an inability of doing properly what is required.

I conclude that by failing to provide a corrected owner statement to Lay, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0055(4) (2013). This is a basis for discipline under ORS 696.301.

17. Whether Respondent failed to include identifying information on Lay's owner ledger for the time period of April 2, 2015 through May 29, 2015, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(a) and (b)(C) (2014).

REA contends that Respondent failed to include identifying information on Lay's owner ledger for the time period of April 2, 2015 through May 29, 2015, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(a) and (b)(C) (2014). Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

* * * * *

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0055, in effect in 2014, provides, in part:

(3) All owner ledgers must contain at least the following information:

- (a) The owner's name and identifying code;
- (b) For each deposit of funds:

* * * * *

(C) The check number, cash receipt number or a unique series of letters and/or numbers that established an audit trail to the receipt of funds;

As indicated above, all owner ledgers must contain at least the owner's name and identifying code, and for each deposit of funds: the check number, cash receipt number or a

unique series of letters and/or numbers that establish an audit trail to the receipt of funds.

During the investigation of Lay's complaint, Ms. Lewis requested production of various documents from Respondent. On February 19, 2016, Respondent produced PPPM's detailed owner ledger for Lay for the dates of April 2, 2015 through May 29, 2015. The owner ledger was missing Lay's name. In addition, for the entries ranging from April 21, 2014 through April 23, 2015, the owner ledger contained multiple receipts of funds that were missing a check number, cash receipt number or unique series of letters or numbers to establish an audit trail.

I find that for the time period of April 2, 2015 through May 29, 2015, Respondent failed to include identifying information on Lay's owner ledger. I also find that Respondent's actions indicate a lack of intellectual ability or an inability of doing properly what is required.

I conclude that by failing to include identifying information on Lay's owner ledger for the time period of April 2, 2015 through May 29, 2015, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(a) and (b)(C) (2014). This is a basis for discipline under ORS 696.301.

18. Whether, by failing to properly account for receipts and disbursements of clients' trust funds on the owners' and tenant ledgers, Respondent violated ORS 696.890(4)(c), (d), and (e) (2013 and 2015).

REA contends that by failing to properly account for receipts and disbursements of clients' trust funds on the owners' and tenant ledgers, Respondent violated ORS 696.890(4)(c), (d), and (e) (2013 and 2015). Respondent contends to the contrary.

ORS 696.890, in effect 2013, provides, in part:

(4) A real estate property manager owes the property owner the following affirmative duties:

* * * * *

(c) To exercise reasonable care and diligence;

(d) To account in a timely manner for all funds received from or on behalf of the owner;

(e) To act in a fiduciary manner in all matters relating to trust funds;

As indicated above, the real estate property manager owes the property owner the following affirmative duties: to exercise reasonable care and diligence; to account in a timely manner for all funds received from or on behalf of the owner; and to act in a fiduciary manner in all matters relating to trust funds.

As determined previously, Respondent failed to document required details on Lay's tenant ledgers for units #6 and #11. In addition, Respondent failed to document identifying information and transaction descriptions on Lay's owner ledger.

On the tenant ledger for unit #6, for the rent of \$430 that was received on April 23, 2015, Respondent did not document the check number, the identity of the person who tendered the check, or the date that check was deposited (*i.e.*, disbursed). In addition, for the entries ranging from April 21, 2014 through April 23, 2015, Respondent did not document an identifying code, the identity of the person who tendered the funds, a check number, cash receipt number or unique series of letters or numbers for funds to establish an audit trail, and the date the funds were deposited.

On the tenant ledger for unit #11, for the rent of \$260 that was received on April 6, 2015, Respondent did not document how the rent had been tendered, the identity of the person who tendered the funds, or the date the funds were deposited. In addition, for the entries ranging from June 2, 2014 through April 6, 2015, Respondent did not document an identifying code, the identity of the person who tendered the funds, a check number, cash receipt number or unique series of letters or numbers for funds to establish an audit trail, and the date the funds were deposited.

On Lay's owner ledger, Respondent did not document Lay's name. In addition, for the entries ranging from April 21, 2014 through April 23, 2015, Respondent did not document a check number, cash receipt number or unique series of letters or numbers to establish an audit trail for multiple receipts of funds that PPPM received on behalf of Lay. Moreover, on the owner statement dated May 11, 2015, that was issued to Lay, Respondent did not document the \$430 rent that had been received from unit #6 on April 23, 2015 and then disbursed to Lay's owner account on that same date.

I find that Respondent did not exercise reasonable care and diligence regarding the funds received on behalf of Lay. I find that Respondent did not account in a timely manner for all the funds received on behalf of Lay. I find that Respondent did not act in a fiduciary manner in all matters related to Lay's funds.

I find that Respondent failed to properly account for receipts and disbursements of clients' trust funds on the owners' and tenant ledgers. I also find that Respondent's actions indicate a lack of intellectual ability or an inability of doing properly what is required.

I conclude that by failing to properly account for receipts and disbursements of clients' trust funds on the owners' and tenant ledgers, Respondent violated ORS 696.890(4)(c), (d), and (e) (2013 and 2015). This is a basis for discipline under ORS 696.301.

19. Whether Respondent failed to timely deliver the tenant agreements requested by Lay in violation of ORS 696.301(3) as it incorporates OAR 863-025-0068(2) (2014).

REA contends that Respondent failed to timely deliver the tenant agreements requested by Lay in violation of ORS 696.301(3) as it incorporates OAR 863-025-0068(2) (2014).

Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

* * * * *

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0068, in effect in 2014, is titled “Owner Information Request” and provides, in part:

(2) Upon written request from a property owner, a property manager must deliver to the owner copies of the current rental or lease agreement, including all addenda and modifications, within five business days of the date of actually receiving the request for information, unless the owner and the manager agree to a different time period.

As indicated above, upon written request from a property owner, a property manager must deliver to the owner copies of the current rental or lease agreement, including all addenda and modifications, within five business days of the date of actually receiving the request for information, unless the owner and the manager agree to a different time period.

On June 1 and June 4, 2015, Lay emailed Respondent and requested copies of the thirty-day notices from the tenants in rental units #4, #6, #7, and #14. Lay never received the documents that he requested from Respondent.

I find that Respondent failed to respond to Lay’s request within five business days of receiving the request, either by timely producing the requested documentation or by timely providing an explanation for the lack of documentation. I also find that Respondent’s actions indicate a lack of intellectual ability or an inability of doing properly what is required.

I conclude that by failing to timely deliver the tenant agreements requested by Lay, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0068(2) (2014). This is a basis for discipline under ORS 696.301.

Respondent contends that all of the requested documents were provided to Keystone Management. However, the reliable evidence in the record establishes to the contrary. Respondent’s contention is unpersuasive.

20. *Whether, by failing to properly account for the \$455, Respondent demonstrated incompetence in violation of ORS 696.301(12) (2015).*

REA contends that by failing to properly account for the \$455, Respondent demonstrated incompetence in violation of ORS 696.301(12) (2015). Respondent contends to the contrary.

ORS 696.301, in effect in 2015, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any real estate licensee or deny the issuance or renewal of a license to an applicant who has:

* * * * *

(12) Demonstrated incompetence or untrustworthiness in performing any act for which the real estate licensee is required to hold a license.

As indicated above, the Real Estate Commissioner may revoke the real estate license of any real estate licensee who has demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

During the investigation into Lay's complaint, Ms. Lewis asked Respondent to show her a report that indicated the final distributions to Lay and his new property management company, Keystone Management.

On February 19, 2016, Respondent produced a report titled "Transactions," that set forth receipts and disbursements for the dates of May 6 through May 29, 2015. The report did not show a balance after each entry. The report contained three different month totals at the bottom of the report, including a month total of <\$9,192> following the May 2015 transactions; a month total of \$0 following a single voided transaction of \$0 on June 12, 2015; and a month total of <\$9,647> following a single transaction of \$455 on July 14, 2015, paid to PPPM by check #4842 for a "Management Fee." The report showed that there was no income received in June or July 2015 for which a management fee could be charged. At Ms. Lewis's request, Respondent produced a detailed owner ledger for Lay for the dates of April 2, 2015 through May 29, 2015, which set forth a balance following each transaction. The owner ledger showed an ending balance of \$455 following the final transaction of May 29, 2015, that was owed to Lay.

On March 21, 2016, Ms. Lewis requested that Respondent and Ziebert provide an explanation for the disbursement on July 14, 2015, by check #4842 in the amount of \$455 to PPPM for management fees. Ms. Lewis also requested that Respondent and Ziebert provide a reconciliation of their clients' trust account ending in #7643 for the months of June 2015 and July 2015.

On March 25, 2016, Ms. Lewis received the requested reconciliations by fax. The reconciliation for June 2015 was prepared by Harris and approved by Ziebert on July 15, 2015. Part one listed a bank statement balance of \$17,122.69 on the bank statement date of June 30, 2015. Part two listed a receipts and disbursement journal balance of \$17,122.69. Parts three and four were left blank. Respondent, through Harris, attached PPPM's bank statement for the account ending in #7643 for June 2015, which supported the amount in part one of the reconciliation. Respondent, through Harris, also attached three different transaction reports, which did not support the balance in part two of the reconciliation. The first transaction report, dated March 25, 2016, showed the disbursement from Lay's account on July 14, 2015, by check #4842 in the amount of \$455 to PPPM for "management fee." On that transaction report, Harris wrote the following note: "This report shows the computer error. There were no monies received to pay another owner payout. This was an internal error." (Exhibit A9 at 18.)

The reconciliation for July 2015 was prepared by Harris and approved by Ziebert on August 17, 2015. Part one listed a bank statement balance of \$23,710.29 on the bank statement date of July 31, 2015. Part two listed a receipts and disbursement journal balance of \$23,710.29. Part three was left blank. Part four had the following statement: "Part III is blank because client security deposits are held in a client deposit trust account. This account is an operating trust account." (Exhibit A9 at 22.) Respondent, through Harris, attached PPPM's bank statement for the account ending in #7643 for July 2015, which supported the amount in part one of the reconciliation. The bank statement also showed that check #4842 in the amount of \$455 was posted on July 16, 2015 with transaction #8950703266. Harris also attached the same transaction report from the June reconciliation that contained her handwritten note asserting that the payout to PPPM was "an internal error." (*Id.* at 28.) The transaction report did not support the amount in part two of the reconciliation.

On April 4, 2016, Ms. Lewis notified Respondent and Ziebert that she had concerns regarding their explanation for check #4842, and their incomplete reconciliations. Ms. Lewis gave Respondent and Ziebert an opportunity to respond and provide corrected reconciliations. On April 7, 2016, Respondent, through Harris, provided a response, reiterating that Lay was not owed any money, and that the \$455 issued to PPPM by check #4842 was the result of "an internal error."

Ms. Lewis subsequently prepared her own monthly ledger for Lay, documenting all of the rents received by PPPM, as well as all of the property management fees paid to PPPM. Ms. Lewis determined that after PPPM was paid all of its allowable fees, there was a balance owing to Lay of \$455.

I find that Respondent failed to properly account for the \$455 that was owed to Lay. I also find that Respondent's actions indicate a lack of intellectual ability or an inability of doing properly what is required.

I conclude that by failing to properly account for the \$455, Respondent demonstrated incompetence in violation of ORS 696.301(12) (2015). This is a basis for discipline under ORS 696.301.

Respondent contends that the \$455 was delivered to Keystone Management. However, the reliable evidence in the record establishes to the contrary. Respondent's contention is unpersuasive.

21. Whether Respondent demonstrated incompetence in performing any act for which Respondent is required to hold a license, in violation of ORS 696.301(12) (2011, 2013, and 2015).

REA contends that in violation numbers 3 through 19, set out and discussed in detail above, Respondent demonstrated incompetence in performing any act for which Respondent is required to hold a license, in violation of ORS 696.301(12) (2011, 2013, and 2015). Respondent contends to the contrary.

ORS 696.301, in effect in 2011, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

* * * * *

(12) Demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

As previously determined, in violation numbers 3 through 19, Respondent engaged in actions that indicate a lack of intellectual ability or an inability of doing properly what is required. As such, in violation numbers 3 through 19, Respondent demonstrated incompetence in performing any act for which the licensee is required to hold a license in violation of ORS 696.301(12) (2011, 2013, and 2015). This is a basis for discipline under ORS 696.301.

The sanction

22. Whether Respondent's property manager license should be revoked. ORS 696.301(12) (2011, 2013, and 2015).

REA contends that Respondent's property manager license should be revoked. Respondent contends to the contrary.

ORS 696.301, in effect in 2011, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

* * * * *

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

* * * * *

(12) Demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

Pursuant to the authority cited above, the Real Estate Commissioner may revoke the real estate license of any real estate licensee who has disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency; or who has demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

As detailed in this order, Respondent engaged in 21 violations of REA’s statutes and rules, all of which involved Respondent demonstrating incompetence or untrustworthiness in performing an act for which Respondent was required to hold a license, in violation of ORS 696.301(12) (2011, 2013, and 2015). Accordingly, the Real Estate Commissioner may revoke Respondent’s real estate license.

Respondent contends that revocation is not appropriate. Respondent contends that she has learned from her mistakes. Respondent contends that she is willing to make the changes required by REA. Respondent contends that she wants a chance to prove herself.

However, as pointed out by REA, Respondent has had five years to prove herself and make the changes required by REA, but has failed to do so. Although I sympathize with Respondent, I find that her argument is unpersuasive.

I conclude that revocation of Respondent’s real estate license is appropriate in this matter.

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ORDER

I propose the Real Estate Agency issue the following order:

Respondent's property manager license is revoked for the following violations:

1. By allowing multiple tenants' security funds to be used to repair Barker's rental property, Respondent violated ORS 696.301(12) (2011) and ORS 696.301(3) as it incorporates OAR 863-025-0030(1)(a), (b), (c), and (d) (2011).
2. By disbursing tenants' security deposit funds to a single owner, Respondent violated ORS 696.301(12) (2011) and ORS 696.890(3)(a), (b), (c), (e), and (f) (2011).
3. By failing to use the required identifying language in the account name for security deposits account ending in #2415, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(4) (2014).
4. By failing to timely produce and provide the requested records for clients' trust account ending in #7643 and security deposits account ending in #2415, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0035(2)(a) (2014).
5. By failing to use the required identifying language in the account name for clients' trust account ending in #7643, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(2) (2014).
6. By failing to have the required transaction descriptions and identifying codes for all entries in the receipts and disbursements journal, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0040(2)(a)(C), and (c) (2014).
7. By failing to have the required transaction dates or descriptions on the owners' ledger, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(b)(B), (D), (c)(A), and (E) (2014).
8. By failing to balance all three clients' trust account reconciliations for account ending in #7643 for the months of February, March and April 2015, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(20)(b) (2014).
9. Respondent failed to resolve the difference of \$2,889.06 on the February 2015 reconciliation in a timely manner by the March 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014).
10. Respondent failed to completely resolve the deficiency from the February 2015 reconciliation in a timely manner by the April 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014).

11. Respondent failed to completely resolve the deficiency from the February 2015 reconciliation in a timely manner by the May 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014).

12. By failing to maintain the registered business name with the Oregon Secretary of State, Respondent violated ORS 696.301(3) as it incorporates OAR 863-024-0095(1) (2013 and 2014).

13. Respondent failed to assign an identifying code to the property management agreement signed with Lay, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0020(2)(k) (2013).

