

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
3

4 In the Matter of the Real Estate License of

5
6 DONALD G. WALLS

7)
8 STIPULATED FINAL ORDER
9

10 The Real Estate Agency (OREA) and Donald G. Walls (Walls) do hereby agree and
11 stipulate to the following:

12 FINDINGS OF FACT
13 &
14 CONCLUSIONS OF LAW

15 1.

16 1.1 At all times mentioned herein, Walls was licensed as a principal broker with
17 Hermiston Property Management.

18 1.2 In October 9, 2013, OREA initiated a random mail in clients' trust account audit
19 for Hermiston Property Management's clients' trust account ending in #2517 for the month of
20 August 2013. Numerous issues and deficiencies were identified in the audit. OREA
21 Compliance Specialist, Danette Rozell (Rozell) worked with Patty Looman (the employee
22 responsible for the bookkeeping and reconciliation) on correcting reconciliation issues. After
23 months of attempts to produce the required documents for the audit, Rozell contacted Walls.
24 On May 9, 2014, OREA opened and investigation.

25 1.3 Several deficiencies were identified during Walls' August 2013 clients' trust
26 account audit. Supporting documentation lacked the required detail, accounts were not being
27 reconciled three ways and the three required components did not balance. At the start of the
28 2014 investigation, it was found that some of the August 2013 non-compliant issues had not
29 been corrected.

30 ///

1 **Violation:** By failing to correct the noncompliance issues from the August 2013 audit for
2 clients' trust account ending in #2517, Walls demonstrated incompetence in violation of ORS
3 696.301(12) (2013 and 2015 Editions) which states a licensee's real estate license may be
4 disciplined if they have demonstrated incompetence or untrustworthiness in performing any act
5 for which the licensee is required to hold a license.

6 1.4 In July 2015 OREA Investigator/Auditor Frances Hlawatsch (Hlawatsch),
7 requested the most recent completed clients' trust account reconciliation from Looman.

8 1.5 Looman indicated she was still working on March 2015's reconciliation. Looman
9 agreed to provide the reconciliation for March 2015 no later than July 16, 2015. The
10 reconciliation was not provided by this date. Hlawatsch spoke with Walls on July 27, 2015, and
11 he was aware of the situation and Looman's failure to provide a current reconciliation. He went
12 on to explain that Looman's mother had passed away and she had taken time off to grieve.

13 **Violation:** By failing to complete a monthly reconciliation for clients' trust account
14 ending in #2517 , Walls violated OAR 863-025-0025(20)(a)(A)(B)(C) (5-15-2014 Edition) which
15 states a property manager must reconcile each clients' trust account within 30 days of the bank
16 statement and (a) the reconciliation must have the following three required components: (A) the
17 bank statement balance, adjusted for outstanding checks and other reconciling bank items; (B)
18 the balance of the record of receipts and disbursements or the check register as of the date of
19 the bank statement and; (C) the sum of all positive owners' ledgers as of the date of the bank
20 statement.

21 **Violation:** By failing to provide the March 2015 clients' trust account reconciliation for
22 account ending in #2517 by the requested date, Walls violated OAR 863-0035(2)(a)(c) (5-15-
23 2014 Edition), which states a property manager must produce records for inspection by the
24 Agency as follows: (a) when the Agency makes a request for production of property
25 management records, the property manager must provide such records within no less than five
26 banking days; and (c) failure to produce such records within the timelines stated in in
27 subsection (a) or (b) is a violation of ORS 696.301.

28 1.6 Looman was responsible for receiving and disbursing funds for the clients' trust
29 account and security deposits account, however there was no written delegation of authority
30 authorizing her to do so between October 2013 and December 14, 2015.

1 **Violation:** By failing to have written policies and a delegation of authority in place for
2 Looman between October 2013 and December 14, 2015, Walls violated OAR 863-025-
3 0015(1)(2)(3)(c)(5)(6)(b) (4-1-2013 and 5-15-2014 Editions) which states a property manager
4 must develop, maintain and follow written policies for persons and activities under this rule.
5 (2)Each policy must state the effective date of the policy. (3) Policies must specify duties,
6 responsibilities, supervision and authority, including the authority to handle funds in a clients'
7 trust account or security deposits account for: (c) an employee of the property manager. (5)
8 Policies must include provisions that specify the production and maintenance of all reports,
9 records and documents under this division. (6)The following delegation of authority to review
10 and approve reconciliations and disburse funds must be kept in writing, dated and signed by the
11 property manager: (b) Review and approve reconciliations and receive and disburse funds.

