

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
3

4 In the Matter of the Property Manager License)

5 of)

6 DEBRA LYNN O'NEAL)

ORDER ON DEFAULT

7
8
9 1.

10 1.1 On March 31, 2016, the Real Estate Commissioner issued a notice of intent to
11 levy a civil penalty against Debra Lynn O'Neal (O'Neal). The notice of intent was served by
12 personal service by Oregon Real Estate Agency (OREA) Investigator/Auditor Meghan Lewis
13 (Lewis). Lewis served the notice of intent to O'Neal on March 31, 2016. Additionally, the
14 notice of intent was mailed via certified mail and regular first class mail in a handwritten
15 envelope on March 31, 2016.

16 1.2 The certified mailing of the notice of intent and the first class mailing were sent to
17 O'Neal at PO Box 714, Oakridge, OR 97463. No mailings have been returned to OREA.

18 1.3 Over twenty (20) days have elapsed since the mailing of the notice issued in this
19 matter and no written request for hearing has been received.

20 1.4 Copies of the entire investigation file are designated as the record for purposes
21 of default, including any submission from respondent and all information in the administrative
22 file relating to the mailing of notices and any responses received.

23 2.

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

26 2.1 Oregon Administrative Rule 863-001-0006 states, in part, that a notice of intent is
27 properly served when deposited in the United States mail, registered or certified mail,
28 addressed to the real estate licensee or to any other person having an interest in a proceeding
29 before the Commissioner at the licensee's or other person's last known address of record with
30 OREA.

1 2.2 O'Neal's last known address of record with OREA was PO Box 714, Oakridge,
2 OR 97463.

3 2.3 A certified mailing of the notice of intent was mailed to O'Neal at her last known
4 address of record on March 31, 2016. The return receipt was signed for by Tim Taylor on April
5 4, 2016.

6 2.4 The mailing in the handwritten envelope has not been returned to OREA. In
7 accordance with ORS 40.135(1)(q), there is a presumption that the mailing properly addressed
8 and placed with the U.S. Postal Service was delivered. That presumption has not been
9 overcome by any evidence.

10 2.5 Over twenty (20) days have elapsed since the mailing of the notice and no
11 written request for a hearing has been received.

12 FINDINGS OF FACT

13 &

14 CONCLUSIONS OF LAW

15 3.

16 3.1 On March 28, 2014, OREA received a complaint from Thomas Salyers (Salyers)
17 alleging that O'Neal engaged in property management activity without having a license to do
18 so. OREA opened an investigation.

19 3.2 Prior to 2011, O'Neal lived in Minnesota, where she told OREA
20 Investigator/Auditor Meghan Lewis (Lewis) she managed several rental communities for one
21 owner for ten years. During that time, she did not have a professional license to lease,
22 manage, or sell real estate. In 2011, O'Neal moved to Oregon and she became acquainted
23 with Joy Kingsbury (Kingsbury), licensed principal broker and owner of Joy Kingsbury Inc. Real
24 Estate Services, when Kingsbury rented O'Neal a home.

25 3.3 Kingsbury offered O'Neal a position as assistant property manager at Joy
26 Kingsbury Real Estate Services. O'Neal and Kingsbury agreed once O'Neal obtained a
27 license, O'Neal would purchase and assume ownership of the property management division
28 of Joy Kingsbury Inc. Real Estate Services.

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1 3.4 While working at Joy Kingsbury Inc. Real Estate Services, O'Neal negotiated
2 tenant rental agreements, checked applicant or tenant references, conducted tenant relations,
3 collected rent and security deposits and supervised her husband, Tim Taylor, for maintenance
4 duties. O'Neal also did the bookkeeping for Joy Kingsbury Inc. Real Estate Services.

5 3.5 When Lewis asked Kingsbury to provide written polices and delegations of
6 authority for O'Neal's property management activity Kingsbury was unable to provide the
7 documents.

8 3.6 In 2012, Kingsbury outlined a Letter of Intent for O'Neal to purchase the property
9 management business. In the Letter of Intent, signed November 8, 2012, Kingsbury wrote she
10 intended to close the property management division and inform all current property owners of
11 the proposed transfer to O'Neal with the provision O'Neal obtain a license to practice property
12 management in Oregon. Kingsbury set the deadline for O'Neal to earn her property manager
13 license and assume ownership of the property management division for April 1, 2013.

14 3.7 Kingsbury and O'Neal's working relationship became strained, and as of March
15 14, 2013, O'Neal had not obtained her property manager license.

16 3.8 On March 14, 2013, Kingsbury wrote to her clients (owners), "This is to announce
17 that beginning May 1, 2013, I will close the Property Management portion of my business and
18 confine my activities to Real Estate only. Debra O'Neal is applying to the State of Oregon for a
19 license to operate independently and she expects to pass her examinations and have a license
20 in hand by that date. She has been diligent and hardworking. She enjoys the work."

