REAL ESTATE AGENCY

BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of TAMARA L HOFF	STIPULATED FINAL ORDER

The Oregon Real Estate Agency (OREA) and Tamara L Hoff (Hoff) do hereby agree and stipulate to the following:

FINDINGS OF FACT

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CONCLUSIONS OF LAW

1.

1.1 At all times mentioned herein, Tamara L Hoff was licensed as a principal broker doing business under the registered business name of Hoff's Frontier Real Estate LLC (Hoff's FRE).

1.2 Gretchen Osa (Osa) submitted a written complaint against Hoff on October 10, 2012, alleging that Hoff mismanaged Osa's owner's account and rental property at 1271 Azalea, Oregon 97417 (Azalea property). The allegations included but were not limited to: a) failing to submit monthly property owner ledgers (statements) or receipts to Osa; b) failing to send Osa the monthly rent payments from July 2011 to the date of the complaint; c) failing to account for $7,420.00 of rent; and d) writing checks to Osa when there were nonsufficient funds (NSF) in the clients' trust account (CTA). Additionally, Osa alleged Hoff overcharged her for services when Hoff hired her husband, Steve Hoff (S. Hoff), a non-licensed contractor, to grade the road and spread gravel. The subsequent investigation found the following.

1.3 On February 21, 2007, Judy M Silveus (Silveus), an employee with Hoff's FRE, signed the property management agreement with Osa for the management of the Azalea

property and Osa's tenant, Larry Pisan (Pisan) signed a rental agreement with Hoff's FRE on March 2, 2007. Silveus was unlicensed at the time she signed the property management agreement. Silveus later received her real estate broker license on December 1, 2007.

Violation: By allowing her unlicensed employee, Silveus, to sign Osa's property management agreement on February 21, 2007, Hoff violated OAR 863-025-0020(4) (4-15-2006 Edition) which states, only a property manager or a real estate broker may negotiate and sign a property management agreement made in the course of the property manager's property management activity.

1.4 In August 2011, Hoff notified Osa that the Azalea property was in need of repair and that the road needed graded. Osa and Hoff agreed that Hoff should hold the monthly rent payments in the Hoff's FRE CTA to cover the cost of the repairs. Hoff understood the funds were to be held in the CTA until repairs were completed and since they agreed the funds were being held that Hoff would not send Osa monthly owner statements. Osa alleges the funds were to only have been held from August 2011 through December 2011. There was no written agreement to hold the monthly rents for the payment of repairs or to not send the monthly owner statements.

Violation: By failing to have written direction from Osa stating Hoff was not to send monthly owner statements and collected rents, Hoff violated ORS 696.890(3)(d) (2011 Edition), which states, a real estate property manager owes the property owner the following affirmative duty: to account in a timely manner for all funds received from or on behalf of the owner. Hoff also violated OAR 863-025-0020(4) (4-15-2011 and 9-1-2011 Editions), which states that any amendment or addendum to the property management agreement must be in writing and include the identifying code, the date of the amendment, the signature of the property manager and the signatures of all owners who signed the initial property management agreement. Hoff also violated OAR 863-025-0055(4) (4-15-2011 & 9-1-2011 Editions), which states 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.

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1.5 On January 16, 2012, tenant Larry Pisan (Pisan) gave notice to Hoff and Osa that he would be moving out of the Azalea property by February 15, 2012. Hoff did not prepare a final accounting for tenant Pisan until July 25, 2012.

Violation: By not preparing a final accounting for tenant Pisan until five months after he left the Azalea property, Hoff demonstrated incompetence or untrustworthiness in performing an act for which the licensee is required to hold a license, in violation of ORS 696.301(12) (2011 Edition).

1.6 On October 15, 2012, Hoff received a fax from Osa terminating the property management agreement. On the same day Hoff completed a final accounting of Osa's account and sent Osa the balance of the funds being held. Osa's owner's records indicated that Hoff paid her management fees for the time period of April 2012 through September 2012 on October 1, 2012.

1.7 During the time period from April 2012 to October 1, 2012, Hoff did not take her management fees out of the clients' trust account monthly.

1.8 In March 2012, Hoff's FRE office was broken into by her daughter, Laura, son-in-law, Derrick Fugate (Fugate) and his friends and they stole some of Hoff's business CTA checks. Hoff's name was forged on the stolen CTA checks that were cashed. Hoff explained that she left her management fees in the CTA to cover some of the loss of stolen funds. She said she had contacted all of the property owners and explained that the CTA was short due to the theft and was trying to figure out how to replace the funds.

