

1 REAL ESTATE AGENCY  
2 BEFORE THE REAL ESTATE COMMISSIONER  
3

4 In the Matter of the Real Estate License of )  
5 ) SETTLEMENT AGREEMENT  
6 MARCUS AARON TORRES ) AND  
7 ) STIPULATED FINAL ORDER  
8 )  
9

10 The Real Estate Agency (OREA) and Marcus Torres (Torres) do hereby agree and  
11 stipulate as follows:

12 1.

13 On April 5, 2012, OREA notified Torres that it was initiating disciplinary proceedings  
14 based on 978 violations of law as set out in the Settlement Letter dated April 5, 2012 in this  
15 proceeding (see Attachment 1). As a result of this letter, Torres requested a settlement  
16 conference in a timely manner.

17 2.

18 OREA and Torres are willing to resolve this matter by stipulated agreement.

19 3.

20 Torres does not desire to contest or defend against the alleged violations and agrees  
21 that OREA may enter an order revoking Torres' license.

22 4.

23 Torres and the OREA agree that the OREA will enter an order revoking Torres's real  
24 estate property manager license. The revocation shall be permanent. Torres may not reapply  
25 at a later date for an Oregon real estate license.

26 STIPULATION AND WAIVER

27 I, Marcus Torres, have read and reviewed the above settlement agreement which has  
28 been submitted to me by OREA and further, the order that follows hereafter. I understand that  
29 this agreement, stipulation and waiver embodies the full and complete agreement and  
30 stipulation between OREA and me. I further understand that if I do not agree with this

1 stipulation I have the right to request a hearing before the Real Estate Commissioner on this  
2 matter and to be represented by legal counsel at such a hearing. Hearings are conducted in  
3 accordance with the procedures set forth in ORS Chapter 183 and in accordance with the  
4 Rules of Practice and Procedure adopted by the Attorney General of the State of Oregon. I  
5 freely and voluntarily waive my rights to a hearing and to any OREA or judicial review of this  
6 matter. I freely and voluntarily waive my rights to representation by legal counsel at any  
7 hearing.

8 I hereby agree and stipulate to the above and understand that the order that follows  
9 hereafter may be completed and signed by the Real Estate Commissioner or may be rejected  
10 by the Real Estate Commissioner, in which case an amended Settlement Agreement and  
11 Stipulated Final Order may be issued in this matter. I understand that in accordance with the  
12 provisions of ORS 696.445(3), notice of this order shall be published in the Oregon Real  
13 Estate News Journal.

14 ORDER

15 Based on the settlement agreement, which is incorporated herein, the Oregon Real  
16 Estate Commissioner orders that the real estate property manager's license of Torres is  
17 hereby permanently revoked.

18  
19 STIPULATED AND AGREED:

STIPULATED, AGREED AND ORDERED:

20  
21   
22 \_\_\_\_\_  
23 MARCUS AARON TORRES

20  
21   
22 \_\_\_\_\_  
23 GENE BENTLEY  
24 Real Estate Commissioner

24 Date: 4/25/12

24 Date: 4.25.12

25  
26 DATE of service: 4-25-12  
27  
28  
29  
30



# Oregon

John A. Kitzhaber, MD, Governor

## Real Estate Agency

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April 5, 2012

Marcus Torres  
14711 SE 29<sup>th</sup> Street  
Vancouver, WA 98683

RE: File # 201009-549 and File # 201011-642

Dear Mr. Torres:

Based on the facts developed in the investigation of the referenced complaint files, the Real Estate Agency intends to take administrative action against you or your license for possible violations of Oregon Revised Statutes (ORS) or Oregon Administrative Rules (OAR). A copy of the investigative report is enclosed.

The Real Estate Agency believes that your actions are in violation of the following Agency statutes and rules and are subject to sanction under ORS 696.301.

File #201009-549

1. The number of rule violations cited demonstrates incompetence or untrustworthiness in conducting property management activities, in violation of ORS 606.301(12). The violations are in regard to the management of Sunrise Village Apartments, Sunwood Apartments and Gresham Central Point Apartments between December 2009 and April 2010.
2. There were 3 instances of violations of ORS 696.200(2)(a)(b)(3):
  - a. Failed to specify in the application for a real estate license the place of business of the licensee.
  - b. Failed to designate the place of business by a sign that contains the name under which the licensee conducts professional real estate activity.
  - c. Failed to maintain in this state a place of business to be designated as the licensee's main office.
3. There were 12 instances of failing to keep or cause to be kept any funds or money in any bank under the heading of Clients' Trust Account or any other name designating such funds or money belonging to the clients or any principal real estate broker, except actual trust funds deposited with the broker, in violation of ORS 696.241(9).