21 3.9 O'Neal contacted retired attorney, Glenn Null (Null), who on behalf of O'Neal
22 wrote a letter to Kingsbury dated, March 18, 2013. In the letter Null wrote, "While April 1,
23 2013, is not likely for Ms. O'Neal to be able to obtain her license as set forth in the agreement,
24 she has currently completed 22 of the 30 classes needed to obtain her property manager's
25 license. Accordingly, this letter will confirm that Ms. O'Neal will have her license no later than
26 May 1, 2013."

27 3.10 In a letter dated, April 1, 2013, Kingsbury informed her clients (tenants) she was
28 closing the property management division of her business, and sometime prior to May 1, they
29 would be notified by the "property owner or new manager Where [sic] you will pay your next
30 month's rent and all other particulars."

1 3.11 As of May 1, 2013, O'Neal had not obtained her property manager license. In a
2 phone call with Lewis, O'Neal admitted taking property management agreements and tenant
3 lease agreements from Joy Kingsbury Inc. Real Estate Services. Kingsbury acknowledged
4 when she became aware of the missing records she determined she was done with the
5 property management business and things were "out of her hands."

6 3.12 O'Neal contacted Linda Moody (Moody) at Town & Country Realtors, Inc., and
7 explained the circumstances. O'Neal acknowledged she asked Moody if she could conduct
8 property management under Moody's principal broker license. O'Neal claimed Moody agreed
9 with the condition that O'Neal continue to work toward obtaining her property manager license.

10 3.13 On May 13, 2013, O'Neal signed an Independent Contractor's Agreement with
11 Moody. In the agreement O'Neal is identified as the "Property Manager."

12 3.14 According to the Independent Contractor's Agreement, O'Neal received 70% of
13 the rental income as compensation for her management of rental real estate. Additionally,
14 Moody provided a copy of Town and Country Realtors, Inc., "Office Policy," which was
15 incorporated into the Independent Contractor's Agreement. Both the Independent Contractor's
16 Agreement and Office Policy were signed by O'Neal. Neither agreement contained the
17 required delegations of authority for O'Neal to negotiate and sign property management
18 agreements, review and approve reconciliations, review, and approve and accept tenant rental
19 and lease agreements.

20 3.15 The Independent Contractor's Agreement included the following language:

21 "Section 2.1 Property Manager may advertise under TOWN & COUNTRY
22 REALTORS, INC.'S name, provided TOWN & COUNTRY REALTORS, INC.,
23 name is always in the advertising as required by Oregon Law.

24 "Section 2.2 Any expenses for attorney's fees and other costs of settling a dispute
25 by property owners or tenants shall be the responsibility of the Property
26 Manager.

27 "Section 2.3 The Principal Broker will assist the Property Manager in the conduct
28 of their work by giving advice and full cooperation on any matter or transaction
29 when so requested by the Property Manager."

30 "Section 3.1 Property Manager will rent/lease properties to the best of his/her

1 abilities and will solicit additional clients for and on behalf of TOWN & COUNTRY
2 REALTORS, INC., and otherwise promote the business of service to the public in
3 property management activities.”

4 “Section 7.1 The parties hereto specifically agree that Property Manager is an
5 independent contractor and not an employee, servant or partner of TOWN &
6 COUNTRY REALTORS, INC.”

7 3.16 The “Office Policy” contained the following:

8 “ADVERTISING: Property Manager shall be responsible for any and all
9 advertising necessary to satisfy property owners.

10 Property Manager shall be responsible for purchasing their own business cards.
11 Business cards must adhere to the TOWN & COUNTRY REALTORS, INC.,
12 standard.

13 Any advertising must be approved by the Principal Broker and done at the
14 Property Manager’s own expense.”

15 Under the heading “Broker Obligations” included the following terms:

16 “The Principal Broker will assist in any way necessary. Any and all transactions
17 must, by Oregon Real Estate Law, be approved by Principal Broker and be on
18 file at TOWN & COUNTRY REALTORS, INC., main office. This includes
19 personal transactions.”

20 and

21 “The Property Manager will be responsible for depositing all rents from tenants in
22 a timely fashion, and sending clients their rental checks in a timely fashion.”

23 3.17 O’Neal conducted property management activity from an office identified as T&C
24 located at 47763 Hwy. 58, Oakridge, OR. Moody conducted professional real estate activity
25 from her registered main office located at 76616 High Prairie Road, Oakridge, OR. According
26 to the OREA records, the T&C location at 47763 Hwy 58 is not registered as a branch office.