Violation: By not disbursing the management fees monthly, when earned, Hoff violated OAR 863-025-0025(15) (9-1-2011 & 9-14-2012 Editions) which requires a property manager to disburse earned management fees from the clients' trust account at least once each month unless a different schedule of disbursement is specified in the property management agreement.

1.9 When Hoff completed a final accounting of Osa's account and sent Osa the balance of funds being held, Hoff also sent Osa copies of receipts for repairs completed on the Azalea property and noted on the 2012 final accounting.

1.10 It appeared that two receipts were not included with the receipts Hoff furnished to Osa, but Osa's ledger notes Del's Building Supplies for deck material $128.47 and Ted Davis, deck repair, $360.00.

Violation: By not furnishing Osa with all receipts, per her request, Hoff violated OAR 863-025-0040(8) (9-1-2011 Edition), which states a property manager must retain all paid bills and receipts explaining the amount of and purpose for the receipt or disbursement entered in the record of receipts and disbursements.

1.11 One of the receipts for 2012 that Osa received was from S & T Small Tractor Works (S & T), Steve and Tamara Hoffs' company, for rock and labor in the excavation and spreading of rock to resurface the Azalea road in the amount of $2,110.00.

1.12 Osa believed that Hoff's husband did not have a contractor's license to do the road work and that she was overcharged for rock and labor. Osa filed a complaint with the Construction Contractor Board (CCB) against Steve and Tamara Hoff. CCB opened a dispute file on January 16, 2013 and closed the file on January 30, 2013, with no action taken against either Hoff or her husband.

1.13 Neither Hoff nor her husband, Steve, were licensed as contractors. Hoff stated that neither she nor her husband were aware that a person would need to be licensed as a contractor to grade and spread gravel.

Violation: By hiring and paying Steve, for work he completed on Osa's road when he did not have a license from CCB, which was required for the work Steve performed, Hoff violated ORS 696.890(3)(c) (2011 Edition), which states that a real estate property manager owes the property owner the following affirmative duty: to exercise reasonable care and diligence.

1.14 On March 30, 2012, Hoff closed a CTA account ending in #5747 because some CTA checks had been stolen and used to take money from the account. Hoff opened a new bank account ending in #5776. The funds in the account were owners' funds, however, the account opened was not a clients' trust account.

Violation: By not having a bank account opened and designated as a clients' trust account, Hoff violated ORS 696.241 (2011 Edition), which requires a licensed real estate property manager or principal real estate broker to maintain in this state one or more separate federally insured bank accounts that are designated clients' trust accounts; and OAR 863-025-0025(1),(2), (9-1-2011 Edition), which requires all clients' trust accounts and security deposits trust accounts to be federally insured bank accounts and that a property manager

must open and maintain at least one clients' trust account as defined in OAR 863-025-0010. Per OAR 863-025-0010(5), a 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…"

1.15 After it was discovered that the stolen CTA checks were cashed, depleting the account, Hoff tried to work with the bank to replace the stolen funds. Hoff stated she could not figure out how much money was missing from the CTA. When asked if she had been doing monthly reconciliations she said she had not been doing them.

Violation: By not completing monthly clients' trust account reconciliations as required, Hoff violated OAR 863-025-0025(20) (9-1-2011 & 9-14-2012 Editions), which requires a property manager to reconcile each clients' trust account within 30 calendar days of the date of the bank statement.

1.16 A February 2013 reconciliation was completed. The reconciliation determined how much money the account was short and how much money was owed to each property owner. The bank statement indicated that the account had two NSF charges in the amount of $70.00 and year to date NSF charges totaling $175.00.

Violation: By overdrawing the clients' trust account by writing checks when there were nonsufficient funds in the account to cover the checks and the account being charged for the overdrafts Hoff violated OAR 863-025-0025(12) (9-1-2011 & 9-14-2012 Edition), which states a property manager must not disburse funds from a clients' trust account unless there are sufficient funds in the ledger account against which the disbursement is made.

1.17 On April 15, 2013, Hoff supplied proof to OREA that she had replenished the funds that had been taken from the CTA via the stolen checks. Hoff was requested to send a copy of her April 2013 reconciliation to OREA by May 15, 2013, to verify the account balanced. OREA received a copy of the April 2013 reconciliation on May 28, 2013. The reconciliation indicated the account was short $35.00 and Hoff noted that Umpqua Bank charged the account $35.00 for a NSF fee and they would make the adjustment. Additionally, the owners' ledger notes rental income but does not identify an owner, address or tenant that would indicate to whom the funds belong.