4. There were 54 instances of violating ORS 696.301:
  - a. Demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license, in violation of ORS 696.301(12).
    - Examples of incompetence and untrustworthiness include:
      1. During an interview you said you were the minority owner of Torres Investments, Inc and the tenant files were in the possession of your father, the owner of Torres Investments, Inc., yet your signature, as licensee, was indicated on the Agency's Main Office Address Change form, dated January 19, 2010. The Agency has no record of your father being a licensed property manager.
      2. Failed to provide financial records to Charles O'Connell, after repeated requests, for Sunwood Apartments, Sunrise Village Apartments and Central Point Apartments.
      3. Told Charles O'Connell you would provide financial records for Sunwood Apartments, Sunrise Village Apartments and Central Point Apartments for a fee of \$125 per hour with a minimum of \$325 per property. The fee schedule was not memorialized in the property management agreement or in an addendum to the property management agreement.
      4. Provided no documentation of written approval allowing owner funds to be transferred from an owner' account to one of more different owners' ledger accounts.
      5. Provided no written documentation explaining why money was transferred to Torres Investments operating account.
      6. Provided no receipts during the investigation for debit card expenses associated with Sunwood Apartments, Sunrise Village Apartments and Central Point Apartments.
5. There were 16 instances of violating OAR 863-025-0015(3)(c)(A)(B) by failing to develop and maintain written policies for employees engaged in property management activities. Employees were allowed to sign rental agreements without authority to do so, and check tenant references.

6. There were 13 instances of violating OAR 863-025-0020(2)(f)(g)(h)(j)(k)(4):
  - a. Failed to memorialize in the property management agreement authorization for the payment of software tools for the management of real estate by the property manager. There were 8 instances noted.
  - b. Failed to memorialize in the property management agreement a description of the monthly statements of accounting the property manager will provide to the owner.
  - c. Failed to memorialize in the property management agreement the disposition of the property manager's records of the management of the owner's rental real estate after termination of the agreement.
  - d. Failed to memorialize in the property management agreement a statement that the property manager will disclose to the owner, in writing, the property manager's planned use of any employees or a business in which the property manager has a pecuniary interest to provide services for the owner's property, if the employees or business were not disclosed in the property management agreement.
  - e. Failed to memorialize in the property management agreement an identifying code consisting of a unique series of letters and/or numbers assigned by a property manager to a property management agreement at the time the agreement is signed by the parties and used on all transactions and records to reference the agreement.
  - f. Failed to memorialize in an addendum to the property management agreement the offer of assessing a fee of \$200 an hour for the reconciliation to document the amount of money being transferred into and out of clients' trust accounts between the three parties.
  
7. There were 411 instances of violating OAR 863-025-0025(11)(c)(d)(12)(13)(a)(19)(20):
  - a. Failed to maintain and account for all checks used for a clients' trust account and each security deposit account.
  - b. Failed to include the words "clients' trust account" in 9 instances when identifying a clients' trust account on bank records.
  - c. Failed to include the words "clients' trust account – security deposits" in 9 instances when identifying a clients' trust account – security deposits.
  - d. Failed to maintain a positive balance in clients' trust account in 2 instances.
  - e. Failed to obtain a signed and dated agreement from each owner authorizing the transfer of funds from an owner's ledger account to one or more different owners' ledger accounts. There were 154 instances of funds, in the amount of \$240,951.38, transferring between owner's clients' trust account, clients' trust account – security deposits and the property manager's operating account.

- f. Employed the use of a debit card associated with a clients' trust account or a clients' trust account – security deposits in 212 instances in the amount of \$40,024.43..
  - g. Failed to provide evidence of the monthly reconciliation of the clients' trust account and clients' trust account – security deposits in 24 instances.
8. Failed to produce property management records requested for inspection by the Agency, in violation of OAR 863-025-0035(2)(a).
9. There were 419 instances of violating OAR 863-025-0040(4)(b)(6)(8)(9)(10):
- a. Failed to 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.
  - b. Failed to furnish the Agency a check register in 30 instances for clients' trust account.
  - c. Failed to provide documentation explaining why money was transferred to Torres Operating Account in 20 instances.
  - d. Failed to provide receipts to support the expenditure of 132 checks in the amount of \$133,189.78.
  - e. Failed to provide receipts to support the use of a debit card in 212 instances in the amount of \$40,924.43.
  - f. Failed to provide documentation for electronic transfers sufficient to establish an audit trail in 24 instances.
10. There were 20 instances of violating OAR 863-025-0045(1)(b)(2):
- a. Failed to file and maintain legible copies of all tenant or lease agreements for the time period required in 17 instances.
  - b. Failed to indicate in the rental agreement the authorization for the payment of the tenant's monthly cable bill in 3 instances.
11. There were 2 instances of failing to provide a written receipt for any cash funds received under a property management agreement, in violation of OAR 863-025-0060(1)(4).
12. There were 2 instances of failing to maintain on file with the Agency a current mailing address and notify the Agency within 10 calendar days of a change of address, in violation of OAR 863-025-0062(1).
13. There were 7 instances of depositing funds received on behalf of the owner into the property manager's personal account, in violation of OAR 863-025-0065(3).
14. There were two violations of failing to advertise your place of business through the use of a sign, in violation of OAR 863-025-0125(1).