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1 3.18 During the investigation, Moody told Lewis that O'Neal did all aspects of the
2 property management, including negotiating, signing property management agreements and
3 tenant lease agreements, collecting rent and deposits, conducting tenant relations, advertising,
4 and directing maintenance. Moody also told Lewis that O'Neal negotiated the property
5 management agreement, but Moody did review and sign the property management agreement
6 in addition to O'Neal.

7 3.19 In his complaint Salyers expressed his concerns to Moody about O'Neal's
8 professionalism and lack of license to conduct property management. In his complaint Salyers
9 wrote, "I was informed by Mrs. Moody that she would not perform any property management
10 duties – that she had neither the time nor the resources to do so – that Debra would continue
11 to be the property manager and Mrs. Moody would be an occasional go-between, but could not
12 cut Debra out of the picture entirely."

13 3.20 In regards to clients' trust accounts, Moody told Lewis that she gave O'Neal
14 authority for two of three clients' trust accounts, which included "Property Management CTA,"
15 account ending in #0803 and "Property Management CTA," ending in #0811. Lewis asked
16 O'Neal if she was responsible for reconciling the clients' trust accounts. O'Neal told Lewis she
17 reconciled the clients' trust accounts using the check register and bank statement.

18 3.21 During the investigation, Lewis reviewed O'Neal's business card which contained
19 the words, "Property Rentals" prominently displayed, in the right hand corner were the words
20 "Property Management Town and Country."

21 3.22 O'Neal negotiated and signed a month-to-month rental agreement with Salyers
22 for a rental on 76540 Bobbe Way, Oakridge, OR 97463 effective March 1, 2014.

23 3.23 OREA licensing records show O'Neal filed an application for a property manager
24 license on March 13, 2013, and had taken the property manager test four times without
25 obtaining a passing score.

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1 3.24 OREA records indicate OREA Business and Licensing Services Manager, Erika
2 Kleiner gave O'Neal until May 7, 2014 to take and pass the licensing examinations using her
3 current education which O'Neal was unable to do (applicants who completed pre-license
4 education between July 1, 2002 and December 31, 2012, had until April 30, 2014 to obtain
5 their license, after that date, applicants were required to complete the updated pre-license
6 education.) On September 15, 2015, O'Neal passed the licensing exam.

7 3.25 On October 4, 2015, OREA received a fax which included a notice dated July 8,
8 2015, from Moody to her clients indicating as of October 1, 2015, Town & Country Realtors,
9 Inc., would no longer be managing their property, and O'Neal would be opening her own
10 company. In the fax, there were the following documents: 1) Articles of Incorporation from the
11 Secretary of State of Oregon for Mountain Property Management, identifying O'Neal as the
12 agent, signed August 24, 2015, 2) Internal Revenue Service Notice of Registration dated
13 August 28, 2015, 3) letter dated October 2, 2015, from First Tech Credit Union notifying OREA
14 O'Neal had submitted documentation to establish a business account, 4) a Department of
15 Business and Consumer Affairs Registration, 5) an Internal Revenue Service notice Employer
16 Identification Number dated August 24, 2015, and 6) an email dated June 25, 2015, from
17 Janda Fleming of VP Training at Superior Schools, Inc. to Moody, which proclaimed O'Neal
18 was working diligently on her pre-license property management course and O'Neal was "in a
19 difficult position with actually running a Property Management [sic] company and studying for
20 her exam."

21 3.26 O'Neal obtained her real estate property manager license on October 23, 2015.

22 **Violation:** By conducting management of rental real estate activity from May 1, 2013 to
23 October 22, 2015, without a license, O'Neal violated ORS 696.020(2) (2013 and 2015
24 Editions), which state an individual may not engage in, carry on, advertise or purport to engage
25 in or carry on professional real estate activity, or act in the capacity of a real estate licensee,
26 within this state unless the individual holds an active license.

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1 ORDER

2 IT IS HEREBY ORDERED, pursuant to ORS 696.990 and based upon the violation set
3 forth above, O'Neal pay a civil penalty in the sum of \$28,500.00, said penalty to be paid to the
4 General Fund of the State Treasury by paying the same to OREA. The civil penalty is
5 computed in accordance with ORS 696.990(4). In this instance, each month of unlicensed
6 activity is one occurrence, for a total of 29 occurrences.

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8 Dated this 30th day of JUNE, 2016.

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10 OREGON REAL ESTATE AGENCY

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13 _____
14 GENE BENTLEY
15 Real Estate Commissioner

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17 Date of service: 6/30/2016

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19 NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by
20 filing a petition for review within 60 days from the date of service of this order. Judicial review
21 is pursuant to the provisions of ORS 183.482.