Violation: By failing to have the following information on the owners' ledger: a) the owner's name and identifying code; and for each deposit of funds: b) the identity of the person who tendered the funds and c) the check number, or cash receipt number or a unique series of letters and/or numbers that established an audit trail to the receipt of funds, Hoff violated OAR 863-025-0055(3)(a),(b)(B)(C) (4-1-2013 Edition), which states all owners' ledgers must contain the owner's name and identifying code, and for each deposit of funds must include the identity of the person who tendered the funds and the check number or cash receipt number.

1.18 Hoff managed property owned by Neal Tanner (Tanner). Tanner's owner ledger indicates that Hoff was not managing Tanner's property after February 2012 and closed his account on June 21, 2012.

Violation: By not completing and furnishing a final accounting until four months after Tanner terminated his property management agreement, Hoff violated OAR 863-025-0070(2)(a), (b)(A)-(F) (9-1-2011 Edition), which states not later than 60 days after the effective date of the termination, the property manager must disburse all obligated funds to the party or parties entitled to the funds and 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; c) an accounting of all security deposits and fees held for tenants; d) all tenant security deposits and fees held for tenants, unless the owner directs the property manager, in writing, to transfer the security deposits and fees to another property manager, escrow agent or person; e) copies of all current tenant rental or lease agreements, unless the owner waives such requirements in writing or directs the property manager, in writing, to provide such documents to another property manager, escrow agent or person; and f) a notice the property manager may destroy the required records of the property management activity performed after six years. Hoff also violated OAR 863-025-0070(6) (9-1-2011 Edition), which requires a property manager to transfer and assign by written agreement any interest of the property manager in a rental or lease agreement to the owner or a new property manager.

1.19 Hoff closed her security deposits account and the CTA ending in #5747 but failed to notify the OREA. Hoff also failed to notify OREA when she opened the Umpqua Bank account ending in #5776 or when she changed the account to a CTA.

Violation: By failing to notify the OREA of the closure of a clients' trust account and a security deposits account, or the opening of an account intended to be a clients' trust account, but was not opened as such, Hoff violated ORS 696.241(2), (4)(a)-(e) and ORS 696.245 (2011 Edition), which requires a licensed real estate property manager or principal real estate broker to maintain in this state one or more separate federally insured bank accounts that are designated clients' trust accounts, and within 10 business days after the date a clients' trust account is opened a licensed real estate property manager or principal real estate broker must file with the OREA on forms approved by the agency, the following information about the clients' trust account: a) the name of the bank; b) account number; c) name of the account; d) date the account was opened; and e) a statement by the property manager or principal broker authorizing the Real Estate Commissioner or commissioner's representative to examine the clients' trust account. Hoff also violated ORS 696.241(5) (Edition 2011), which requires that a licensed property manager or principal real estate broker who closes a clients' trust account to notify the OREA within 10 business days after the date an account is closed on a form approved by the agency. Hoff also violated ORS 696.245 (2011 Edition), which requires each licensed real estate property manager and principal real estate broker, at the time a clients' trust account is opened, to provide the bank in which the account is opened with a notice, acknowledged by the real estate licensee and the bank.

1.20 The violations noted above demonstrate incompetence in performing acts for which Hoff is required to hold a license.

Violation: ORS 696.301(12) (2009 Edition), which states a licensee's real estate license can be disciplined if they have demonstrated incompetence in performing any act for which the licensee is required to hold a license.

2.

2.1 OREA reserves the right to investigate and pursue additional complaints that may be received in the future regarding this licensee.

STIPULATION & WAIVER

I have read and reviewed the above findings of fact and conclusions of law which have been submitted to me by OREA 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 OREA 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, in which case an amended notice of intent may be issued in this matter.

ORDER

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

IT IS FURTHER ORDERED that Hoff be issued a real estate principal broker's license with limitations as set forth below:

(a) The limited license period shall be indefinite;

(b) Hoff shall not be convicted of any felony or misdemeanor during the limited license term;

(c) Hoff shall not violate any license law or rule during the limited license term:

(d) Hoff shall not conduct or engage in (or supervise any individual engaged in) the management of rental real estate as defined in ORS 696.010(11) (2013 Edition)

(e) Hoff is prohibited from controlling, having access to, or being a signatory to a clients' trust account of any kind.

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IT IS FURTHER ORDERED that, should Hoff violate any term or condition of this Order, it may be a basis on which to revoke Hoff's license in accordance with ORS 696.301(13).

IT IS SO STIPULATED:

Tamara L Hoff

TAMARA L HOFF

Date 4-19-14

IT IS SO ORDERED:

GENE BENTLEY
Real Estate Commissioner

Date 4.24.14.

DATE of service: 4-24-2014