File #201011-642

1. Failed to specify in the application for a real estate license the place of business of the licensee, in violation of ORS 696.200(3).
2. There were five violations of ORS 696.301.
  - a. Demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license, in violation of ORS 696.301(12).
    - Examples of incompetence and untrustworthiness include:
      1. During an interview you said you were the minority owner of Torres Investments, Inc and the tenant files were in the possession of your father, the owner of Torres Investments, Inc., yet your signature, as licensee, was indicated on the Agency's Main Office Address Change form, dated January 19, 2010. The Agency has no record of your father being a licensed property manager.
      2. In the investigation you did not provide a copy of the property management agreement.
      3. You sent an email to your client threatening to evict tenants from your client's property and take your client to court if fees were not paid to you.
      4. You sent an email to your client's tenants and threatened to evict them if they did not pay you rent allegedly owed.
  - b. Committed an act of fraud or engaged in dishonest conduct by altering a copy of the property management agreement without the authorization of the property owner, in violation of ORS 696.301(14).
3. Failed to maintain on file with the Agency a current mailing address of your property management company, in violation of OAR 863-014-0062(1).
4. Failed to register the business name with the Agency prior to the property manager conducting business in a name other than the licensee's legal name, in violation of OAR 863-024-0095(1).

5. There were 4 violations of OAR 863-025-0020(2)(g)(h)(j)(k):
  - a. Failed to memorialize in the property management agreement a description of the monthly statements of accounting the property manager will provide to the owner.
  - b. Failed to memorialize in the property management agreement the disposition of the property manager's records of the management of the owner's real estate after termination of the agreement.
  - c. Failed to memorialize in the property management agreement a statement that the property manager will disclose to the owner, in writing, the property manager's planned use of any employees or a business in which the property manager has a pecuniary interest to provide services for the owner's property, if the employees or businesses were not disclosed in the property management agreement.
  - d. Failed to memorialize in the property management agreement an identifying code consisting of a unique series of letters and/or numbers assigned by a property manager to a property management agreement at the time the agreement is signed by the parties and used on all transactions and records to reference the agreement.
  
6. There were 2 violations of OAR 863-025-0025(11)(c)(d):
  - a. Failed to include the words "clients' trust account" when identifying a clients' trust account on bank records.
  - b. Failed to include the words "clients' trust account -- security deposits" when identifying a clients' trust account -- security deposits on bank records.
  
7. Failed to produce property management records requested for inspection by the Agency, in violation of OAR 863-025-0035(2)(a).
  
8. Failed to provide the owner, after termination of the property management agreement, a copy of the tenant's lease agreement, in violation of OAR 863-025-0070(2)(b)(E).

The purpose of this letter is to inquire as to whether you would be willing to settle the matter and avoid the time and expense of a formal administrative hearing by entering into a stipulated order resulting in a revocation of your license.



If you are interested in discussing this matter on an informal basis with the Agency, contact Denise Lewis at 503-378-4761 within two weeks of the date of this letter to schedule a settlement conference to occur within 30 days of the date of this letter.

We are prepared to move this matter forward by issuing a Notice of Proposed Action, which is the first step in the formal disciplinary process; however, we are willing to refrain from taking this action in the event a successful settlement can be achieved. If you are interested in discussing the possibility of a settlement, **you must contact Denise Lewis at 503-378-4761 within two weeks of the date of this letter to schedule a settlement conference to occur within 30 days of the date of this letter.**

You also may arrange to review the entire investigative file and discuss this matter with the Agency on an informal basis by contacting Denise Lewis at (503) 378-4761. Copies of file documents can also be made available to you for a fee under the Public Records Law.

The enclosed document entitled "The Settlement Process" provides additional information for your consideration.

Respectfully,



Selina Barnes  
Regulations Manager  
(503) 378-4637

Enclosures