

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
3

4 In the Matter of the Real Estate License of)

5
6 DEBRA LYNN O'NEAL)

FINAL ORDER BY DEFAULT

7
8
9 1.

10 1.1 On May 15, 2017, the Real Estate Commissioner issued, by certified mail, a
11 notice of intent to levy a civil penalty and revoke the real estate property manager license of
12 Debra Lynn O'Neal (O'Neal). The Real Estate Agency (OREA) sent the notice of intent to
13 O'Neal's last known address of record with the OREA. The notice of intent was also mailed to
14 O'Neal by regular first class mail in a handwritten envelope.

15 1.2 The certified mailing and the first class mailing of the notice of intent were sent to
16 O'Neal at the following addresses: PO Box 714, Oakridge, OR 97463, 47763 Hwy 58,
17 Oakridge, OR 97463, and 46831 Sunset Ave. Westfir, OR 97492.

18 1.3 OREA received back the certified mailing of the notice of intent to PO Box 714,
19 Oakridge, OR 97463. The mailing was marked, "Return to Sender Unclaimed Unable to
20 Forward." The regular mailing of the notice to this address was not returned.

21 1.4 OREA received back both the certified mailing and the regular mailing of the
22 notice of intent mailed to 47763 Hwy 58, Oakridge, OR 97463. The certified mailing was
23 stamped, "Not deliverable As Addressed Unable to Forward," and handwritten on the envelope
24 was, "PO Box 714." The regular mailing of the notice of intent to this address was stamped,
25 "Return to Sender No Mail Receptacle Unable to Forward Return to Sender."

26 1.5 OREA received back the certified mailing of the notice of intent to 46831 Sunset
27 Ave. Westfir, OR 97492. This was stamped, "Not Deliverable As Addressed Unable to
28 Forward." Handwritten on the envelope were several notations including, "Unc," and "6-2 Rts
29 Unc." The first class regular mailing of the notice of intent was not returned to OREA for this
30 address.

1 "Unc," and "6-2 Rts Unc." The first class regular mailing of the notice of intent was not
2 returned to OREA for this address.

3 2.7 The mailings of the notice of intent in the handwritten envelope has not been
4 returned to OREA for the following addresses, PO Box 714, Oakridge, OR 97463 and 46831
5 Sunset Ave., Westfir, OR 97492. In accordance with ORS 40.135(1)(q), there is a
6 presumption that the mailing properly addressed and placed with the U.S. Postal Service was
7 delivered. That presumption has not been overcome by any evidence.

8 2.8 Over twenty (20) days have elapsed since the mailing of the notice and no
9 written request for a hearing has been received.

10 2.9 Pursuant to ORS 696.775, the expiration of O'Neal's license does not prohibit the
11 Commissioner from proceeding with further action.

12 FINDINGS OF FACT

13 &

14 CONCLUSIONS OF LAW

15 3.

16 3.1 On October 23, 2015, OREA issued O'Neal a property manager license.
17 O'Neal's license was associated with the registered business name Mountain Property
18 Management (MPM).

19 3.2 Prior to O'Neal becoming licensed, she worked as an assistant property manager
20 for Kingsbury Real Estate Inc. On May 1, 2013, Joy Kingsbury closed her property
21 management business. With Kingsbury's property management records, O'Neal assumed
22 property management activity under an Independent Contractor Agreement with principal
23 broker, Linda Moody of Town and Country Realty, Inc.

24 3.3 On June 30, 2016, OREA issued an Order on Default issuing a \$28,500.00 civil
25 penalty to O'Neal for unlicensed property management activity conducted before she obtained
26 a license.

27 3.4 On March 9, 2016, OREA received an email from Sandy Price (Price), a principal
28 broker, regarding concerns she had concerning O'Neal, after four property owners reported to
29 Price late or missing rents from O'Neal's management of their property. On March 23, 2016,
30 OREA opened an investigation.

1 3.5 On January 1, 2017, O'Neal failed to renew her license, and her license expired.

2 3.6 O'Neal did not properly register the clients' trust accounts ending in #8311 and
3 #6667, as required, in the OREA licensing system.