14. Between June 2, 2014 through April 6, 2015, Respondent failed to include the required detail on tenant ledger for unit #11, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(c), (d)(B), (C), and (D) (2014).

15. Between April 21, 2014 through April 23, 2015, Respondent failed to include required details on the tenant ledger for unit #6, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(c), (d)(B), (C), and (D) (2014).

16. By failing to provide a corrected owner statement to Lay, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0055(4) (2013).

17. Respondent failed to include identifying information on Lay's owner ledger for time period of April 2, 2015 through May 29, 2015, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(a), and (b)(C) (2014).

18. By failing to properly account for receipts and disbursements of clients' trust funds on the owners' and tenant ledgers, Respondent violated ORS 696.890(4)(c), (d), and (e) (2013 and 2015).

19. Respondent failed to timely deliver the tenant agreements requested by Lay in violation of ORS 696.301(3) as it incorporates OAR 863-025-0068(2) (2014).

20. By failing to properly account for the \$455, Respondent demonstrated incompetence in violation of ORS 696.301(12) (2015).

21. Respondent demonstrated incompetence in performing any act for which Respondent is required to hold a license, in violation of ORS 696.301(12) (2011, 2013, and 2015).

Dove L. Gutman

Senior Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the Administrative Law Judge's Proposed Order. If the Proposed Order is adverse to you, you have the right to file written exceptions and argument to be considered by the Real Estate Commissioner in issuing the Final Order. Your exceptions and argument must be received by the 20th day from the date of service. Send them to:

Janae Weston
Oregon Real Estate Agency
530 Center Street NE Ste 100
Salem, OR 97301-2505

The Real Estate Commissioner will issue a Final Order, which will explain your appeal rights.

CERTIFICATE OF MAILING

On April 1, 2020, I mailed the foregoing Proposed Order issued on this date in OAH Case No. 2018-ABC-02279.

By: First Class Mail

Cynthia Webber
PO Box 72025
Springfield OR 97475

By: Electronic Mail

Liz Hayes, Agency Representative
Real Estate Agency
530 Center St. NE Ste. 100
Salem OR 97301

Selina Barnes, Agency Representative
Real Estate Agency
530 Center St NE Ste 100
Salem OR 97301

Catriona McCracken, Assistant Attorney General
Department of Justice
1162 Court St NE
Salem OR 97301

Lucy M Garcia
Hearing Coordinator

Certificate of Mailing

On June 9, 2020, I mailed the foregoing Final Order issued on this date in OAH Case No. 2018-ABC-02279 and the Agency Case No. 2014-714 and 2015-286

By: First Class Mail

CYNTHIA ZIEBERT WEBBER
PO Box 72025
Springfield, OR 97475

Cynthia Ziebert Webber
380 Q Street, Suite #2
Springfield, OR 97477

Office of Administrative Hearings
ALJ Dove L. Gutman
PO Box 14020
Salem OR 97309-4020

G. Catriona McCracken
Senior Assistant Attorney General
Department of Justice
1162 Court St. NE
Salem OR 97301-4096

By: Email:
cindywebber1@yahoo.com

Rick Marsland
Licensing Specialist

REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of
SHERRY PATRICIA KOPP) STIPULATED FINAL ORDER

The Oregon Real Estate Agency (Agency) and Sherry Patricia Kopp (Kopp) do hereby agree and stipulate to all of the following, with the exception of the precise dollar figures listed by the Agency:

PROCEDURAL HISTORY:

On March 13, 2020, the Agency issued a Notice of Intent to Revoke Respondent Sherry Patricia Kopp’s (Kopp’s) principal broker license (which authorized Respondent to act as a principal broker and as a property manager). On March 25, 2020, Respondent Kopp requested a hearing. The hearing is scheduled for July 14, 2020 through July 15, 2020. Prior to the date of hearing Respondent Kopp did on July 9, 2020, enter into settlement discussions with the Agency. Pursuant to those discussions Respondent Kopp agreed to stipulate to the commission of the listed violations, and to the revocation of her real estate broker license, upon the condition that she not have to stipulate to the precise dollar discrepancies determined by the Agency in the course of its investigation. In the interests of settlement, the Commissioner agreed to the stated condition and with the understanding that Respondent Kopp is not agreeing to the dollar figures listed herein the Commissioner and Respondent Kopp now state as follows:

FINDINGS OF FACT

&

CONCLUSIONS OF LAW

1.

1.1 Kopp holds a principal broker license and worked under the registered business name Quinella Realty P.C. Kopp’s license expired on February 1, 2020.

1.2 Between May and June 2019 the Agency received 3 different complaints against Kopp.

1 The Agency opened an investigation.

2 1.3 On October 30, 2018, the Agency selected Kopp for a Reconciliation Mail-In
3 Review on her security deposits account ending in #9131. The reconciliation form provided
4 showed all three components in balance, with \$5,168.11 in the account along with the required
5 supporting documentation. The reconciliation form was dated November 26, 2018, and was
6 for August 2018.

7 1.4 On June 14, 2019, Kopp told OREA Financial Investigator/Auditor Lisa
8 Montellano (Montellano) that until the Agency selected her for the Reconciliation Mail- In
9 Review in October 2018, she had not completed a single three way reconciliation for any
10 account since she had opened her business in September 2014.

11 **(1) Violation:** By failing to reconcile clients' trust account ending in #9123 and security
12 deposits ending in #9131 for a period of over forty-eight months Kopp violated ORS
13 696.890(4)(c)(d)(e) (2013 and 2015 Editions), and ORS 696.301(3) as it incorporates ORS
14 696.890(4)(c)(d)(e) (2017 Edition). ORS 696.890(4) states a real estate property manager
15 owes the property owner the following affirmative duties: (c) to exercise reasonable care and
16 diligence; (d) to account in a timely manner for all funds received from or on behalf of the
17 owner; (e) to act in a fiduciary manner in all matters relating to trust funds. Kopp's conduct is
18 grounds for discipline under ORS 696.301(12) and (15) for violations occurring from 2014
19 through 2018. Additionally, Kopp violated ORS 696.301(3) as it incorporates OAR 863-025-
20 0025(20)(21) (5-15-14 and 11-15-16 Editions), and OAR 863-025-0028(2)(3) (1-1-2018
21 Edition). OAR 863-025-0025(21)(22), and OAR 863-025-0028(2)(3) require a property
22 manager to reconcile each clients' trust account and security deposits account within 30
23 calendar days of the bank statements. The reconciliation must have the required three
24 components and be equal and reconciled with each other.

25 1.5 Between January 2019 and August 2019, Kopp collected rents but did not
26 disburse funds owed to the owners in the following amounts:

27 • Joseph Berger \$9,929.90
28 • Deborah Green \$3,132.25
29 • Israel Posner \$12,288.51
30 • Marion Dye \$3,648.23

1 **(2) Violation:** By failing to disburse the funds listed above to the corresponding property
2 owner Kopp violated ORS 696.301(3) as it incorporates ORS 696.890(4)(c)(d)(e)(f) (2019
3 Edition). ORS 696.890(4) states a real estate property manager owes the property owner the
4 following affirmative duties: (c) to exercise reasonable care and diligence; (d) to account in a
5 timely manner for all funds received from or on behalf of the owner; (e) to act in a fiduciary
6 manner in all matters relating to trust funds; (f) to be loyal to the owner by not taking action that
7 is adverse or detrimental to the owner's interest.

8 1.6 Kopp collected and/or was responsible to collect and hold the following tenant
9 security deposits on behalf of the different owners listed below:

- 10 • Joseph Berger \$9,281.66
- 11 • Deborah Green \$1,895.00
- 12 • Marion Dye \$2,395.00
- 13 • Israel Posner \$3,895.00
- 14 • Gary Clark \$16,791.00

15 1.7 On June 14, 2019, Kopp's security deposit account ending in #9131 had a zero
16 balance. Kopp admitted transferring all tenant security deposits to her clients' trust account
17 ending in #9123 and paying them out to the owners as owner disbursements because there
18 were insufficient funds in the clients' trust account ending in #9123.

19 **(3) Violation:** By failing to collect and/or hold the tenant security deposits Kopp violated
20 ORS 696.890(4)(c)(d)(e)(f) (2013 and 2015 Editions), and ORS 696.301(3) as it incorporates
21 ORS 696.890(4)(c)(d)(e)(f) (2017 and 2019 Editions). ORS 696.890(4) states a real estate
22 property manager owes the property owner the following affirmative duties: (c) to exercise
23 reasonable care and diligence; (d) to account in a timely manner for all funds received from or
24 on behalf of the owner; (e) to act in a fiduciary manner in all matters relating to trust funds; (f)
25 to be loyal to the owner by not taking action that is adverse or detrimental to the owner's
26 interest. Kopp's conduct is grounds for discipline under ORS 696.301(12) and (15) for
27 violations occurring from 2013 through 2019. Additionally, by failing to hold and maintain the
28 tenant security deposits received by Kopp she violated OAR 863-025-0030(1) (5-15-2014, 11-
29 15-2016, 1-1-2018 Editions). OAR 863-025-0030(1) states except as provided in section (3) of
30 this rule, all tenants' security deposits received by a property manager must be deposited and

1 maintained in a security deposits account until: (a) the property manager forwards the tenant's
2 security deposits to the owner of the property according to the terms of the tenant's rental or
3 lease agreement and the property management agreement; (b) the property manager
4 disburses the tenant's security deposit for purposes authorized by the tenant's rental or lease
5 agreement and the property management agreement; (c) the property manager refunds a
6 deposit to the tenant according to the terms of the tenant's rental or lease agreement and the
7 property management agreement; or (d) the property management agreement is terminated
8 and the property manager transfers the tenant's security deposit to the owner unless the owner
9 directs the property manager, in writing, to transfer the security deposits and fees to another
10 property manager, escrow agent or person.

11 1.8 The following property owners terminated their property management
12 agreements with Kopp and did not receive any final accounts or funds.

- 13 • Gary Clark terminated on July 23, 2019.
- 14 • Deborah Green terminated on June 2, 2019
- 15 • Marion Dye, terminated on August 31, 2019

16 **(4) Violation:** By failing to disburse obligated funds and provide final accountings to the
17 owners listed above, Kopp violated ORS 696.301(3) as it incorporates OAR 863-025-
18 0070(2)(a),(b)(A) (1-1-2018 Edition). OAR 863-025-0070(2) Not later than 60 days after the
19 effective date of the termination, the property manager must: (a) disburse all obligated funds to
20 the party or parties entitled to the funds; and (b) provide the owner with the following: (A) a
21 final accounting of the owner's ledger account.

22 1.9 Tenant Desirae Duvall leased unit #561 of 503 Knott Street Canby Oregon
23 (property was owned by Joseph Berger). On Joseph Berger's owner statement there is an
24 entry dated October 27, 2017, showing Kopp transferring Duvall's \$1,400.00 security deposit
25 from clients' trust account ending in #9123 to her business operating account ending in #0601.
26 Kopp's security deposit ledger for August 2018 shows no security deposits held for Joseph
27 Berger's property. Duvall was still occupying unit #561, and as of June 14, 2019, Kopp's
28 security deposit account ending in #9131 balance was zero, and Kopp's business operating
29 account ending in #0601 had a balance of -\$3236.43.

30 **(5) Violation:** By depositing the \$1,400.00 tenant security deposit into the business

1 operating bank account ending in #0601 Kopp violated ORS 696.301(3) as it incorporates
2 OAR 863-025-0065(3) (11-15-2016 Edition) which states a property manager may not deposit
3 any funds received on behalf of an owner in the property manager's personal account or
4 commingle any such funds received with personal funds of the property manager.

5 1.10 In April 2019, Kopp made twenty-five separate transfers of funds from her clients'
6 trust account ending in #9123 to her business operating account ending in 0601. The transfers
7 totaled \$18,472.43. Kopp was unable to explain or provide accounting documentation to
8 support the transfers.

9 **(6) Violation:** By transferring a total of \$18,472.43 from clients' trust account ending in
10 #9123 into business operating account ending in #0601 Kopp violated ORS 696.301(14) (2019
11 Edition) and ORS 696.301(3) as it incorporates OAR 863-025-0027(9) (1-1-2018 Edition). Per
12 ORS 696.301(14) a licensee's real estate license may be disciplined if they have committed an
13 act of fraud or engaged in dishonest conduct substantially related to the fitness of the applicant
14 or real estate licensee to conduct professional real estate activity without regard to whether the
15 act or conduct occurred in the course of professional real estate activity. OAR 863-025-
16 0027(9) requires a property manager to record the transfer of any funds from a clients' trust
17 account or security deposits account by a check, by written proof of transmittal or receipt
18 retained in the property manager's record. The property manager must record the transfer of
19 other documents by written proof of transmittal or receipt retained in the property manager's
20 records. A property manager may transfer funds electronically via the Internet or Automated
21 Clearing House (ACH) software from a clients' trust account to a bank account maintained by
22 the owner and a property manager may make payments electronically to a vendor's account
23 for expenses relating to the owner's property. If the software program used for the transfer
24 does not automatically update the owner's ledger, the property manager must manually record
25 the transfer in the owner's ledger. At the time the transfer is made, the property manager must
26 print and preserve a hard copy of the electronic record of the transfer.

27 1.11 Between approximately February 2016 and May 2019, Kopp performed property
28 management activity for property owner Joseph Berger's 10-plex property located at 503 Knott
29 Street in Canby without a written property management agreement.

30 **(7) Violation:** By conducting property management activity for property owner Joseph

1 Berger without a written property management agreement, Kopp violated ORS 696.301(3) as it
2 incorporates OAR 863-025-0020(1) (5-5-2014, 11-15-2016, 1-1-2018 Editions) which states a
3 property manager must not engage in the management of rental real estate without a written,
4 unexpired property management agreement between the owner and the property manager.

5 1.12 On or about March 3, 2019, Kopp submitted an Agent Authorization form to the
6 Housing Authority of Clackamas County regarding property located at 16345 Brockway Road
7 in Oregon City. The form appeared to have been signed by the property owner, Marion Dye.
8 On August 16, 2019, the form was reviewed by property owner, Marion Dye, and she
9 confirmed the signature on the form was not her own.

10 **(8) Violation:** By submitting a form to the housing authority with the knowledge that the
11 form was signed by someone other than Marion Dye, Kopp violated ORS 696.301(14) (2019
12 Edition) and ORS 696.301(3) as it incorporates ORS 696.890(4)(f) (2019 Edition). Per ORS
13 696.301(14) a licensee's real estate license may be disciplined if they have committed an act
14 of fraud or engaged in dishonest conduct substantially related to the fitness of the applicant or
15 real estate licensee to conduct professional real estate activity without regard to whether the
16 act or conduct occurred in the course of professional real estate activity. ORS 696.890(4)
17 states a real estate property manager owes the property owner the following affirmative duties:
18 (f) to be loyal to the owner by not taking action that is adverse or detrimental to the owner's
19 interest.

20 1.13 From January 26, 2018, through January 18, 2019, Kopp allowed her brother,
21 Chuck Kopp, to sign Kopp's name on checks issued from the clients' trust account ending #
22 9123.