12 1.7 On December 15, 2015, Walls provided a written delegation of authority to OREA
13 for Looman, an unlicensed person, which gave Looman permission to negotiate and sign
14 property management agreements.

15 **Violation:** By delegating the task of negotiating and signing a property management
16 agreement to Looman, an unlicensed individual, Walls violated OAR 863-025-0020(6) (5-15-
17 2014 Edition) which states only a property manager may negotiate and property management
18 agreements, except that a principal real estate broker may delegate such authority to a real
19 estate licensee. Additionally, Walls violated ORS 696.315(1) (2013 and 2015 Editions) which
20 states a real estate licensee may not knowingly permit a non-licensed individual to engage in
21 professional real estate activity, with or on behalf of the licensee.

22 1.8 In July 2015, the most recent completed security deposits account reconciliation
23 for account ending in # 7712 was for April 2015.

24 **Violation:** By failing to reconcile the security deposits account ending in #7712 Walls
25 violated OAR 863-025-0025(21) (5-15-2014 Edition) which states a property manager must
26 reconcile each security deposits account within 30 calendar days of the date of the bank
27 statement.

28 ///

29 ///

30 ///

1 1.9 On August 3, 2015, Looman submitted the security deposit account reconciliation
2 for account ending in #7712. This included a reconciliation report and a copy of the June 2015
3 bank statement. No tenant ledger or check register reports were included. The adjusted cash
4 balance was reported at \$1,340.24 more than the ending balance of the bank statement.

5 **Violation:** By failing to properly reconcile the security deposits account ending in #7712
6 and provide the required supporting documentation, Walls violated OAR 863-025-
7 0025(21)(a)(b) (5-15-2014 Edition) which states a property manager must reconcile each
8 security deposits account within 30 calendar days of the bank statement date, and (a) it must
9 contain the three required components: the bank statement balance, the balance in the
10 records of receipts and disbursements or check register and the sum of all positive balances of
11 individual security deposits and fees; and (b) The balances of each component in this section
12 must be equal to and reconciled with each other.

13 1.10 On August 5, 2015, Looman submitted the clients' trust account reconciliation for
14 account ending #2517. Documents provided were a reconciliation report, the bank statement
15 and the individual owners' ledger. The owners' ledgers lacked the following required detail:
16 identifying codes, who deposits were received from, and deposit check numbers. According to
17 the reconciliation report, the account was out of balance with \$511.80 more in the bank than
18 what the records reported.

19 **Violation:** By failing to have the required supporting detail on the owners ledgers' Walls
20 violated OAR 863-025-0055(3)(a)(b)(B)(C) (5-15-2014 Edition) which states the owners' ledger
21 must contain at least the following information: (a) the owner's name and identifying code; (b)
22 for each deposit received: (B) the purpose and the funds and the identity of the person who
23 tendered them; (C) the check number or bank-generated tracking number.

24 By failing to properly account for all funds on the owners ledger, and failing to take
25 corrective action on the reconciliation Walls also violated OAR 863-025-0025(20)(b)(22) (5-15-
26 2014 Edition) which states a property manager must reconcile each clients' trust account
27 within 30 calendar days of the date of the bank statement and the balance of each component
28 must be equal to and reconciled with each other. Per OAR 863-022-0025(22), a property
29 manager must take corrective action to resolve all adjustments made in a reconciliation prior to
30 the next reconciliation or document the good faith efforts the property manager has taken to
resolve the adjustment.

1 1.11 On September 15, 2015, Walls called OREA to advise that the clients' trust
2 account had been accessed fraudulently. The fraud was discovered early on and the account
3 had to be shut down.

4 1.12 As of October 1, 2015, Looman was still working to reconcile the clients' trust
5 account from "July or August" 2015. Looman described the bank fraud that occurred as "really
6 inconvenient," stating that it caused a lot of extra work for her. In discussing the out of balance
7 June 2015 clients' trust account reconciliations Looman stated the clients' trust account had
8 not been in balance for a "very long time."

9 **Violation:** By failing to have the July and/or August 2015 reconciliations completed after
10 30 days from the bank statement, Walls violated OAR 863-025-0025(20)(d)(A)(B) (5-15-2014)
11 which requires a property manager to reconcile each clients' trust account within 30 days of
12 the date of the bank statement. (d) Within 30 calendar days from the date of the bank
13 statement the property manager must: (A) complete the reconciliation document and (B) sign
14 and date the reconciliation document, attesting to the accuracy of the document.

15 1.13 As of October 1, 2015, Looman was unable to identify what caused the June
16 2015 security deposits account reconciliation to be out of balance, she admitted she had not
17 investigated this difference.