4 3.7 On October 14, 2015, OREA received by fax a Notice of Clients' form signed by
5 O'Neal, dated October 8, 2015, for clients' trust account, "Mountain Property Management Inc.
6 Property Management Checking- Client Trust Account," ending in #8311 and "Mountain
7 Property Management Inc. Security Deposits Client Trust Account- Savings," ending in #6667.

8 **Violation:** By failing to properly register the following clients' trust accounts: "Mountain
9 Property Management Inc. Property Management Checking- Client Trust Account," ending in
10 #6667, and "Mountain Property Management Inc. Security Deposits Client Trust Account-
11 Savings," ending in #8311, with OREA, O'Neal violated ORS 696.301(3) as it incorporates
12 696.241(4)(2015 Edition) which states, within 10 business days after the date a clients' trust
13 account is opened, a licensed real estate property manager or principal real estate broker shall
14 file with the Real Estate Agency, on forms approved by the agency, the following information
15 about the clients' trust account: a) the name of the bank; b) the account number; c) the name
16 of the account; d) the date the account was opened; and e) a statement by the licensed real
17 estate property manager authorizing the Real Estate Commissioner or commissioner's
18 representative to examine the clients' trust account at such times as the commissioner may
19 direct.

20 3.8 O'Neal did not properly register the clients' trust account ending in #0007, as
21 required, in the OREA licensing system.

22 3.9 O'Neal submitted a Notice of Clients' Trust Account for "Mountain Property
23 Mgmt- Client Trust Account- Checking" account ending in #0007, at Banner Bank, to OREA
24 dated October 5, 2015, with "Void" written across the notice. Records indicate that O'Neal
25 continued to use the account to maintain and disburse funds from the account through
26 December 31, 2015. Documents submitted indicate this account was closed as of April 11,
27 2016.

28 ///

29 ///

30 ///

1 **Violation:** By failing to properly register Mountain Property Mgmt-Client Trust Account-
2 Checking account ending in #0007 with OREA, and failing to notify OREA of the account
3 closing, O'Neal violated ORS 696.301(3) as it incorporates ORS 696.241(4) and (6) (2015
4 Edition) which states: (4) Within 10 business days after the date a clients' trust account is
5 opened, a licensed real estate property manager or principal real estate broker shall file with
6 the Real Estate Agency, on forms approved by the agency, the following information about the
7 clients' trust account: a) the name of the bank; b) the account number; c) the name of the
8 account; d) the date the account was opened; and e) a statement by the licensed real estate
9 property manager authorizing the Real Estate Commissioner or commissioner's representative
10 to examine the clients' trust account at such times as the commissioner may direct; (6) A
11 licensed property manager who closes a clients' trust account shall notify the agency, within 10
12 business days after the date the account is closed. Additionally, O'Neal demonstrated
13 incompetence or untrustworthiness in performing any act for which the licensee is required to
14 hold a license, in violation of ORS 696.301(12) (2015 Edition).

15 3.10 O'Neal failed to properly register clients' trust accounts ending in #6245 and
16 #6278, as required, in the OREA licensing system.

17 3.11 O'Neal submitted a Notice of Clients' Trust Account form dated January 4, 2016,
18 and was received by OREA on April 5, 2016. The form included the following accounts,
19 "Mountain Property Management Inc. Client Trust Savings," ending in #6245 (security deposits
20 account) and "Mountain Property Management Inc. Client Trust Checking," ending in #6278
21 (clients' trust account) at First Tech Federal Credit Union. O'Neal did not register the clients'
22 trust accounts ending in #6245 and #6278, as required, with a statement authorizing OREA to
23 examine the clients' trust accounts.

24 ///

25 ///

26 ///

27 ///

28 ///

29 ///

30 ///

1 **Violation:** By failing to properly register with "Mountain Property Management Inc.
2 Client Trust Savings," ending in #6245 (security deposits account) and "Mountain Property
3 Management Inc. Client Trust Checking," ending in #6278 (clients' trust account) with OREA,
4 O'Neal violated ORS 696.301(3) as it incorporates ORS 696.241(4) (2015 Edition) which
5 states, within 10 business days after the date a clients' trust account is opened, a licensed real
6 estate property manager or principal real estate broker shall file with the Real Estate Agency,
7 on forms approved by the agency, the following information about the clients' trust account: a)
8 the name of the bank; b) the account number; c) the name of the account; d) the date the
9 account was opened; and e) a statement by the licensed real estate property manager
10 authorizing the Real Estate Commissioner or commissioner's representative to examine the
11 clients' trust account at such times as the commissioner may direct.