23 **(9) Violation:** By allowing another person to sign her name on the checks, Kopp violated
24 ORS 696.301(14) (2017 Edition) and ORS 696.301(3) as it incorporates ORS
25 696.890(4)(c)(e)(f) (1-1-2018 Edition). Per ORS 696.301(14) a licensee's real estate license
26 may be disciplined if they have committed an act of fraud or engaged in dishonest conduct
27 substantially related to the fitness of the applicant or real estate licensee to conduct
28 professional real estate activity without regard to whether the act or conduct occurred in the
29 course of professional real estate activity. ORS 696.890(4) states a real estate property
30 manager owes the property owner the following affirmative duties: (c) to exercise reasonable

1 care and diligence; (e) to act in a fiduciary manner in all matters relating to trust funds; and (f)
2 to be loyal to the owner by not taking action that is adverse or detrimental to the owner's
3 interest.

4 1.14 All of the above demonstrate incompetence in performing acts for which Kopp is
5 required to hold a license and show that Kopp engaged in conduct that is below the standard
6 of care for the practice of professional real estate activity.

7 **(10) Violation:** ORS 696.301(12) and (15) (2013, 2015, and 2017 Editions). ORS 696.301
8 states a licensee's real estate license can be disciplined if they have: (12) demonstrated
9 incompetence in performing any act for which the licensee is required to hold a license. (15)
10 engaged in any conduct that is below the standard of care for the practice of professional real
11 estate activity in Oregon as established by the community of individuals engaged in the
12 practice of professional real estate activity in Oregon.

13 2.

14 2.1 The foregoing violations are grounds for discipline pursuant to ORS 696.301.
15 Based on these violations a revocation is appropriate for violations of ORS 696.301(3), (12),
16 (14), (15).

17 2.2 A revocation of Kopp's principal broker license is appropriate under ORS
18 696.396(2)(c)(A),(B) and (C). According to ORS 696.396(2)(c)(A), (B), and (C), the Agency
19 may revoke a real estate license if the material facts establish a violation of a ground for
20 discipline under ORS 696.301 that: (A) results in significant damage or injury, (B) exhibits
21 incompetence in the performance of professional real estate activity, or (C) exhibits dishonesty
22 or fraudulent conduct.

23 2.3 The Agency reserves the right to investigate and pursue additional complaints
24 that may be received in the future regarding this licensee.

25 2.4 In establishing the violations alleged above, OREA may rely on one or more of
26 the definitions contained in ORS 696.010.

27 2.5 According to ORS 696.775, the lapsing, expiration, revocation or suspension of a
28 real estate license, whether by operation of law, order of the Real Estate Commissioner or
29 decision of a court of law, or the inactive status of the license, or voluntary surrender of the
30 license by the real estate licensee does not deprive the commissioner of jurisdiction to: (1)

1 proceed with an investigation of the licensee; (2) conduct disciplinary proceedings relating to
2 the licensee; (3) Take action against a licensee, including assessment of a civil penalty against
3 the licensee for a violation of ORS 696.020(2); or (4) revise or render null and void an order
4 suspending or revoking a license.

5
6 **STIPULATION & WAIVER**

7 I have read and reviewed the above findings of fact and conclusions of law which have
8 been submitted to me by the Agency and further, the order which follows hereafter. I
9 understand that the findings of fact, conclusions of law and this stipulation and waiver embody
10 the full and complete agreement and stipulation between the Agency and me. I further
11 understand that if I do not agree with this stipulation I have the right continue on with the
12 hearing as scheduled on this matter and to be represented by legal counsel at such a hearing.
13 Hearings are conducted in accordance with the procedures set forth in ORS Chapter 183 and
14 in accordance with the Rules of Practice and Procedure adopted by the Attorney General of
15 the State of Oregon. While I do not agree with all the dollar figures arrived at as a result of the
16 Agency's investigation of this matter, I do agree that I did violate the Agency's statutes and
17 rules in the manner set forth herein. I also agree that because of my methods of accounting it
18 is likely impossible for me, my prior clients, or the Agency, to arrive at the exact dollar
19 discrepancies which resulted from my accounting methods. I, therefore, freely and voluntarily
20 waive my rights to a hearing, to representation by legal counsel at such a hearing, and to
21 judicial review of this matter.

22 I hereby agree and stipulate to the above findings of fact and conclusions of law, with
23 the exception of the precise dollar figures set forth herein, and understand that the order which
24 follows hereafter may be completed and signed by the Real Estate Commissioner or may be
25 rejected by the Real Estate Commissioner. I understand that, in accordance with the
26 provisions of ORS 696.445(3), notice of this order shall be published in the Oregon Real
27 Estate News Journal.

28 I agree once the Commissioner executes this stipulated order, I will accept service of
29 the final order by email, and hereby waive the right to challenge the validity of service.

30 I understand that this order revokes my real estate principal broker license which
previously permitted me to act as a real estate principal broker/broker and property manager

1 and that I may not hold myself out to anyone as a real estate principal broker/broker/property
2 manager upon the execution of this Stipulated Order by the Commissioner.

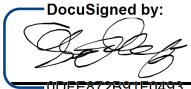
3 ORDER

4 IT IS HEREBY ORDERED that Kopp's principal broker license is revoked.

5
6 IT IS SO STIPULATED:

IT IS SO ORDERED:

8 DocuSigned by:

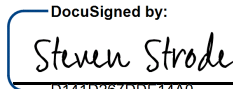
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10 SHERRY PATRICIA KOPP

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14 STEVEN STRODE

15 Real Estate Commissioner

16 Date 7/10/2020 | 3:05 PM PDT

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18 Date of Service: 07/10/2020



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REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of

MARY M. HOWARD



FINAL ORDER BY DEFAULT

PROCEDURAL HISTORY

1.

1.1 On June 18, 2020, the Real Estate Commissioner issued, by certified mail, a *Notice of Intent to Revoke* the real estate principal broker license of Mary M. Howard (Howard). The Oregon Real Estate Agency (Agency) sent the Notice of Intent to Howard’s last two known addresses of record with the Agency (PO Box 2372, Gearhart, OR 97138 and 400 Shore Ter, Seaside, OR 97138). The *Notice of Intent* was also mailed to Howard by regular first class mail to both of the above addresses.

1.2 The notice was also emailed to Howard at her email address of record.

1.3 Neither the certified mailings nor the first class mailings have been returned to the Agency. Over twenty (20 days) have elapsed since the mailing of the notice issued in this matter and no written request for hearing has been received.

2.

Based upon the foregoing and upon a review of the above described investigation reports, documents and files, the Real Estate Commissioner finds:

2.1 Oregon Administrative Rule 863-001-0006 states, in part, that a notice of intent is properly served when deposited in the United States mail, registered or certified mail, addressed to the real estate licensee or to any other person having an interest in a proceeding before the Commissioner at the licensee’s or other person’s last known address of record with OREA.

2.2 Howard's last known mailing address of record with the Agency is PO Box 2372, Gearhart, OR 97138. Another address on file at the Agency for Howard was 400 Shore Ter, Seaside, OR 97138.

2.3 Certified mailings of the notice of intent were mailed to Howard at her two last known addresses of record (see above) on June 18, 2020. The certified mailings of the notice have not been returned to the Agency. A Domestic Return Receipt was received by the Agency for the certified mailing of the notice addressed to Howard at 400 Shore Ter Seaside, OR 97138. The date of delivery noted on the return receipt was June 22, 2020, and in the "Received By" section it was marked "Covid 19" and was followed by some writing that was illegible.

2.4 The notice was also mailed regular first class mail in a handwritten envelope to both of the above addresses for Howard. The mailings in the handwritten envelope have not been returned to OREA. In accordance with ORS 40.135(1)(q), there is a presumption that the mailing properly addressed and placed with the U.S. Postal Service was delivered. That presumption has not been overcome by any evidence.

2.5 Over twenty (20) days have elapsed since the mailing of the notice and no written request for a hearing has been received.

2.6 According to ORS 696.775, the lapsing, expiration, revocation or suspension of a real estate license, whether by operation of law, order of the Real Estate Commissioner or decision of a court of law, or the inactive status of the license, or voluntary surrender of the license by the real estate licensee does not deprive the commissioner of jurisdiction to: (1) proceed with an investigation of the licensee; (2) conduct disciplinary proceedings relating to the licensee; (3) Take action against a licensee, including assessment of a civil penalty against the licensee for a violation of ORS 696.020(2); or (4) revise or render null and void an order suspending or revoking a license.

2.7 As noted in paragraph 9 of the *Notice of Intent to Revoke*, the Agency's entire investigation file was designated as the record for purposes of presenting a prima facie case upon default, including submissions from Howard and all information in the administrative file relating to the mailing of notices and any responses received.

FINDINGS OF FACT

3.

3.1 At all times mentioned herein, Howard was licensed as a principal broker, doing professional real estate activity under the registered business name Astoria Coast, Inc (Astoria Coast).

3.2 On August 7, 2019, the Agency received a complaint from Cindy Bergquist against Howard. On August 9, 2019, the Agency received another complaint against Howard from Judy Ledyard (Ledyard).

3.3 On September 24, 2019, the Agency opened an investigation.

3.4 Howard maintained clients' trust account ending in #5552, and security deposits account ending in #5560.

3.5 On October 29, 2019, Agency Financial Investigator/Auditor Aaron Grimes (Grimes) interviewed Howard. Howard provided copies of the bank statements for the clients' trust account- security deposits account number ending in #5560 for 2018 and most of 2019, along with the bank statements for the clients' trust account number ending in #5552 for most of 2019. When Grimes requested Howard's most recent reconciliations with supporting documentation, Howard stated they were not completed.

3.6 Howard provided a reconciled bank balance sheet attached to the clients' trust account bank statements for account ending in #5552. In regards to the security deposits account, Howard had calculated reconciled bank balances on some of the security deposits bank statements for account ending in #5560.

3.7 Howard did not have reconciliations for either clients' trust account ending in #5552, or security deposits account ending in #5560 with the required three components contained in a single reconciliation document.

3.8 During the interview with Grimes on October 20, 2019, Howard stated she started 2018 with "fresh numbers" in her software because her numbers were "all scrambled." Howard estimated she needed update her check registers with entries that should have been posted as far back as March 2019, and as far back as April 2019 in the tenants' and owners' ledgers. Howard stated there were rents she need to post to her software, and bills to pay for a couple owners.

3.9 Howard failed to provide check registers for 2018 and 2019 for both clients' trust account and security deposit account for the investigation.

3.10 Prior to this investigation, and dated December 20, 2017, Howard provided the Agency with a list of security deposits held for each tenant. This list was used to compare security deposits amounts held provided by Howard during the investigation.

3.11 Bank statements for the security deposits account ending in #5560 showed the following checks written by Howard without full explanations or supporting documentation:

- April 30, 2018, check #1709 was written to Astoria Coast for \$5,000.00. The check was deposited into the clients' trust account ending in #5552. Howard provided a spreadsheet with explanations of where funds from the security deposits account went after being transferred to the clients' trust account. On the spreadsheet, Howard stated \$1,350.00 of check #1709 was forfeited for cause and noted "DUPRAU TO CARMICHAEL." (Howard's explanation was inconsistent with her December 20, 2017, list of security deposits held for each tenant, where it noted \$0.00 held for Tenant Micah Domingcil (Domingcil), the only tenant for property owner Carmichael Properties, LLC.)
- May 4, 2018, check #1710 was written to Astoria Coast for \$1,000 and deposited into a Clatsop Community Bank Account (Howard's personal bank account). When asked to explain the check, Howard said someone forfeited their deposit to her. Howard's spreadsheet noted a tenant's security deposit was forfeited for cause and another was forfeited for rent, but she only explained \$850.00 of the \$1,000.00 check.
- May 30, 2018, check #1712 was written to Astoria Coast for \$5,000.00 and deposited into the clients' trust account. Howard noted it was for "Transfer Forfeits." Howard explained \$4,970.00 of the \$5,000, being for six tenants who forfeited their deposits and one forfeited for cause. Howard provided the forfeited amount for each of the tenants. The forfeited amounts for six of these tenants when compared to Howard's December 20, 2017, list of security deposits held on behalf of each tenant did not match.

- Over the remainder of 2018 Howard wrote more checks, totaling \$9,000 from the security deposits to the clients trust account. Howard's transfers did not include complete and adequate records to support her explanations.

3.12 Howard stated she had some tenants who asked her to use their security deposit to cover rent with the understanding that the tenants would replenish their security deposits, which didn't happen. When she noted that the security deposit was forfeited for rent, Howard had applied the security deposit to cover a tenant's rent. As of December 31, 2017, Howard held \$31,902.52 in the security deposits ending in #5560. As of December 31, 2018, Howard held \$1,162.50 in the security deposits account ending in #5560.

3.13 Additionally, Howard stated if she was short in the clients' trust account she would sometimes transfer funds from the security deposits account.

3.14 When interviewed on November 15, 2019, Howard said she held deposits totaling \$3,100 for the following three tenants for property owner John Porter: Greg Lessard (Lessard), Yvonne Buckman (Buckman) and Kyle Miller (Miller). Howard submitted ledgers for each of the three tenants. Miller's ledger balance was \$1,209.00, but Howard said Miller paid \$1,200.00. Buckman's ledger balance showed he paid \$1,200.00 and Lessard's ledger balance showed he paid \$700.00.

3.15 The security deposit bank statement for period ending September 30, 2019, shows a balance of \$962.50 in that account.

3.16 Dated September 1, 2019, owner, Judy Ledyard (Ledyard), wrote Howard giving a 60-days' notice to terminate her property management agreement. On October 29, 2019, Howard told the Agency she still owed Ledyard \$850.00 for one months' rent. On November 15, 2019, Howard said Ledyard's account was "still a mess" and printed an owner's ledger that showed Howard owed Ledyard \$3,825.00, with changes Howard made dating back to March 1, 2019.

3.17 On December 13, 2019, Grimes interviewed Ledyard. Ledyard said Howard still owed her \$4,100.00 from four months of rent, less management fees, plus a reserve of \$500.00. As of December 13, 2019, Ledyard had not received any final accounting from Howard or any of the funds she was due. On February 7, 2020, Ledyard took Howard to small claims court in Clatsop County for return of her funds, \$4,100.00.

3.18 All of the above demonstrate incompetence or untrustworthiness in performing acts for which Howard is required to hold a license.

STATEMENT OF LAW

4.

4.1 ORS 696.301(3) which states a real estate licensee's real estate license may be disciplined if they have: ORS 696.301(3) which states a real estate licensee's real estate license may be disciplined if they have: (3) disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or any rule of the Real Estate Agency

4.2 ORS 696.301(12) (2017 and 2019 Editions) which states a licensee's real estate license can be disciplined if they have demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

4.3 ORS 696.301(3) as it incorporates:

a. ORS 696.280(1) (2017 and 2019 Editions) which requires a principal broker to maintain within this state, except as provided in subsection (6) of this section, complete and adequate records of all professional real estate activity conducted by or through the principal real estate broker.

b. ORS 696.890(4)(c),(d), and (e) (2017 and 2019 Editions) which states (4) a real estate property manager owes the property owner the following affirmative duties: (c) to exercise reasonable care and diligence; (d) to account in a timely manner for all funds received from or on behalf of the owner; (e) to account in a fiduciary manner in all matters relating to trust funds.

4.4 ORS 696.301(3) as it incorporates:

a. OAR 863-025-0028(2)(a)(A),(B),(C),(b),(c),(d)(A),(B) and (e) and (3)(a)(A),(B),(C),(b),(c),(d)(A),(B)and (e) (1-1-2018 Edition), which requires a property manager to reconcile each clients' trust account and security deposits account within 30 calendar days of the date of the bank statement with the required 3 components.

b. OAR 863-025-0030(1)(a),(b),(c),(d) (1-1-2018 Edition) states except as provided in section (3) of this rule, all tenants' security deposits received by a property manager must be deposited and maintained in a security deposits account until: (a) the property manager

forwards the tenant's security deposit to the owner of the property according to the terms of the tenant's rental or lease agreement and the property management agreement; (b) the property manager disburses the tenant's security deposit for purposes authorized by the tenant's rental or lease agreement and the property management agreement; (c) the property manager refunds a deposit to the tenant according to the terms of the tenant's rental or lease agreement and the property management agreement; or (d) the property management agreement is terminated and the property manager transfers the tenant's security deposit to the owner unless the owner directs the property manager, in writing, to transfer the security deposits and fees to another property manager, escrow agent, or person.

c. OAR 863-025-0035(1)(d) (1-1-2018 Edition) states (1) the property manager's records the management of rental real estate are "complete and adequate" as required under ORS 696.280 if the records contain, at least the following: (d) a record of receipts and disbursements or check register maintained for each clients' trust account or security deposits account.

d. OAR 863-025-0035(1)(j) (1-1-2018 Edition) states (1) the property manager's records the management of rental real estate are "complete and adequate" as required under ORS 696.280 if the records contain, at least the following: (j) records of the reconciliation of each clients' trust account and security deposits account, including the reconciliation document.

e. OAR 863-025-0040(1) (1-1-2018 Edition) requires a property manager to prepare and maintain a chronological record of receipts and disbursements or a check register for each clients' trust account and each security deposits account in which the manager must record each receipt of funds and each disbursement of funds.

f. OAR 863-025-0040(5) (1-1-2018 Edition) requires upon any activity, the property manager must record each receipt, deposit or disbursement as required in this rule and record each deposit or disbursement on the corresponding owner's ledger as required in OAR 863-025-0050 and/or tenant's ledger as required in 863-025-0050.

g. OAR 863-025-0070(2)(a),(b)(A),(B) (1-1-2018) states not later than 60 days after the effective date of the termination, the property manager must: (a) disburse all obligated funds to the party or parties entitled to the funds; and (b) provide the owner with the following: (A) a final accounting of the owner's ledger account; (B) all funds belonging to the owner as shown

on the owner's ledger, unless the owner directs the property manager, in writing, to transfer the funds to another property manager, escrow agent or person.

ULTIMATE FINDINGS OF FACT

5.

5.1 Howard failed to complete the required monthly three-way reconciliations for clients' trust account ending in #5552, and security deposits account ending in #5560.

5.2 Howard failed to keep the required record of each receipt and disbursement, posted upon any activity.

5.3 Howard transferred \$20,000 out of the security deposits account into the clients' trust account in 2018 without complete and adequate supporting documentation.

5.4 Howard failed to maintain security deposit funds in the security deposits account.

5.5 Howard failed to timely return a final accounting and funds due to Ledyard, despite acknowledging that she owed her at least \$3,825.

5.6 Howard demonstrated incompetence or untrustworthiness in her actions relating to the above violations.

5.7 In summary, the facts above establish grounds to revoke Howard's principal broker license.

CONCLUSIONS OF LAW

6.

6.1 Pursuant to ORS 183.417(4) and OAR 137-003-0670 Howard is in default.

6.2 The material facts establish a violation of a ground for discipline under ORS 696.301 as set forth in the *Notice of Intent to Revoke*.

6.3 Based on these violations, the Agency may revoke Howard's principal broker license.

6.4 Specifically, Howard is subject to discipline pursuant to ORS 696.301(3) and (12). A revocation of Howard's principal broker license is appropriate for violations of ORS 696.301(3) and (12) which states in part a licensee's real estate license may be disciplined if they have: (3) disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or any rule of the Real Estate Agency; and (12)

demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

6.5 A revocation of Howard's principal broker license is appropriate under ORS 696.396(2)(c)(B). According to ORS 696.396(2)(c)(B) the Agency may suspend a real estate license if the material facts establish a violation of a ground of discipline under ORS 696.301 that (B) exhibits incompetence in the performance of professional real estate activity.

6.6 Based on the evidence in the record, the preponderance of the evidence weighs in favor of the revocation of Howard's principal broker license.

OPINION

7.

The Agency takes its consumer protection role very seriously. Howard's violations centered around failing to properly maintain and account for owner and tenant funds under her control, and returning unobligated funds to at least one owner timely. During 2018, \$20,000 was transferred out of the security deposits account. When asked to provide an explanation for each transfer, she provided information which contradicted, and/or failed to completely and adequately explain, the removal of the security deposit funds. Additionally, Howard failed to post owners' and tenants' ledgers upon any activity. In November 2019, Howard admitted she posted activity from as far back as March 2019 to the ledger for an owner. Although "still a mess," according to Howard, the ledger showed the owner was owed \$3,825. To this day, Howard has failed to provide a final accounting and return of the funds to the owner. The above facts and violations noted below show Howard's incompetence in her property management activity. Howard's utter failure to properly account for the funds of others provide a sufficient basis for the revocation of Howard's license.

The specific violations are repeated here below:

(1) Violation: By failing to complete the required monthly three-way reconciliations for clients' trust account ending in #5552, and security deposits account ending in #5560, Howard violated ORS 696.301(3) as it incorporates OAR 863-025-0028(2)(a)(A),(B),(C),(b),(c),(d)(A),(B) and (e) and (3)(a)(A),(B),(C),(b),(c),(d)(A),(B)and (e) (1-

1-2018 Edition), which requires a property manager to reconcile each clients' trust account and security deposits account within 30 calendar days of the date of the bank statement with the required 3 components. Howard also violated ORS 696.301(3) as it incorporates ORS 696.280(1) (2017 and 2019 Editions) and OAR 863-025-0035(1)(j) (1-1-2018 Edition) ORS 696.280(1) requires a principal broker to maintain complete and adequate records of all professional real estate activity conducted by the principal real estate broker. OAR 863-025-0035(1)(j) states (1) the property manager's records the management of rental real estate are "complete and adequate" as required under ORS 696.280 if the records contain, at least the following: (j) records of the reconciliation of each clients' trust account and security deposits account, including the reconciliation document.

(2) Violation: By failing to keep a record of each receipt and disbursement, posted upon any activity, Howard violated ORS 696.301(3) as it incorporates OAR 863-025-0040(1) and (5) (1-1-2018 Edition), ORS 696.280(1) (2017 and 2019 Editions) and OAR 863-025-0035(1)(d) (1-1-2018 Edition). OAR 863-025-0040(1) requires a property manager to prepare and maintain a chronological record of receipts and disbursements or a check register for each clients' trust account and each security deposits account in which the manager must record each receipt of funds and each disbursement of funds. OAR 863-025-0040(5) requires upon any activity, the property manager must record each receipt, deposit or disbursement as required in this rule and record each deposit or disbursement on the corresponding owner's ledger as required in OAR 863-025-0050 and/or tenant's ledger as required in 863-025-0050. OAR 863-025-0035(1)(d) states (1) the property manager's records the management of rental real estate are "complete and adequate" as required under ORS 696.280 if the records contain, at least the following: (d) a record of receipts and disbursements or check register maintained for each clients' trust account or security deposits account.

(3) Violation: By transferring \$20,000 out of the security deposits account into the clients' trust account in 2018 without complete and adequate documentation of where the funds went, Howard violated ORS 696.301(3) as it incorporates ORS 696.890(4)(c), (d), and (e) (2017 Edition) which states (4) a real estate property manager owes the property owner the following affirmative duties: (c) to exercise reasonable care and diligence; (d) to account in a timely

manner for all funds received from or on behalf of the owner; (e) to account in a fiduciary manner in all matters relating to trust funds.

(4) Violation: By failing to maintain security deposit funds in the appropriate security deposits account, Howard violated ORS 696.301(3) as it incorporates OAR 863-025-0030(1)(a),(b),(c),and (d) (1-1-2018 Edition). Additionally, Howard violated ORS 696.301(3) as it incorporates ORS 696.890(4)(c),(d), and (e) (2017 and 2019 Editions). OAR 863-025-0030(1) states except as provided in section (3) of this rule, all tenants' security deposits received by a property manager must be deposited and maintained in a security deposits account until: (a) the property manager forwards the tenant's security deposit to the owner of the property according to the terms of the tenant's rental or lease agreement and the property management agreement; (b) the property manager disburses the tenant's security deposit for purposes authorized by the tenant's rental or lease agreement and the property management agreement; (c) the property manager refunds a deposit to the tenant according to the terms of the tenant's rental or lease agreement and the property management agreement; or (d) the property management agreement is terminated and the property manager transfers the tenant's security deposit to the owner unless the owner directs the property manager, in writing, to transfer the security deposits and fees to another property manager, escrow agent, or person. Per ORS 696.890(4)(c),(d), and (e), a real estate property manager owes the property owner the following affirmative duties: (c) to exercise reasonable care and diligence; (d) to account in a timely manner for all funds received from or on behalf of the owner; (e) to act in a fiduciary manner in all matters relating to trust funds.

(5) Violation: By failing to return a final accounting and funds due to Ledyard, timely, Howard violated ORS 696.301(3) as it incorporates ORS 696.890(4)(c),(d), and (e) (2019 Edition) and OAR 863-025-0070(2)(a),(b)(A),(B) (1-1-2018). ORS 696.890(4)(c),(d),(e) states: (4) a real estate property manager owes the property owner the following affirmative duties: (c) to exercise reasonable care and diligence; (d) to account in a timely manner for all funds received from or on behalf of the owner; (e) to act in a fiduciary manner in all matters relating to trust funds. OAR 863-025-0070(2) states not later than 60 days after the effective date of the termination, the property manager must: (a) disburse all obligated funds to the party or parties entitled to the funds; and (b) provide the owner with the following: (A) a final accounting

of the owner's ledger account; (B) all funds belonging to the owner as shown on the owner's ledger, unless the owner directs the property manager, in writing, to transfer the funds to another property manager, escrow agent or person.

(6) Violation: ORS 696.301(12) (2017 and 2019 Edition) which states a licensee's real estate license can be disciplined if they have demonstrated incompetence or untrustworthiness in performing an act for which the licensee is required to hold a license.

ORDER

IT IS HEREBY ORDERED that Howard's principal broker license be, and hereby is revoked.

Dated this 14th day of July, 2020.

OREGON REAL ESTATE AGENCY

DocuSigned by:

Steven Strode

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Steven Strode

Real Estate Commissioner

NOTICE OF RIGHT TO APPEAL: You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for review within 60 days from the date of service of this order. Judicial review is to the Oregon Court of Appeals, pursuant to the provisions of ORS 183.482.

Certificate of Service

On July 14, 2020, I mailed and emailed the foregoing Final Order By Default issued on this date in Agency Case No. 2019-394 and 2019-434

By: First Class Mail

MARY M HOWARD
400 Shore Ter
Seaside, OR 97138-7837

MARY M HOWARD
P.O. Box 2372
Gearhart, OR 97138

By: Email:

mary@astoriacoast.com

Rick Marsland
Licensing Specialist

REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of

ROSALIE A DIETER

STIPULATED FINAL ORDER

The Oregon Real Estate Agency (Agency) and Rosalie A Dieter (Dieter) do hereby agree and stipulate to the following:

FINDINGS OF FACT
&
CONCLUSIONS OF LAW

1.

1.1 At all times mentioned herein, Dieter was licensed as a principal broker with Blue Chip Properties LLC (BCP).

1.2 On November 25, 2019, the Agency received a written complaint from Mary Boshart (Boshart) against Dieter.

1.3 On September 12, 2019, Boshart entered into a listing agreement with Dieter to sell her real property located at 15721 Highway 101, Brookings, OR, (15721 Highway 101) for the price of \$279,000.

1.4 After a few weeks, Boshart agreed to lower the price to \$199,000 per Dieter's recommendation.

1.5 Dieter made an offer to purchase 15721 Highway 101. On October 7, 2019, Boshart and Dieter entered into a residential sale agreement in which Dieter represented the buyer (Dieter) and the seller (Boshart) on behalf of BCP.

1.6 When Dieter was unable to obtain satisfactory financing, she contacted Boshart to terminate the sale agreement. Dieter admitted she did not obtain Boshart's signature on the termination agreement. She created an electronic signature for Boshart, entered the signature

1 on the termination agreement, and submitted the form on October 24, 2019, to the title
2 company.

3 1.7 On November 3, 2019, Dieter presented an offer to purchase to Boshart from
4 James and Wende Caputo (the Caputos) for \$195,000. Boshart accepted the offer on the
5 same date.

6 1.8 The Caputos could not obtain financing, therefore they terminated the
7 agreement. Dieter handwrote Boshart's signature on the termination agreement for the
8 transaction. Dieter admitted she did not obtain Boshart's signature on the termination
9 agreement.

10 **(1) Violation:** By failing to inform Boshart that her signature was required on two
11 termination agreements and, subsequently, signing Boshart's name on the agreements without
12 her authorization, Dieter violated ORS 696.301(14) (2019 Edition). Per ORS 696.301(14): The
13 Real Estate Commissioner may suspend or revoke the real estate license of any real estate
14 licensee, reprimand any real estate licensee, or deny the issuance or renewal of a license to
15 an applicant who has committed an act of fraud or engaged in dishonest conduct substantially
16 related to the fitness of the applicant or real estate licensee to conduct professional real estate
17 activity, without regard to whether the act or conduct occurred in the course of professional
18 real estate activity.

19 1.9 Dieter admitted she failed to provide signed copies of the residential sale
20 agreements for either of the above referenced transactions to Boshart.

21 **(2) Violation:** By failing to provide signed copies of the residential sale agreements to
22 Boshart, Dieter violated ORS 696.301(3) as it incorporates OAR 863-015-0135(4) (1-1-18
23 Edition). Per OAR 863-015-0135(4): When a licensee receives a written acceptance of an offer
24 or counter-offer to purchase real property, the licensee must deliver within three banking days
25 true, legible copies of the offer or counter-offer, signed by the seller and buyer, to both the
26 buyer and seller.

27 1.10 On October 28, 2019, an offer to purchase was submitted to Dieter by broker
28 Elaine Williams-Smith of Blue Pacific Realty in Brookings, OR for \$149,000. Dieter admitted
29 she did not present the offer to Boshart because Dieter thought the offer was too low.

30 ///

1 **(3) Violation:** By failing to present the offer to purchase real estate to Boshart, Dieter
2 violated ORS 868.301(3) as it incorporates OAR 863-015-0135(2) (1-1-18 Edition), ORS
3 696.805(2)(a) and (b) (2019 Edition), and ORS 696.805(3)(a) and (c) (2019 Edition). Per OAR
4 863-015-0135(2): A real estate licensee must promptly deliver to the offeror or offeree every
5 written offer or counter-offer the licensee receives. Per ORS 696.805(2)(a) and (b): A seller's
6 agent owes the seller, other principals and the principals' agents involved in a real estate
7 transaction the following affirmative duties: (a) To deal honestly and in good faith; (b) To
8 present all written offers, written notices and other written communications to and from the
9 parties in a timely manner without regard to whether the property is subject to a contract for
10 sale or the buyer is already a party to a contract to purchase. Per ORS 696.805(3)(a) and (c):
11 A seller's agent owes the seller involved in a real estate transaction the following affirmative
12 duties: (a) To exercise reasonable care and diligence; (c) To be loyal to the seller by not taking
13 action that is adverse or detrimental to the seller's interest in a transaction.

14 2.