12 3.12 On March 31, 2016, OREA Investigator/Auditor, Meghan Lewis (Lewis), met
13 O'Neal at O'Neal's office. During the visit, Lewis requested documents and O'Neal failed to
14 produce her records for inspection.

15 **Violation:** By failing to have her records available upon inspection during the March 31,
16 2016, office visit, O'Neal violated ORS 696.301(3) as it incorporates ORS 696.280(3) (2015
17 Edition) which states records maintained under this section must at all times be open for
18 inspection by the Real Estate Commissioner or the commissioner's authorized representatives.

19 3.13 After the March 31, 2016, office visit, Lewis sent an email to O'Neal requesting
20 multiple documents from O'Neal, including, but not limited to: 1) CTA reconciliations for
21 January and February 2016 and the supporting documentation, 2) a signed and completed
22 Inventory and Authorization form referencing all of O'Neal's clients' trust accounts, and 3)
23 property management agreements for owners Floyd and Virginia Staley and Doug Scholten.
24 The documentation was required to be produced no later than April 4, 2016.

25 3.14 On April 1, 2016, Lewis made another request to O'Neal requesting records. On
26 April 5, 2016, Lewis contacted O'Neal to let her know OREA had received some of her records
27 via fax, but it appeared the CTA reconciliations had not been received.

28 ///

29 ///

30 ///

1 3.15 On April 20, 2016, Lewis requested all owner and tenant ledger documentation
2 along with the outstanding reconciliations. O'Neal was given the final deadline of April 22,
3 2016 to produce her records. O'Neal failed to produce the reconciliations and supporting
4 documentation for January and February 2016.

5 3.16 Some records for property owners Floyd and Virginia Staley, and Doug Scholten
6 were received from O'Neal on April 5, 2016. However, O'Neal did not produce a property
7 management agreement for Staleys, or Scholten.

8 **Violation:** By failing to produce the requested January 2016 and February 2016, clients'
9 trust account monthly reconciliations and supporting documentation, by the April 4, 2016, and
10 April 22, 2016, deadlines, O'Neal violated ORS 696.301(3) as it incorporates OAR 863-025-
11 0035(2) (5-15-14 Edition) which states a property manager must produce records under
12 section (1) of this rule for inspection by the Agency as follows: (a) when the Agency makes a
13 request for production of property management records, the property manager must provide
14 such records with no less than five banking days; and (b) If the Agency has reasonable
15 grounds to believe that funds of an owner or tenant may be missing or misappropriated or that
16 the property manager is engaging in fraudulent activity, any records demanded or requested
17 by the Agency must be produced immediately; and (c) Failure to provide such records within
18 the timelines stated in subsection (a) or (b) of this section is a violation of ORS 696.301.

19 **Violation:** By failing to produce the property management agreements for owners,
20 Floyd and Virginia Staley and Doug Scholten, by April 4, 2016, O'Neal violated ORS 696.301
21 (3) as it incorporates OAR 863-025-0035(2) (5-15-14 Edition) which states a property manager
22 must produce records under section (1) of this rule for inspection by the Agency as follows: (a)
23 when the Agency makes a request for production of property management records, the
24 property manager must provide such records with no less than five banking days; and (b) If the
25 Agency has reasonable grounds to believe that funds of an owner or tenant may be missing or
26 misappropriated or that the property manager is engaging in fraudulent activity, any records
27 demanded or requested by the Agency must be produced immediately; and (c) Failure to
28 provide such records within the timelines stated in subsection (a) or (b) of this section is a
29 violation of ORS 696.301.