15 2.1 The foregoing violations are grounds for discipline pursuant to ORS 696.301.
16 Based on these violations a reprimand is appropriate for violations of ORS 696.301(3) and
17 (14).

18 2.2 The Agency reserves the right to investigate and pursue additional complaints
19 that may be received in the future regarding this licensee.

20 2.3 In establishing the violations alleged above, the Agency may rely on one or more
21 of the definitions contained in ORS 696.010.

22
23 **STIPULATION & WAIVER**

24 I have read and reviewed the above findings of fact and conclusions of law which have
25 been submitted to me by the Agency and further, the order which follows hereafter. I
26 understand that the findings of fact, conclusions of law and this stipulation and waiver embody
27 the full and complete agreement and stipulation between the Agency and me. I further
28 understand that if I do not agree with this stipulation I have the right to request a hearing on
29 this matter and to be represented by legal counsel at such a hearing. Hearings are conducted
30 in accordance with the procedures set forth in ORS Chapter 183 and in accordance with the

1 Rules of Practice and Procedure adopted by the Attorney General of the State of Oregon. I
2 freely and voluntarily waive my rights to a hearing, to representation by legal counsel at such a
3 hearing, and to judicial review of this matter.

4 I hereby agree and stipulate to the above findings of fact and conclusions of law and
5 understand that the order which follows hereafter may be completed and signed by the Real
6 Estate Commissioner or may be rejected by the Real Estate Commissioner. I understand that,
7 in accordance with the provisions of ORS 696.445(3), notice of this order shall be published in
8 the Oregon Real Estate News Journal.

9 I agree once the Commissioner executes this stipulated order, I will accept service of
10 the final order by email, and hereby waive the right to challenge the validity of service

11 ORDER

12 IT IS HEREBY ORDERED that the principal broker license of Dieter be, and hereby is,
13 reprimanded.

14
15 IT IS SO STIPULATED:

IT IS SO ORDERED:

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17 

18
19 ROSALIE A DIETER

20
21 Date 6/9/2020

DocuSigned by:




22
23 STEVEN STRODE

24 Real Estate Commissioner

25 Date 6/11/2020 | 7:52 AM PDT

26
27 Date of Service: 06/11/2020

REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of)
SHELLEY GRETCHEN CONRAD) STIPULATED FINAL ORDER

The Oregon Real Estate Agency (Agency) and Shelley Gretchen Conrad (Conrad) do hereby agree and stipulate to the following:

FINDINGS OF FACT
&
CONCLUSIONS OF LAW
1.

- 1.1 At all times mentioned herein, Conrad was licensed as a real estate broker with Fisher Nicholson Realty, LLC.
- 1.2 On November 30, 2018, the Agency received a complaint from John King (King) an investigator with the Department of Human Services in the Protective Service/ Elder Abuse Division. The complaint was regarding Conrad’s dealings with Carole Jeanne Chavarria (Chavarria), an elderly individual.
- 1.3 In 2016, Conrad sold Chavarria’s home in Keno and helped her purchase another home in Klamath Falls.
- 1.4 In 2017, Chavarria determined she was unable to care for the Klamath Falls home, so she listed it with Conrad. Conrad sold the home and helped Chavarria move into an assisted living facility. Conrad visited Chavarria regularly and ran errands for her.
- 1.5 Chavarria shared with Conrad that she was unhappy at the assisted living facility and wanted to move out. Conrad showed her some homes, but Chavarria did not like any.
- 1.6 Conrad suggested that Chavarria move in with Conrad and her husband into the house they were having built.

1 1.7 Conrad completed an undated gift letter document for All Seasons Mortgage for
2 the purchase of real estate located at 7818 Scenic View Drive, Klamath Falls, OR (7818
3 Scenic View). The gift letter listed Chavarria as the donor making a gift of \$105,000 to Conrad
4 and her husband to be applied to the purchase of 7818 Scenic View. The gift letter identified
5 Chavarria as Conrad’s “Aunt,” which was untrue.

6 **(1) Violation:** By making a false statement on the gift letter, Conrad violated ORS
7 696.301(12) and (14) (Edition 2017). Per ORS 696.301(12): The Real Estate Commissioner
8 may suspend or revoke the real estate license of any real estate licensee, reprimand any real
9 estate licensee or deny the issuance or renewal of a license to an applicant who has
10 demonstrated incompetence or untrustworthiness in performing any act for which the real
11 estate licensee is required to hold a license. Per ORS 696.301(14): The Real Estate
12 Commissioner may suspend or revoke the real estate license of any real estate licensee,
13 reprimand any real estate licensee or deny the issuance or renewal of a license to an applicant
14 who has committed an act of fraud or engaged in dishonest conduct substantially related to the
15 fitness of the applicant or real estate licensee to conduct professional real estate activity,
16 without regard to whether the act or conduct occurred in the course of professional real estate
17 activity.

18 1.8 On August 14, 2019, Stacy Ellingson, Conrad’s supervising principal broker, was
19 asked if she was aware of the details of this transaction. She said no.

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1 **(2) Violation:** By failing to transmit her professional real estate records to her principal
2 broker for the purchase of 7818 Scenic View, in which she was a principal to the transaction,
3 Conrad violated ORS 696.301(3) as it incorporates OAR 863-015-0145(3) (1-1-18 Edition),
4 which states: (3) Each transaction described in section (1) of this rule of a real estate broker
5 associated with a principal broker must be conducted under the supervision of the licensee's
6 principal broker and all documents and funds must be transmitted through the licensee's
7 principal broker.

8 **(3) Violation:** By failing to transmit her records of professional real estate activity to her
9 principal broker, Conrad also violated ORS 696.301(3) as it incorporates OAR 863-015-
10 0250(1)(c),(d) and (2) (1-1-18 Edition), which states (1) complete and adequate records of
11 professional real estate activity include complete, legible, and permanent copies of all
12 documents required by law or voluntarily generated during a real estate transaction, including
13 all offers received by or through real estate brokers or principal brokers to the client, including,
14 but not limited to, the following: (c) a copy of any written agreement for the listing, sale,
15 purchase, rental, lease, lease option, or exchange of real property generated by a real estate
16 broker or principal broker while engaging in professional real estate activity that must be
17 signed by all parties to such agreement; and (d) a copy of any receipt issued by a real estate
18 broker or principal broker to evidence acceptance of funds or documents; and (2) when a real
19 estate broker receives any document referred to in (1) of this rule, the real estate broker must
20 transmit to the real estate broker's principal broker the document within 3 banking days of real
21 estate broker's receipt of the document.

22 2.

23 2.1 The foregoing violations are grounds for discipline pursuant to ORS 696.301.
24 Based on these violations, a reprimand is appropriate for violations of ORS 696.301(3), (12),
25 and (14).

26 2.2 The Agency reserves the right to investigate and pursue additional complaints
27 that may be received in the future regarding this licensee.

28 2.3 In establishing the violations alleged above, the Agency may rely on one or more
29 of the definitions contained in ORS 696.010.

30 ///

STIPULATION & WAIVER

I have read and reviewed the above findings of fact and conclusions of law which have been submitted to me by the Agency and further, the order which follows hereafter. I understand that the findings of fact, conclusions of law and this stipulation and waiver embody the full and complete agreement and stipulation between the Agency and me. I further understand that if I do not agree with this stipulation I have the right to request a hearing on this matter and to be represented by legal counsel at such a hearing. Hearings are conducted in accordance with the procedures set forth in ORS Chapter 183 and in accordance with the Rules of Practice and Procedure adopted by the Attorney General of the State of Oregon. I freely and voluntarily waive my rights to a hearing, to representation by legal counsel at such a hearing, and to judicial review of this matter.

I hereby agree and stipulate to the above findings of fact and conclusions of law and understand that the order which follows hereafter may be completed and signed by the Real Estate Commissioner or may be rejected by the Real Estate Commissioner. I understand that, in accordance with the provisions of ORS 696.445(3), notice of this order shall be published in the Oregon Real Estate News Journal.

I agree once the Commissioner executes this stipulated order, I will accept service of the final order by email and hereby waive the right to challenge the validity of service.

ORDER

IT IS HEREBY ORDERED that the broker license of Conrad be, and hereby is, reprimanded.

IT IS SO STIPULATED:

IT IS SO ORDERED:

DocuSigned by: Shelley Gretchen Conrad
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Shelley Gretchen Conrad

DocuSigned by: Steven Strode
D141D267DDE14A0...
STEVEN STRODE



Date 6/10/2020 | 4:26 PM PDT

Date 6/11/2020 | 8:48 AM PDT

Date of Service: 06/11/2020

REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of

MATHEW KENT MCVAY



FINAL ORDER BY DEFAULT

PROCEDURAL HISTORY

1.

1.1 On May 28, 2020, the Real Estate Commissioner issued, by certified mail, a *Notice of Intent to Reprimand* the real estate property manager license of Mathew Kent McVay (McVay). The Oregon Real Estate Agency (Agency) sent the Notice of Intent to McVay’s last known address of record with the Agency (1415 Esplanade, Klamath Falls, OR 97601). The *Notice of Intent* was also mailed to McVay by regular first class mail.

1.2 The notice was also emailed to McVay at his email address of record.

1.3 Neither of the mailings have been returned to the Agency. Over 20 (20 days) have elapsed since the mailing of the notice issued in this matter and no written request for hearing has been received.

2.

Based upon the foregoing and upon a review of the above described investigation reports, documents and files, the Real Estate Commissioner finds:

2.1 Oregon Administrative Rule 863-001-0006 states, in part, that a notice of intent is properly served when deposited in the United States mail, registered or certified mail, addressed to the real estate licensee or to any other person having an interest in a proceeding before the Commissioner at the licensee’s or other person’s last known address of record with OREA.

2.2 McVay’s last known address of record with the Agency was 1415 Esplanade, Klamath Falls, OR 97601.

2.3 A certified mailing of the notice of intent was mailed to McVay at his last known address of record on May 28, 2020. The Domestic Return Receipt was signed for by T Alexander on June 1, 2020. The certified mailing of the notice has not been returned to the Agency.

2.4 The notice was also mailed regular first class mail in a handwritten envelope. The mailing in the handwritten envelope has not been returned to OREA. In accordance with ORS 40.135(1)(q), there is a presumption that the mailing properly addressed and placed with the U.S. Postal Service was delivered. That presumption has not been overcome by any evidence.

2.5 Over twenty (20) days have elapsed since the mailing of the notice and no written request for a hearing has been received.

2.6 According to ORS 696.775, the lapsing, expiration, revocation or suspension of a real estate license, whether by operation of law, order of the Real Estate Commissioner or decision of a court of law, or the inactive status of the license, or voluntary surrender of the license by the real estate licensee does not deprive the commissioner of jurisdiction to: (1) proceed with an investigation of the licensee; (2) conduct disciplinary proceedings relating to the licensee; (3) Take action against a licensee, including assessment of a civil penalty against the licensee for a violation of ORS 696.020(2); or (4) revise or render null and void an order suspending or revoking a license.

2.7 As noted in paragraph 9 of the *Notice of Intent to Reprimand*, the Agency's entire investigation file was designated as the record for purposes of presenting a prima facie case upon default, including submissions from McVay and all information in the administrative file relating to the mailing of notices and any responses received.

FINDINGS OF FACT

3.

3.1 At all times mentioned herein, McVay was licensed as a real estate property manager doing business under First Choice Property Management, Inc., (First Choice).

3.2 On May 10, 2019, First Choice was selected for a reconciliation mail in review and was required to submit the December 2018 reconciliation for security deposit account ending in #4988.

3.3 On June 7, 2019, First Choice submitted their December 2018 reconciliation documents for two security deposit accounts, ending in #4988 and #4251. On October 15, 2019, the Agency opened an investigation.

3.4 The reconciliation document for December 2018 for security deposits account ending in #4988 showed the following:

- Reconciled bank balance: \$152,921.21
- Check register: \$152,921.21
- Tenant ledger balance: \$152,921.21

3.5 The reconciliation document for December 2018 for security deposits account ending in #4251 showed the following:

- Reconciled bank balance: \$300,000.00
- Check register balance: \$300,000.00
- Tenant ledger balance: \$300,000.00

3.6 The December 2018 reconciliation form for account ending in #4251 showed the check register balance as \$300,000.00, however, the supporting check register showed an ending balance of \$452,921.21 balance. The check register showing the balance of \$452,921.21 included \$152,921.21 which was held in a separate security deposits account ending in #4988.

3.7 McVay maintained one check register for two separate security deposits accounts ending in #4988 and #4251.

3.8 The December 2018 reconciliation form for security deposits account ending in #4251 does not list the date the document was prepared. McVay signed the December 2018 reconciliation on August 2, 2019, not within 30 days of the bank statement as required.

3.9 The December 2018 reconciliation form for security deposits account ending in #4988 lists a date of January 25, 2019. The reconciliation was signed by McVay on August 2, 2019.

3.10 The September 2019 reconciliation form for security deposit account ending in #4988 indicates \$47.28 in checks were purchased using funds from the account. A note on the form stated “\$47.28 – Check charge to be reimbursed to account by First Choice Office Account 10/2019.” The \$47.28 is also reflected in the “Reconciliation Report” as a bank adjustment for a check fee charge under “Cleared Checks and other Decreases.”

3.11 The September 2019 security deposits account ending in #4988 “Reconciliation Report” indicates thirteen unreconciled transactions/outstanding deposits totaling \$13,501.00. The unreconciled transactions/outstanding deposits date back to April 30, 2013 and include transactions that remain outstanding from 2014, 2015, 2016, 2018 and 2019. Explanations were provided for two of the thirteen unreconciled transactions, no explanations were provided for the remaining eleven transactions/deposits.

3.12 McVay was unsure why the deposits remained outstanding for so long and believed they were errors on his part.

3.13 McVay wrote a check for \$13,501.00 to offset the outstanding transactions while continuing to research the deposits. On October 25, 2019, McVay provided a receipt indicating the \$13,501.00 was deposited into security deposits account ending in #4988.

STATEMENT OF LAW

4.

4.1 ORS 696.301(3) which states a real estate licensee’s real estate license may be disciplined if they have: ORS 696.301(3) which states a real estate licensee’s real estate license may be disciplined if they have: (3) disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or any rule of the Real Estate Agency

4.2 ORS 696.301(3) as it incorporates:

a. ORS 696.241(5) (2019 Edition) states a principal real estate broker or licensed property manager may not commingle other funds with the trust funds held in a clients’ trust account, except for: (a) earned interest on a clients’ trust account as provided in subsections (7) and (8) of this section; and (b) earned compensation as provided in subsection (9) of this section.