30 ///

1 3.17 When O'Neal obtained her property management license and registered her
2 business name of Mountain Property Management, Inc., she was still managing properties
3 under property management agreements with the name of Town & Country Realty, Inc., from
4 when she worked previously under Linda Moody, (before O'Neal was licensed). During the
5 investigation, Lewis noted O'Neal managed 76358 Rainbow Street in Oakridge, OR on behalf
6 of property owner Lee Cowart (Cowart). Cowart had signed a property management
7 agreement with Moody and O'Neal, at Town & Country Realty, Inc, effective May 1, 2013.
8 When O'Neal obtained her license and registered her business name of Mountain Property
9 Management on October 23, 2015, she failed to create an amendment or addendum to the
10 property management agreement with Cowart to reflect the change of business.

11 3.18 Additionally, O'Neal managed property at 47636 Cline Street, Oakridge OR, on
12 behalf of J&J Real Properties, LLC. A review of the property management agreement shows it
13 signed by Moody and initialed, "JE", but not signed by a representative of J&J Real Properties.
14 O'Neal did not have a current property management agreement or addendum with Mountain
15 Property Management, Inc as the property management company for the Cline Street
16 property.

17 **Violation:** By failing to create an amendment or addendum to the property
18 management agreement for property owners Lee Cowart and J&J Real Properties, LLC
19 reflecting the new registered business name, O'Neal violated ORS 696.301(3) as it
20 incorporates ORS 696.026(6)(b), and (7)(a) (2015 Edition), which states, (6) a licensed real
21 estate property manager may conduct professional real estate activity only under the name
22 under which the property manager's license was issued or (b) a registered business name, (7)
23 if a property manager has a registered business name: (a) all professional real estate activity
24 conducted by the property manager must be conducted under the registered business name.

25 ///

26 ///

27 ///

28 ///

29 ///

30 ///

1 3.19 Lewis reviewed multiple property management records of O'Neal's. On owner
2 ledgers for property owners Lee Cowart, Floyd and Virginia Staley, Doug Scholten, Lila
3 Castleman, and J&J Real Properties, the following required detail was missing for the receipt
4 of funds:

- 5 • For each receipt of funds the identity of the person who tendered the funds
- 6 • The check number, cash receipt number or unique series of letters and/or
7 numbers that establish an audit trail to the receipt of funds

8 For each disbursement of funds:

- 9 • The following detail was missing on some of the owner ledgers, the check
10 number or bank generated electronic tracking number
- 11 • All owner ledgers lacked the balance after each recorded entry.

12 **Violation:** By failing to have all the required details on the owner ledgers for property
13 owners Lee Cowart, Floyd and Virginia Staley, Doug Scholten, Lila Castleman, and J&J Real
14 Properties, O'Neal violated ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(b)(B),
15 (C),(c)(C)(d) (5-15-14 Editions) which states (3) all owners ledgers must contain at least the
16 following information, (b) for each deposit of funds: (B) the purpose of the funds and identity of
17 the person who tendered the funds; (C) the check number, cash receipt number or a unique
18 series of letters and/or numbers that established an audit trail to the receipt of the funds, and
19 (c) for each disbursement of the funds: (C) the check number and bank generated electronic
20 tracking number; and (d) the balance after each recorded entry.

21 3.20 On March 31, 2016, O'Neal was requested to produce supporting documentation
22 for charges against Cowart's client trust funds for roof repairs. Lewis reviewed the supporting
23 documentation O'Neal produced for Cowart.

24 3.21 A review found invoice, E24770/2, dated November 21, 2015, for \$457.52 from
25 Jerry's Home Improvement Center. Invoice E24770/2 indicates a cash payment of \$500.00
26 and change given of \$42.48. The invoice description is for painting supplies, and includes a
27 purchase of a Sprite, Coke and Cheetos. Cowart's owner ledger shows a disbursement of
28 \$457.00, described as, "Jerrys", to payee, Mountain Property Management. Inc. O'Neal did
29 not reimburse Cowart for the food items purchased, which totaled \$6.87.

30 ///

1 3.22 There was no supporting documentation produced by O'Neal for the following
2 transactions that showed on Cowart's owner ledger as roof repair:

- 3 • Disbursement on November 14, 2015, to payee in Town and Country in the
4 amount of \$340.00 identified as Materials Repair Roof"/Up."
- 5 • Check #2041, in the amount of \$787.50 payable to Mountain Property
6 Management, Inc., described as, "Repair Roof&Replace Flooring."

7 3.23 A disbursement to Cowart is dated January 10, 2016, with check #4011,
8 described as, "Rent Payment," for \$148.90 and the final disbursement shown on the owner
9 ledger is dated February 15, 2016, for \$618.00, described as, "Rent Payment," also with check
10 #4011. A photocopy of check #4011 is shown on the owner ledger. The check is dated
11 February 9, 2016, for \$766.90. The memo line of check #4011 is handwritten, "#76358
12 Jan/Feb pymt." The disbursement as shown on the owner ledger, dated January 10, 2016,
13 was not disbursed until either February 9, 2016, the date of check #4011, or February 15,
14 2015, the date of the disbursement for check #4011, as seen on the owner ledger. It was
15 unclear by the records maintained by O'Neal.

16 **Violation:** By purchasing food items using owner funds as demonstrated on invoice
17 E24770/2, failing to properly account for owner funds regarding \$1127.00 purchases for roof
18 materials, and failing to disburse client trust funds from the owner's ledger according to the
19 date and amount entered in the ledger, O'Neal violated ORS 696.890(4)(a)(c)(d)(e) (2015
20 Edition) which states a real estate property manager owes the property owner the following
21 affirmative duties: (a) to deal honestly and in good faith; (c) to exercise reasonable care and
22 diligence; (d) to account in a timely manner for all funds received from or on behalf of an
23 owner; and (e) to act in a fiduciary manner in all matters relating to trust funds. Additionally,
24 O'Neal's actions demonstrate incompetence or untrustworthiness in performing any act for
25 which the licensee is required to hold a license, in violation of ORS 696.301(12) (2015 Edition).
26 O'Neal's conduct is grounds for discipline under ORS 696.301(12) and (15).

27 3.24 On May 12, 2016, OREA received a call from property owner Lila Castleman
28 after she had not received rental income for several months from O'Neal. During the call
29 Castleman alleged she had not received any rental income on her property since August 2015.

30 ///

1 3.25 Sometime around January 2016, Castleman went to O'Neal's office to speak to
2 O'Neal about the missing rent. O'Neal alleged the property was vacant and Castleman verified
3 this. During her visit with O'Neal, Castleman received a rent check that day dated December
4 31, 2015, from O'Neal.

5 3.26 By March 2016, Castleman had not received any additional rent checks.
6 Castleman drove to Oakridge to check on her rental property. Castleman was able to speak to
7 the current renters, who told her they had moved in on February 23, 2016, and paid first and
8 last month's rent and a \$650.00 security deposit. Castleman alleged she had not received any
9 rent since the check dated December 31, 2016.

10 3.27 In an email dated May 6, 2016, Castleman terminated her property management
11 agreement. She requested O'Neal send her money that was owed and the current tenant's
12 deposits. On May 12, 2016, Castleman received rental income for April 2016, check # 4042,
13 dated April 10, 2016, for \$600.00. No owner statements were provided to Castleman for
14 January through May 2016.

15 3.28 A review of Castleman's owner ledger shows rental income received through
16 December 28, 2015.

17 **Violation:** O'Neal failed to report changes in the owner ledger to Castleman, for the
18 months of January through May 2016, in violation of ORS 696.301(3) as it incorporates OAR
19 863-025-0055(4) (5-15-14 Edition) which states a property manager must report in writing to
20 each owner any change in the owner's ledger. A monthly report, showing all receipts and
21 disbursements for the account of the owner during the prior monthly period is sufficient under
22 this section.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

29 ///

30 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

5.

ORDER

IT IS HEREBY ORDERED that O'Neal's property manager license is revoked.

IT IS FURTHER ORDERED that pursuant to ORS 696.990, O'Neal pay a civil penalty in the sum of \$10,000, and said penalty to be paid to the General Fund of the State Treasury by paying the same to OREA. The civil penalty is for O'Neal's failure to comply with the rules that require the licensee to produce records for inspection related to the management of rental real estate.

Dated this 10th day of July, 2017.

OREGON REAL ESTATE AGENCY



GENE BENTLEY

Real Estate Commissioner

Date of Service: 7/10/2017

NOTICE: 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 pursuant to the provisions of ORS 183.482.