4.3 ORS 696.301(3) as it incorporates:

a. OAR 863-025-0025(22) (4-1-2013, 5-15-2014 and 11-15-2016 Editions) states a property manager must take corrective action to resolve all adjustments made in a reconciliation prior to the next reconciliation or document the good faith efforts the property manager has taken to resolve the adjustment.

b. OAR 863-025-0028(3)(a)(B) (1-1-2018 Edition), which states (3) A property manager must reconcile each security deposits account within 30 calendar days of the bank statement date pursuant to the requirements contained in this section. (a) The reconciliation must have three components that are contained in a single reconciliation document: (B) The balance in the records of receipts and disbursements or the check register as of the date of the bank statement.

c. OAR 863-025-0028(3)(d)(A)(B) (1-1-2018 Edition), which states (3) a property manager must reconcile each security deposits account within 30 calendar days of the bank statement date pursuant to the requirements contained in this section. (d) Within 30 calendar days of the date of the bank statement, the property manager must; (A) Complete the reconciliation document; and (B) Sign and date the reconciliation document attesting to the accuracy and completeness of the reconciliation.

d. OAR 863-025-0028(3)(d)(B) (1-1-2018 Edition), which states (3) a property manager must reconcile each security deposits account within 30 calendar days of the bank statement date pursuant to the requirements contained in this section. (d) Within 30 calendar days of the date of the bank statement, the property manager must; (B) Sign and date the reconciliation document attesting to the accuracy and completeness of the reconciliation.

e. OAR 863-025-0028(4) (1-01-2018 Edition) states a property manager must take corrective action to resolve all adjustments made in a reconciliation prior to the next reconciliation or document the good faith efforts the property manager has taken to resolve the adjustment.

f. OAR 863-025-0040(1) (1-1-2018 Edition) which states except as provided in section (4) of this rule, a property manager must prepare and maintain a chronological record of receipts and disbursements or a check register for each clients' trust account and each

security deposits account in which the manager must record each receipt of funds and each disbursement of funds.

g. OAR 863-025-0065(6) (1-1-2018 Edition) states a property manager may not deposit any funds received on behalf of an owner in the property manager's personal account or commingle any such funds received with personal funds of the property manager.

ULTIMATE FINDINGS OF FACT

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5.1 McVay failed to maintain a separate check register for clients' trust account ending in #4251.

5.2 McVay failed to include the date the December 2018 reconciliation form was prepared. McVay signed the December 2018 reconciliation form security deposits account ending in #4251 on August 2, 2019.

5.3 McVay signed the December 2018 reconciliation form for security deposits account ending in #4988 on August 2, 2019.

5.4 McVay purchased \$47.28 in checks in September 2019 with funds from security deposits account ending in #4988.

5.5 McVay failed to take corrective action to resolve the 13 outstanding deposits totaling \$13,501.00 dating back to 2014, 2015, 2016, 2018 and 2019.

5.6 In summary, the facts above establish grounds to reprimand McVay's property manager license.

CONCLUSIONS OF LAW

6.

6.1 Pursuant to ORS 183.417(4) and OAR 137-003-0670 McVay is in default.

6.2 The material facts establish a violation of a ground for discipline under ORS 696.301 as set forth in the *Notice of Intent to Reprimand*.

6.3 Based on these violations, the Agency may reprimand McVay's property manager license.

6.4 Specifically, McVay is subject to discipline pursuant to ORS 696.301(3) which states in part a licensee's real estate license may be disciplined if they have: (3) disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or any rule of the Real Estate Agency.

6.5 A reprimand is appropriate for violations of ORS 696.301(3).

6.6 Based on the evidence in the record, the preponderance of the evidence weighs in favor of the reprimand of McVay's property manager license.

6.7 The Agency may, therefore, reprimand McVay's property manager license.

OPINION

7.

The Agency takes its consumer protection role very seriously. McVay's violations center around his trust account accounting and reconciliation responsibilities. Most serious of the violations is McVay's failure to take corrective action to resolve the 13 outstanding deposits dating back to 2014, 2015, 2016, 2018 and 2019. Managing and properly accounting for trust funds is a serious responsibility for anyone engaged in property management activity. McVay's failures regarding his trust accounting and reconciliations provide sufficient basis for a reprimand of his license.

The specific violations are repeated here below:

(1) Violation: By not maintaining a separate check register for security deposits account ending in #4251, McVay violated ORS 696.301(3) as it incorporates OAR 863-025-0028(3)(a)(B) (1-1-2018 Edition), which states (3) A property manager must reconcile each security deposits account within 30 calendar days of the bank statement date pursuant to the requirements contained in this section. (a) The reconciliation must have three components that are contained in a single reconciliation document: (B) The balance in the records of receipts and disbursements or the check register as of the date of the bank statement. McVay also violated ORS 696.301(3) as it incorporates OAR 863-025-0040(1) (1-1-2018 Edition) which states except as provided in section (4) of this rule, a property manager must prepare and maintain a chronological record of receipts and disbursements or a check register for each

clients' trust account and each security deposits account in which the manager must record each receipt of funds and each disbursement of funds.

(2) Violation: By not including the date the reconciliation from document was prepared by and by signing the December 2018 reconciliation for security deposits account ending in #4251 on August 2, 2019, McVay violated ORS 696.301(3) as it incorporates OAR 863-025-0028(3)(d)(A)(B) (1-1-2018 Edition), which states (3) a property manager must reconcile each security deposits account within 30 calendar days of the bank statement date pursuant to the requirements contained in this section. (d) Within 30 calendar days of the date of the bank statement, the property manager must; (A) Complete the reconciliation document; and (B) Sign and date the reconciliation document attesting to the accuracy and completeness of the reconciliation.

3) Violation: By signing the December 2018 reconciliation form for security deposits account ending in #4988 on August 2, 2019, McVay violated ORS 696.301(3) as it incorporates OAR 863-025-0028(3)(d)(B) (1-1-2018 Edition), which states (3) a property manager must reconcile each security deposits account within 30 calendar days of the bank statement date pursuant to the requirements contained in this section. (d) Within 30 calendar days of the date of the bank statement, the property manager must; (B) Sign and date the reconciliation document attesting to the accuracy and completeness of the reconciliation.

(4) Violation: By purchasing \$47.28 in checks in September 2019 with funds from security deposits account ending in #4988, McVay violated ORS 696.301(3) as it incorporates ORS 696.241(5) (2019 Edition) and OAR 863-025-0065(6) (1-1-2018 Edition) ORS 696.241(5) states a principal real estate broker or licensed property manager may not commingle other funds with the trust funds held in a clients' trust account, except for: (a) earned interest on a clients' trust account as provided in subsections (7) and (8) of this section; and (b) earned compensation as provided in subsection (9) of this section. OAR 863-025-0065(6) states a property manager may not deposit any funds received on behalf of an owner in the property manager's personal account or commingle any such funds received with personal funds of the property manager.

(5) Violation: By failing to take corrective action to resolve the 13 outstanding deposits totaling \$13,501.00 dating back to 2014, 2015, 2016, 2018 and 2019, McVay violated ORS

696.301(3) as it incorporates OAR 863-025-0025(22) (4-1-2013, 5-15-2014 and 11-15-2016 Editions) and OAR 863-025-0028(4) (1-01-2018 Edition), which states a property manager must take corrective action to resolve all adjustments made in a reconciliation prior to the next reconciliation or document the good faith efforts the property manager has taken to resolve the adjustment.

ORDER

IT IS HEREBY ORDERED that McVay's property manager license be, and hereby is reprimanded.

Dated this 30th day of June, 2020.

OREGON REAL ESTATE AGENCY

DocuSigned by:

Steven Strode

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Steven Strode

Real Estate Commissioner

NOTICE OF RIGHT TO APPEAL: You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for review within 60 days from the date of service of this order. Judicial review is to the Oregon Court of Appeals, pursuant to the provisions of ORS 183.482.

Certificate of Mailing

On June 30, 2020, I mailed the foregoing Final Order By Default issued on this date in Agency Case No. 2019-484.

By: First Class Mail

MATHEW KENT MCVAY
1415 ESPLANADE
KLAMATH FALLS, OR 97601-0000

By: Email:

matt@1stcpm.com

Rick Marsland
Licensing Specialist

REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of

NOELLE P. FRIESEN

STIPULATED FINAL ORDER

The Oregon Real Estate Agency (Agency) and Noelle P. Friesen (Friesen) do hereby agree and stipulate to the following:

FINDINGS OF FACT

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CONCLUSIONS OF LAW

1.

1.1 Friesen was licensed as a property manager working under the registered business name of NPF Properties.

1.2 On February 7, 2019, the Agency sent Friesen a mandatory clients' trust account reconciliation review for clients' trust account (CTA) ending in #9586, requesting reconciliation documents for October 2018.

1.3 On March 5, 2019, Friesen had a meeting with Agency Compliance Coordinator Deanna Hewitt (Hewitt) at the Agency. At the meeting, it was discovered that Friesen had no clients' trust account records and had been doing all accounting on her phone.

1.4 Clients' trust account ending in #9586 was actually NPF's business operating account and not a true clients' trust account. According to Friesen, rents, security deposits and disbursements were run through her personal and business accounts.

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1 **(1) Violation:** By using clients' trust account ending in #9586 as both a business operating
2 account and clients trust account (holding both trust funds and funds belonging to Friesen),
3 Friesen violated ORS 696.301(3) as it incorporates ORS 696.241(5) (2017 Edition), which
4 states a licensed real estate property manager may not commingle any other funds with the
5 trust funds held in a clients' trust account.

6 1.5 On March 11, 2019, Friesen opened two new clients' trust accounts: NPF
7 Properties Clients' Trust Account ending in #3274, and NPF Properties Client's Trust Account-
8 Security Deposits ending in #3282. Friesen closed clients' trust account ending in #9586 on
9 March 15, 2019.

10 1.6 Hewitt requested that Friesen check in with her on March 21, 2019, and provide
11 the required reconciliation documents for the reconciliation review. Friesen failed to provide
12 the required documents and an investigation was opened.

13 1.7 Friesen did not have the required records for any of her clients' trust accounts or
14 security deposit accounts.

15 **(2) Violation:** Friesen failed to maintain the required records for clients' trust account
16 ending in # 9586, clients' trust account ending in #3274, and security deposits account ending
17 in #3282, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0035(1)(b)
18 (1/01/2018 Edition). OAR 863-025-0035(1)(b) states the property manager's records of the
19 management of rental real estate are "complete and adequate" as required under ORS
20 696.280 if the records contain, at least, the following: (b) clients' trust account and security
21 deposit account records required by OAR 863-025-0000 to 863-025-0080 and ORS Chapter
22 696.

23 1.8 On June 11, 2019, Agency Financial Investigator/Auditor Liz Hayes (Hayes) left a
24 demand letter with Friesen requiring her to produce April 2019 reconciliations including all
25 supporting documentation for clients' trust account ending in #3274 and security deposit
26 account ending in #3282.

27 1.9 As of July 10, 2019, Friesen failed to provide all of the requested April 2019
28 reconciliation documents.

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1 1.10 As of July 10, 2019 Friesen had not provided the required reconciliation
2 documents related to the mandatory reconciliation review for clients' trust account ending in
3 #9586.

4 **(3) Violation:** By failing to provide all of the requested reconciliation documents for clients'
5 trust account ending in # 9586 and #3274, and security deposits account ending in #3282,
6 Friesen violated ORS 696.301(3) as it incorporates OAR 863-025-0035(2)(a) (1/1/2018
7 Edition), which states: (2) a property manager must produce records required under section (1)
8 of this rule for inspection by the Agency as follows: (a) When the Agency makes a request for
9 production of property management records, the property manager must provide such records
10 within no less than five banking days.

11 1.11 Friesen owners' ledgers lacked some of the required identifying information.
12 The following detail was lacking:

- 13 • Check number or other unique series of letters and/or numbers for
- 14 deposits
- 15 • The date of deposit
- 16 • Date funds are disbursed
- 17 • The check number or bank generated electronic checking number for
- 18 disbursements
- 19 • Payee of disbursement
- 20 • Balance after each recorded entry.

21 **(4) Violation:** By failing to have the required identifying information on her owners' ledgers,
22 Friesen violated ORS 696.301(3) as it incorporates violates OAR 863-025-
23 0055(3)(b)(C),(D),(c)(A),(C),(D), and (E) (1/01/2018 Edition), which states: (3) all owners
24 ledgers must contain at least the following information: (b) for each deposit of funds: (C) the
25 check number, cash receipt number or a unique series of letters and/or numbers and letter to
26 establish an audit trail; and (D)the date funds were deposited; (c) for each disbursement of
27 funds: (A) the date funds were disbursed; (C) the check number or bank generated tracking
28 number; (D) the payee; and (E) the purpose of the disbursement.

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1 1.12 Friesen was requested to provide a copy of her tenant ledgers. However, she
2 only provided a handwritten total of Tenants' ledger. According to the documentation, Friesen
3 managed 21 property in April 2019, and held 9 security deposits totaling \$27,495.00. The
4 bank records for the security deposit account ending in #3282 had an ending balance of
5 \$32,593.82 for April 2019. The \$5,098.82 difference between the bank statement and the total
6 of Tenants' ledger was unexplained. Friesen did not provide copies of individual tenant
7 ledgers.

8 **(5) Violation:** By failing to prepare and maintain individual tenant ledgers Friesen violated
9 ORS 696.301(3) as it incorporates OAR 863-025-0050(1))(1/01/2018 Edition), which states
10 except as provided in section (3) of this rule, a property manager must prepare and maintain at
11 least one tenant's ledger for each tenant or individual from whom the property manager has
12 received any funds under a property management agreement, whether or not the tenant has
13 executed a written rental or lease agreement at the time of the payment of funds to the
14 property manager.

15 **(6) Violation:** By having an unexplained difference in the ending April 2019 bank statement
16 balance compared to the total of tenants' ledgers for April 2019 of \$5,098.82 Friesen violated
17 ORS 696.301(3) as it incorporates OAR 863-025-0028(3)(b) (1/01/2018 Edition), which states:
18 (3) a property manager must reconcile each security deposits account within 30 calendar days
19 of the bank statement date pursuant to the requirements contained in this section. (b) the
20 balances of each component in section (3)(a) of this rule must be equal to and reconciled with
21 each other. If any adjustment is needed, the adjustment must be clearly identified and
22 explained in the reconciliation document.

23 1.13 The total of Tenants' Ledgers showed that the property owners of 10922 SW 65th
24 Ave. Portland, Oregon and 3601 SW River Parkway #2106 Portland, Oregon, held the tenant
25 security deposits. However, the tenant lease agreements both stated the security deposit will
26 be held by the landlord. The property management agreements for both properties failed to
27 note the security deposits were owner held.

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1 **(7) Violation:** By having inconsistencies between the total of Tenant's Ledgers, property
2 management agreements and the tenant lease agreements regarding who was holding the
3 security deposits Friesen violated ORS 696.301(3) as it incorporates OAR 863-025-0045(1)(c)
4 (1/01/2018 Edition) and OAR 863-025-0030(1)(a) (1-1-2018). OAR 863-025-0045(1)(c) states
5 (1) the property manager must file and maintain legible copies of all tenant rental or lease
6 agreements for the time period required under OAR 863-025-0035. Each tenant rental or
7 lease agreement prepared by a property manager for residential real estate must contain, in
8 addition to and not in lieu of any applicable requirements of the Residential Landlord and
9 Tenant Act, the following: (c) the amount of and reason for all funds paid by the tenant to the
10 property manager including but not limited to, funds for rent, conditionally refundable security
11 deposits including whether held by the property manager or the property owner, and any fees
12 or other charges. OAR 863-025-0030(1)(a) (1/01/2018 Edition), which states except as
13 provided in section (3) of this rule, all tenants' security deposits received by a property
14 manager must be deposited and maintained in a security deposits account until (a) the
15 property manager forwards the tenant's security deposit to the owner of the property according
16 to the terms of the tenant's rental or lease agreement and the property management
17 agreements.

18 1.14 In March 2019, Friesen opened clients' trust account ending in #3274 and
19 security deposits account ending in #3282 and transferred \$25.00 to each account from NPF
20 Properties operating account ending in #9586.

21 **(8) Violation:** By using her own funds to open clients trust account ending in #3274 and
22 security deposits account ending in #3282 Friesen violated ORS 696.301(3) as it incorporates
23 OAR 863-025-0025(5)(a) and (8)(a) (1/01/2018 Edition), which states: (5) Only the following
24 funds may be held in a clients' trust account: (a) funds received by a property manager on
25 behalf of an owner. (8) Only the following funds may be held in a security deposits account: (a)
26 security deposits as defined in OAR 863-025-0010. Friesen also violated ORS 696.301(3) as
27 it incorporates ORS 696.241(5) (2017 Edition) which states a principal real estate broker or
28 licensed real estate property manager may not commingle any other funds with the trust funds
29 held in a clients' trust account.

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1 1.15 In May 2019, there were six rent deposits totaling \$5,000.00 made to Friesen's
2 personal account ending in #2405. In June 2019 there were five rent deposits totaling
3 \$4,500.00 made to Friesen's personal account ending in #2405.

4 1.16 On May 23, 2019, Friesen transferred \$9,000.00 from clients' trust account
5 ending in #3274 to her personal account ending in #2405 to pay for two owner distributions
6 and an HVAC repair totaling only \$4,749.00.

7 **(9) Violation:** By putting owner trust funds in her personal account ending in #2405,
8 Friesen violated ORS 696.301(3) as it incorporates OAR 863-025-0065(6) (1/01/2018 Edition),
9 which states: A property manager may not deposit any funds received on behalf of an owner in
10 the property manager's personal account or commingle any such funds received with personal
11 funds of the property manager.

12 1.17 NPF Property's website stated that Friesen had been in the property
13 management industry since 2001 and that she started her own management company in 2003.
14 Friesen did work as a leasing consultant around 2001-2002 and worked her way up to
15 assistant manager. Friesen did not become licensed in Oregon as a property manager until
16 April 2015.

17 **(10) Violation:** By claiming to have started her own management company in 2003 which
18 was untrue, Friesen violated ORS 696.301(4) which states a licensee's real estate license may
19 be subject to discipline if they knowingly or recklessly published materially misleading or
20 untruthful advertising. Additionally, Friesen purported to be in the property management
21 business when she was unlicensed to do so in violation of ORS 696.301(3) as it incorporates
22 ORS 696.020(2) (2017 Edition), which states: An individual may not engage in, carry on,
23 advertise or purport to engage in or carry on professional real estate activity, or act in the
24 capacity of a real estate licensee, within this state unless the individual holds an active license.

25 1.18 From April 16, 2017 to September 26, 2017, NPF Properties was inactive with
26 the Oregon Secretary of State while the registered business name remained active with the
27 Agency.

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1 **(11) Violation:** By failing to renew her business with the Oregon Secretary of State and
2 allowing it to become inactive, Friesen violated ORS 696.301(3) as it incorporates OAR 863-
3 024-0095(1) (11/15/2016 Edition), which requires a property manager to register a business
4 name with the Agency before conducting business in a name other than the licensee’s legal
5 name. For the purposes of this rule, “business name” means an assumed name or the name of
6 a business entity, such as a corporation, partnership, limited liability company, or other
7 business entity recognized by law. A licensee must maintain the registered business name
8 with the Oregon Secretary of State’s Corporation Division.

9 1.19 On November 29, 2016, Friesen completed her first active license renewal. She
10 took 11 classes, one being the 3 hour Law and Rule Required Course. She took a total of 32.5
11 hours, but failed to take the required 27- hour Property Manager Advanced Practices Course.
12 When this was pointed out to Friesen during the investigation, she completed the course and
13 provided a copy of her certificate of completion to Hayes.

14 **(12) Violation:** By failing to take the required 27-hour Property Manager Advanced Practices
15 course for her first active renewal Friesen violated ORS 696.301(3) as it incorporates OAR
16 863-020-0010(3)(b) 11/15/2016 Edition, which states: (3) to renew an active license for the first
17 time or before the first license reactivation following an inactive first renewal, a real estate
18 broker and a licensed real estate property manager must comply with the following: (b) a
19 licensed real estate property manager must complete the 27-hour property manager advanced
20 practices course described in OAR 863-022-0022. Additionally Friesen violated ORS
21 696.301(3) as it incorporates ORS 696.174(1)(b)(B) (2015 Edition), which states (1)to renew
22 an active license, a real estate licensee must complete 30 hours of real estate continuing
23 education courses that are eligible for credit under ORS 696.182 during the two years
24 preceding the renewal. The 30 hours must include: (b)(B) if a licensed real estate property
25 manager is reviewing an active license for the first time, an advanced course in property
26 management practices approved by the agency.

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1 1.20 On November 30, 2018, Friesen completed her second active renewal. On the
2 renewal application Friesen entered in her continuing education. For the courses entered in, it
3 showed Friesen completed her courses in October and November 2018. However, in
4 reviewing the certificates of completion, only one class was completed prior to her renewal,
5 “Building Green.” The rest of her continuing education was completed in February 2019,
6 which was after her renewal.

7 **(13a) Violation:** By failing to complete the required continuing education prior to her 2018
8 renewal, Friesen violated ORS 696.301(3) as it incorporates ORS 696.174(1) (2017 Edition)
9 which states to renew an active license, a real estate licensee must complete 30 hours of real
10 estate continuing education courses that are eligible for credit under ORS 696.182 during the
11 two years preceding the renewal.

12 **(13b) Violation:** By failing to complete the required courses prior to renewal Friesen violated
13 ORS 696.301(3) as it incorporates OAR 863-020-0010(2)(a) and (b) which states (2) to renew
14 an active license, a real estate licensee must provide course information in an online renewal
15 application which demonstrates that the license (a) has completed at least 27 hours of real
16 estate continuing education that are eligible for credit under OAR 863-0020-0035 and 863-020-
17 0040 during the two years preceding renewal and (b) has completed the Board-approved
18 three-hour law and rule required course on recent changes in a real estate rule and law
19 described in OAR 863-022-0055.

20 **(13c) Violation:** By falsely attesting to completing the continuing education prior to her
21 November 2018 renewal Friesen violated ORS 696.301(3) as it incorporates OAR 863-020-
22 0010(5) (1-1-2018 Edition) which states A licensee who falsely certifies that the licensee has
23 completed the required continuing education violates section (2) of this rule and subject to
24 discipline under ORS 696.301. Additionally, Friesen engaged in dishonest conduct
25 substantially related to the fitness of a licensee to conduct professional real estate activity, in
26 violation of ORS 696.301(14) (2017 Edition).

27 1.21 There was no NPF Properties sign posted at Friesen’s main office.

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1 **(14) Violation:** By failing to have the main office designated by a sign, Friesen violated ORS
2 696.301(3) as it incorporates ORS 696.200(1)(c) (2017 Edition), which states (1) a licensed
3 real estate property manager or principal real estate broker shall: (c) designate the main office
4 by a sign that contains the name under which the real estate licensee conducts professional
5 real estate activity as provided in ORS 696.026.

6 1.22 On May 22, 2019, the “Featured Properties” page on NPF Properties’ website it
7 appeared there were 31 properties available. Friesen provided a list of properties she
8 currently managed at that time, totaling only 26. Of the 31 properties listed on the website, 11
9 of the properties were no longer managed by Friesen.

10 **(15) Violation:** By having 11 properties listed on NPF Properties’ website that Friesen no
11 longer managed she violated ORS 696.301(3) as it incorporates OAR 863-025-0020(1)
12 (1/01/2018 Edition), which states: A property manager must not engage in the management of
13 rental real estate without a written, unexpired property management agreement between the
14 owner and the property manager. In doing so, Friesen engaged in dishonest conduct
15 substantially related to the fitness of a licensee to conduct professional real estate activity, in
16 violation of ORS 696.301(14) (2017 Edition). Friesen also violated ORS 696.301(3) as it
17 incorporates ORS 696.301(4) (2017 Edition), which states: a licensee’s real estate license may
18 be subject to discipline if they knowingly or recklessly published materially misleading or
19 untruthful advertising.

20 1.23 All of the above demonstrates incompetence or untrustworthiness in performing
21 acts for which Friesen is required to hold a license.

22 **(16) Violation:** ORS 696.301(12) (2017 and 2015 Editions) which states a licensee’s real
23 estate license may be disciplined if they have demonstrated incompetence or
24 untrustworthiness in performing any act for which the licensee is required to hold a license.

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2.1 The foregoing violations are grounds for discipline pursuant to ORS 696.301. Based on these violations a reprimand is appropriate for violations of ORS 696.301(3),(4), (12), and (14).

2.2 The Agency reserves the right to investigate and pursue additional complaints that may be received in the future regarding this licensee.

2.3 In establishing the violations alleged above, the Agency may rely on one or more of the definitions contained in ORS 696.010.

2.4 According to ORS 696.775, the lapsing, expiration, revocation or suspension of a real estate license, whether by operation of law, order of the Real Estate Commissioner or decision of a court of law, or the inactive status of the license, or voluntary surrender of the license by the real estate licensee does not deprive the commissioner of jurisdiction to: (1) proceed with an investigation of the licensee; (2) conduct disciplinary proceedings relating to the licensee; (3) Take action against a licensee, including assessment of a civil penalty against the licensee for a violation of ORS 696.020(2); or (4) revise or render null and void an order suspending or revoking a license.

STIPULATION & WAIVER

I have read and reviewed the above findings of fact and conclusions of law which have been submitted to me by the Agency and further, the order which follows hereafter. I understand that the findings of fact, conclusions of law and this stipulation and waiver embody the full and complete agreement and stipulation between the Agency and me. I further understand that if I do not agree with this stipulation I have the right to request a hearing on this matter and to be represented by legal counsel at such a hearing. Hearings are conducted in accordance with the procedures set forth in ORS Chapter 183 and in accordance with the Rules of Practice and Procedure adopted by the Attorney General of the State of Oregon. I freely and voluntarily waive my rights to a hearing, to representation by legal counsel at such a hearing, and to judicial review of this matter.

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///

1 I hereby agree and stipulate to the above findings of fact and conclusions of law and
2 understand that the order which follows hereafter may be completed and signed by the Real
3 Estate Commissioner or may be rejected by the Real Estate Commissioner. I understand that,
4 in accordance with the provisions of ORS 696.445(3), notice of this order shall be published in
5 the Oregon Real Estate News Journal.

6 I agree once the Commissioner executes this stipulated order, I will accept service of
7 the final order by email, and hereby waive the right to challenge the validity of service.

8 ORDER

9 IT IS HEREBY ORDERED that Friesen’s property manager license be, and hereby is
10 reprimanded.

11 IT IS FURTHER ORDERED that Friesen complete a minimum of a three hour course on
12 the subject matter of handling and accounting for client trust funds. Friesen must submit a
13 certificate showing completion of the course to the Agency. This documentation must be
14 submitted to the Agency no later than six months from the date the Commissioner signs this
15 stipulated order.

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1 IT IS FURTHER ORDERED that Friesen submits reconciliations and supporting
2 documentation for clients trust account ending in #3274 and security deposits account ending
3 in #3282 for the months of October 2020, January 2021, April 2021, and July 2021. These
4 reconciliations and supporting documentation must be submitted to Agency Compliance
5 Coordinator Rob Pierce for review.

- 6 • The October 2020 reconciliations for both clients' trust account ending in #3274 and
7 security deposits account ending in #3282 must be submitted to the Agency by
8 November 30, 2020.
- 9 • The January 2021 reconciliations for both clients' trust account ending in #3274 and
10 security deposits account ending in #3282 must be submitted to the Agency by
11 March 1, 2021.
- 12 • The April 2021 reconciliations for both clients' trust account ending in #3274 and
13 security deposits account ending in #3282 must be submitted to the Agency by
14 June 1, 2021.
- 15 • The July 2021 reconciliations for both clients' trust account ending in #3274 and security
16 deposits account ending in #3282 must be submitted to the Agency by August 31,
17 2021.

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19 IT IS SO STIPULATED:

IT IS SO ORDERED:

20
21 DocuSigned by:
22 Noelle P. Friesen
23 7C82A27C231B430
NOELLE P. FRIESEN

21
22 DocuSigned by:
23 Steven Strode
24 D141D267DDE14A0...
STEVEN STRODE



24
25 Date 7/3/2020 | 1:09 PM PDT

Real Estate Commissioner
25 Date 7/6/2020 | 9:31 AM PDT

26
27 Date of Service: 07/06/2020

**REAL ESTATE BOARD
ADMINISTRATIVE SERVICES DIVISION REPORT
August 3, 2020**

Section Overview

The Administrative Services Division acts as business support for the Agency overall. This division manages budget preparation, accounting, purchasing and contracting, inventory control, facilities, payroll, human resources, special projects, information technology (IT) and communications.

Budget Update

Financials: The Legislative Adopted Budget for the 2019-2021 biennium is **\$ 8.5 million**. The Agency cash balance as of July 24th is **\$ 3.99 million**. To date in the current biennium (July 2019 – August 2021) Agency revenue continues to hover around \$420,000 per month. After expenses, this leaves the Agency with a monthly revenue surplus of \$105,000, on average. The Agency continues to see consistency in the revenue stream for the time being. However given that over 70% of Agency revenue is driven by renewals, declines will be gradual to start and mount over time, most likely beginning over the next six months and fall steeper in the next one to four years. Now that the economic effects of the pandemic are breaching beyond retail and hospitality, with recent layoffs, corporate divestiture and salary cuts at Oregon's largest employers (Nike, Daimler, OHSU), signs are indicating deeper economic wounds which are likely to reach the real estate industry as an aftershock.

The Agency has just submitted the Agency Request Budget for the 2021-2023 biennium. This exercise takes the Agency beyond the analysis of what activity looks like today and in the near term, to the forward thinking projection of what could be in one to three years' time and beyond, under extremely uncertain conditions. The Great Recession of 2008 does offer the Agency a road map. From the last severe economic downturn, we see a long gradual but persistent slide in revenue due to low levels of new entrants and high lapse rates. Overall license numbers reduced by 30% between 2008 and 2011. At the height of licensing pre-Great Recession there was \$4.6 million in cash reserves. In today's dollars that is \$5.5 million. We sit just under \$4 million in reserves now. There is potential for this downturn to be even greater than what was seen in 2008 and our cash reserves remain crucial to maintaining operations through the next five to seven years to come with less time in the reserve building phase than will likely be needed. Accounting for the declines in licensing beginning in July 2021 and continuing to recede through the next biennium, the Agency's projects \$7.4 million in revenue next biennium. The Agency budget request is \$8.9 million.

In preparation for expected declines, the Agency has taken immediate budgetary measures, including: holding vacant positions, restricting all travel and taking on IT projects that clearly demonstrate a reduction in expenditures through investment, for the remainder of the biennium. These immediate actions have reduced our expected total expenditures for the biennium by 10%. The Agency has also deferred the planned eLicense replacement system request to the legislature for the next budget. Postponing a replacement system allows us to retain an additional \$1.0 million in reserve through the 2021-2023 biennium and better project the longer term effects of the pandemic on the Agency's budget. This information will inform the scale and budget of the replacement efforts. Regardless, this project cannot be postponed beyond 2021-23 as eLicense will be at the end of life stage. The Agency is committed to maintaining high customer service and will not compromise the long term ability to do business efficiently by maintaining out of date systems.

Organizational Change & Staffing

The Agency office remains closed to the public and staff provide customer service by phone and email while Regulation Division staff conduct investigations and settlement conferences by phone and video conference.

Despite the technical pains of quickly transitioning processes outside of the office we are continuing to see exceptional performance. Notably customer service related surveys remain high with ratings of good or excellent overall at 93%.

Real Estate Agency - AY21

2019-2021 Budget - Biennium to Date Through June 30th 2021

<i>Budget Codes</i>		<u>19-2021 Legislative Approved Budget</u>	<u>Expected Total Expenditures for Biennium (current)</u>	<u>Expected Remaining Limitation at end of Biennium</u>
	Total Personal Services	6,757,897	6,185,745	572,152
4100 & 4125	In-State Travel & Out-of-StateTravel	98,762	53,584	45,178
4150	Employee Training	36,994	25,133	11,861
4175	Office Expenses	83,040	39,654	43,386
4200	Telecom/Tech Services & Support	64,621	47,650	16,971
4225	State Government Services	233,574	311,258	(77,684)
4250	Data Processing	109,297	122,904	(13,607)
4275	Publicity & Publications	36,718	907	35,811
4300 & 4315	Professional Services & IT Professional Services	186,339	262,714	(76,375)
4325	Attorney General Legal Fees	293,465	190,001	103,464
4375	Employee Recruitment	7,748	250	7,498
4400	Dues & Subscriptions	9,575	5,798	3,777
4425	Facilities Rent & Taxes	254,611	243,453	11,158
4475	Facilities Maintenance	4,519	5,031	(512)
4575	Agency Program Related S&S	41,308	1,095	40,213
4650	Other Services & Supplies	88,482	161,147	(72,665)
4700	Expendable Property \$250-\$5000	29,148	8,177	20,971
4715	IT Expendable Property	162,972	49,005	113,967
	Total Services & Supplies	1,741,173	1,527,761	213,412
	Totals	8,499,070	7,713,506	785,564

**REAL ESTATE BOARD
REGULATION DIVISION REPORT
August 3, 2020**

Regulation Division Manager: Vacant
Compliance Specialists 3 (Compliance Coordinator): Rob Pierce, Meghan Lewis (WOC)
Financial Investigators (Investigator-Auditor): Jeremy Brooks, Aaron Grimes,
 Liz Hayes (WOC), Lisa Montellano, Cidia Nañez, Lindsey Nunes, John Moore, Frances
 Hlawatsch (Temporary)
Compliance Specialist 2: Carolyn Kalb
Operations and Policy Analyst: Denise Lewis (WOC)

Division Overview

The Agency receives complaints and determines if an investigation is warranted. Open cases are assigned to investigators to gather facts (from interviews and documents), prepare a detailed written report and submit for Administrative Review. The Compliance Coordinators conducting the Administrative Review work evaluate whether the evidence supports charging a person with a violation of Agency statutes or administrative rules. When a case is found to have sufficient cause to sanction a license, the case is elevated to the Commissioner for review. When a sanction is supported by the Commissioner, the Compliance Coordinators conduct a settlement conferences to resolve cases without a contested case hearing. If a hearing is requested, the Investigator works with the Assistant Attorney General in preparing for and presenting the case at hearing.

Personnel

The Regulations Division Manager position remains vacant. Deputy Commissioner Higley is acting in the manager role with Commissioner Strode overseeing Administrative Actions.

For budgetary purposes the Agency is holding the vacant manager positions open for the foreseeable future.

Workload and Activity Indicators

<u>Average # in this Status at the time</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>Current 5/25/20</u>
Complaint	40	44	33	25	20	26	22	6
Pending Assignment	3	4	24	16	26	39	N/A***	0
Investigation	47	52	49	50	38	48	69****	92***
<i>(# of Investigators)</i>	6	7	7	7	7*	6-7**	7	8
Admin Review	27	33	28	40	35	61	38	8

* One investigator on medical leave.

** One investigator on medical leave, then retired. Late 2019 vacancy was filled.

*** Pending queue retired. All cases are directly assigned to an investigator rather than being held in a pending status.

**** Increase in average is not reflective of an increased caseload. All pending assignment cases were assigned.

ADMINISTRATIVE ACTIONS
Reported
5/20/2020 through 7/21/2020

REVOCATIONS

Webber, Ziebert Cynthia (Springfield) Property Manager 930400183, Final Order dated June 9, 2020, issuing a revocation.

Kopp, Sherry Patricia (Beaverton), Principal Broker, 201107057, Stipulated Final Order dated July 10, 2020 issuing a revocation.

Howard, Mary M (Seaside), Principal Broker, 851100210, Final Order By Default dated July 14, 2020 issuing a revocation.

SUSPENSIONS

REPRIMANDS

Dieter, Rosalie A (Harbor) Principal Broker 200407126, Stipulated Order dated June 11, 2020, issuing a reprimand.

Conrad, Shelley Gretchen (Klamath Falls) Broker 990400237, Stipulated Order dated June 11, 2020, issuing a reprimand.

McVay, Mathew Kent (Klamath Falls) Property Manager, 200404125, Final Order By Default dated June 30, 2020, issuing a reprimand.

Friesen, Noelle P. (Portland) Property Manager, 201212448, Stipulated Order dated July 6, 2020, issuing a reprimand with education.

CIVIL PENALTIES

Expired — Late Renewal civil penalties are computed using each 30-day period as a single offense. The civil penalty for the first 30-day period can range from \$100-\$500, with each subsequent 30-day period ranging from \$500-\$1,000. ORS 696.990

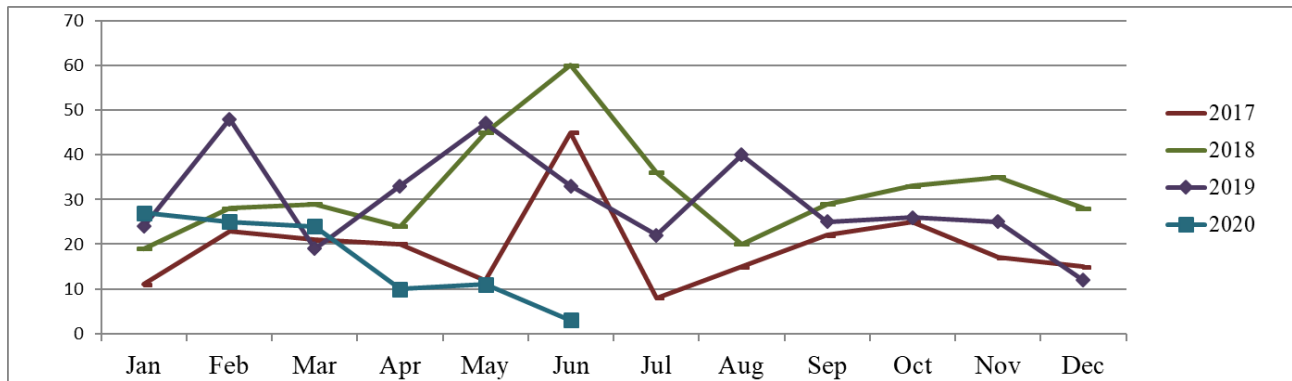
**Report to the Real Estate Board
Land Development Division
3 August 2020**

Division Manager: Michael Hanifin

Section Overview:

The Land Development Division reviews and approves filings related to condominiums, timeshares, subdivisions, manufactured home subdivisions, and membership campgrounds. The section reviews and approves the foundational documents creating these types of properties, as well as later amendments to those documents, to verify compliance with statutory requirements. We also issue the Disclosure Statement (sometimes referred to as a Public Report) required for sales of these interests to Oregonians. The Disclosure Statement summarizes key information about the condominium for the consumer, somewhat like the owner's manual for a car.

Workload and Activity Indicators



As the graph above reflects, filings for April thru June have dropped sharply. Developers are continuing to convert finished projects into saleable condominiums. The steep drop in filings seen in June (just three filed) is likely a direct reflection of the inability of developers to get work done several months ago, creating a bottleneck in the development pipeline. Some of the challenges appear to have been resolved and my understanding from talking to developer's attorneys is that many are continuing with plans for new condominium projects.

Transition to Online Filing Process: The Land Development division has completed the transition to online filing of condominiums and subdivisions. We're looking to add membership campground contract registrations and mobile home subdivision filings to the digital process as well.

Rulemaking activity:

The Commissioner has taken the lead on revising the advertising rules and will brief the Board on current activities.

**REAL ESTATE BOARD
EDUCATION & LICENSING DIVISION REPORT
August 3, 2020**

Education & Licensing Manager: Madeline Alvarado

Compliance Specialist: Roger McComas

Compliance Specialist: Tami Schemmel

Compliance Specialist: Jenifer Wetherbee

Administrative Specialist: Elizabeth Hardwick

Administrative Specialist: Rick Marsland

Administrative Specialist: Nenah Darville

Section Overview

The Education and Licensing Division acts as support to the Agency as well as the first point of contact for the public and services the business functions of the Agency overall. This division manages reception, licensing services, compliance reviews, client trust account reviews and education.

Continuing Impacts of COVID-19 on Educators/Licensees/Applicants

- CE providers offering live classroom instruction via Zoom (or similar platforms).
- All licensees due for renewal are required to complete and pay their online license renewal.
- The Agency is providing 30 day extensions, for actively renewing licensees, to provide their certified continuing education class information.
- PSI has resumed testing and fingerprinting.

Licensing Updates

New application types- The amount of new applications received for the month of May 2020 increased by 60% (from April '20 to May '20). In addition, it was up 51% compared to May 2019s new applications. June's new application numbers decreased from the month of May by 4%. However, when you compare June 2019's number to June 2020 the new applications increased by 50%.

License renewals- For the month of May 87% of licensees renewed their licenses. For the month of June 85% of the licensees renewed their license. These percentages are consistent with the numbers that renewed in 2019.

Escrow renewals took place during the month of June. Currently there are currently 65 active escrow organizations. We had two companies that decided to close. One of which never conducted business in Oregon.

Pre-licensing Educator Provider Renewals (PEP)- The PEP's certification was due for renewal during the month of June. There were 30 active providers and 26 successfully renewed. One school closed four locations because they operate online and the physical school locations were no longer necessary.

Real Estate Marketing Organization (REMO)- All REMO's renewed timely.

Phones

May 2020 calls were consistent with April 2020's numbers. However, June 2020 calls increased by 20%. We're maintaining an average hold time of 25 seconds.

RBN Renewal

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Eligible to Renew	420	343	366	346	320	304						
Failed to Renew	14	11	20	10	10	17						
% Renewed	97%	97%	95%	97%	97%	94%						

Licensing Statistics

Total Licensee Counts by Month:

Individuals (Persons)	May-20	Jun-20
Broker – Total	16,365	16,411
Active	14,578	14,638
Inactive	1,787	1,773
Principal Broker - Total	6,393	6,383
Active	6,006	5,993
Inactive	387	390
ALL BROKERS Total	22,758	22,794
Active	20,584	20,631
Inactive	2,174	2,163
Property Manager - Total	928	935
Active	806	811
Inactive	122	124
MCC Salesperson	16	17
MCC Broker	1	1
TOTAL INDIVIDUALS	23,703	23,747
Active	21,407	21,460
Inactive	2,296	2,287
Facilities (Companies)		
REMO	5	5
Registered Business Name (RBN)	3,848	3,852
Registered Branch Office (RBO)	752	763
Escrow Organization	66	65
Escrow Branch	145	145
PBLN	NA	NA
PMLN	NA	NA
CEP	313	313
MCC Operator	25	25
TOTAL FACILITIES	5,154	5,168
TOTAL INDIVIDUALS & FACILITIES	28,857	28,915

New Licenses by Month:

Individuals (Persons)	May-20	June-20
Broker	65	153
Principal Broker	9	14
TOTAL BROKERS	74	167
Property Manager	4	4
MCC Salesperson	0	0
MCC Broker	0	0
TOTAL INDIVIDUALS	78	171
Facilities (Companies)		
Continuing Education Provider (CEP)	3	0
REMO	0	0
Registered Business Name	23	25
Registered Branch Office	4	10
Escrow Organization	1	0
Escrow Branch	0	0
MCC Operator	0	0
TOTAL FACILITIES	28	35
TOTAL INDIVIDUALS & FACILITIES	106	206

Exam Statistics

June 2020

Total

ALL LICENSING EXAMS

Broker	463
Property Manager	18
Principal Broker	41
Reactivation	3

Pass Rates

<i>First Time Pass Rate</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>
<i>Percentage</i>					
Broker State	64	61	58	57	55
Broker National	74	73	72	70	71
Principal Broker State	59	58	59	51	60
Principal Broker National	75	76	77	69	72
Property Manager	64	69	67	64	52

Oregon Real Estate Agency
 Education & Licensing Division
 Licensee Application & Renewal
 2019 Data

New Applications													
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Brokers	328	259	300	280	287	278	233	245	227	260	250	238	3185
Principal Brokers	47	32	39	25	32	24	36	14	23	32	38	26	368
Property Managers	17	18	24	39	25	22	20	21	19	24	22	19	270
Total	392	309	363	344	344	324	289	280	269	316	310	283	3823

Renewed & Lapsed Licenses														
Brokers		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
On Time	Active	415	398	473	426	485	521	534	503	550	497	439	469	5710
	Inactive	43	41	35	33	38	33	49	37	46	40	36	37	468
Late	Active	42	25	37	47	67	40	52	32	50	35	35	52	514
	Inactive	7	14	9	6	13	7	7	11	17	10	9	7	117
Lapse		79	103	102	96	102	87	99	116	103	105	78	99	1169
Total		586	581	656	608	705	688	741	699	766	687	597	664	7978

Principal Brokers		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
On Time	Active	211	188	208	215	205	243	250	258	243	215	203	233	2672
	Inactive	18	9	11	5	8	8	12	8	10	13	6	13	121
Late	Active	12	7	8	15	12	11	12	12	10	11	15	14	139
	Inactive	1	2	1	4	3	1	4	2	3	4	1	4	30
Lapse		29	28	28	20	33	24	27	23	24	21	23	20	300
Total		271	234	256	259	261	287	305	303	290	264	248	284	3262

Oregon Real Estate Agency
Education & Licensing Division
Phone Counts

(minutes: seconds)	Jan – 20	Feb – 20	Mar – 20	Apr – 20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov--20	Dec-20	2020 Average
Call Count	2117	1834	1830	1474	1468	1775							1750
Average Wait Time	:25	:21	:19	:23	:25	:35							:25
Maximum Wait Time	0:11:05	0:09:30	0:14:56	0:10:15	0:18:12	0:13:00							0:12:50

(minutes: seconds)	Jan – 19	Feb – 19	Mar – 19	Apr – 19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19	Nov--19	Dec-19	2019 Average
Call Count	2251	1748	1917	2138	2062	1738	1882	1685	1882	2012	1606	1637	1880
Average Wait Time	:20	:21	:29	:23	:24	:33	:30	:27	:26	:16	:25	:20	:24.5
Maximum Wait Time	16:06	9:32	21:21	14:03	15:58	13:20	11:15	12:00	13:59	10:15	5:51	8:21	12:40

(minutes: seconds)	Jan – 18	Feb – 18	Mar – 18	Apr – 18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov--18	Dec-18	2018 Average
Call Count	2317	2006	2263	2063	2113	2084	1837	2049	1824	2153	1828	1738	2024
Average Wait Time	:22	:15	:17	:16	:16	:27	:21	:19	:21	:23	:17	:25	:20
Maximum Wait Time	5:32	3:23	8:58	7:05	13:27	12:18	14:40	12:53	10:26	13:22	7:41	10:07	8:29