18 1.14 Looman explained she had inherited historical errors from her predecessor. She
19 stated Walls was aware the accounts were out of balance and he had asked her to identify the
20 reason. She said she had been unable to do so.

21 **Violation:** By failing to properly balance the reconciliation and make the necessary
22 adjustments for the June 2015 security deposits reconciliation, Walls violated OAR 863-025-
23 0025(21)(b)(22) (5-15-2014 Edition) which requires a property manager to reconcile each
24 security deposits account within 30 calendar days of the bank statement date, and (b) the
25 balances of each required component must be equal and reconcile with each other. OAR 863-
26 025-0025(22) requires a property manager to take corrective action to resolve all adjustments
27 made in a reconciliation or document good faith efforts made to resolve the adjustment.

28 1.15 On November 17, 2015, Looman agreed to submit a properly reconciled account
29 for both trust accounts, along with supporting documents, for the month of October 2015, no
30 later than November 23, 2015. The reconciliation was not received by OREA on this date.

1 1.16 On December 2, 2015, a formal written request for documents was issued to
2 Walls. Walls responded to the demand on December 2, 2015, and indicated that Looman had
3 complied and submitted the documents to OREA on November 25, 2015. Walls included the
4 fax number Looman used, and it was apparent that a digit in the fax number had been
5 transposed.

6 1.17 On December 3, 2015, OREA received the reconciliation documents for the
7 clients' trust account.

8 **Violation:** By failing to produce the requested records by the given deadline, Walls
9 violated OAR 863-0025-0035(2)(a)(c) (5-15-2014 Edition) which states a property manager
10 must produce records for inspection by the Agency when the Agency makes a request for
11 production of property management records, within no less than five banking days. Failure to
12 produce such records within the timeline is a violation of ORS 696.301.

13 1.18 A review of the documentation submitted December 3, 2015, showed the
14 following: the clients' trust account reconciliation submitted on December 3, 2015, lacked
15 Walls' signature.

16 **Violation:** By failing to sign the reconciliation Walls violated OAR 863-025-
17 0025(20)(d)(B)(5-15-2014 Edition) which states (d) Within 30 calendar days from the date of
18 the bank statement the property manager must: (B) Sign and date the reconciliation document.

19 1.19 The reconciliation form was accompanied by an Appfolio reconciliation report, a
20 bank statement and individual owners' cash flow report. There was no reconciliation for the
21 security deposit account provided.

22 1.20 The October 2015 clients' trust account reconciliation documents submitted on
23 December 3, 2015, did not include a receipts and disbursements journal or check register.

24 ///

25 ///

26 ///

27 ///

28 ///

29 ///

30 ///

1 **Violation:** By failing to provide a receipts and disbursements record or a check register,
2 a required component of the trust account reconciliation, Walls violated OAR 863-025-
3 0025(20)(a)(B) (5-15-2014 Edition) which requires (a) a property manager to reconcile each
4 clients' trust account within 30 calendar days of the date of the bank statement and must
5 include: (B) the balance of the records of receipts and disbursements or the check register as
6 of the date of the bank statement. Additionally, Walls violated OAR 863-025-0040(1) (5-15-
7 2014) which states a property manager must prepare and maintain a chronological record of
8 receipts and disbursements or a check register for each clients' trust account and each
9 security deposits account in which the manager must record each receipt of funds and
10 disbursement of funds.

11 1.21 The October 2015 clients' trust account check register report submitted on
12 December 15, 2015, lacked required detail. There was no information about deposits
13 received into the account. The document also failed to display the purpose of disbursements
14 made, identifying codes, and it did not include a running balance.

15 **Violation:** By failing to include required identifying detail on the check register such as
16 date funds were received, amount of funds received, purpose of the funds and identity of
17 person tendering the funds, for each disbursement, the purpose, identifying code and account
18 balance after each entry, Walls violated OAR 863-025-0040(2)(a)(A)(B)(C)(b)(D)(c)(e) (5-15-
19 2014 Edition) which states a record of receipts and disbursements or check register must
20 contain the following: (a) for each receipt of funds: (A) the date the funds were received; (B)
21 the amount of funds received; (C) the purpose of the funds and identity of the person who
22 tendered the funds; (b) for each disbursement of funds: (D) the purpose of the disbursement;
23 (c) if there is more than one property in a clients' trust account each entry for a receipt;
24 deposit or disbursement must be identified with the applicable identifying code; and (e) the
25 account balance after each entry.

26 1.22. The October 2015 clients' trust account reconciliation submitted on December
27 15, 2015, included a general ledger intended to serve as a receipts and disbursement record.
28 This document lacked the following required detail: purpose of the funds and identity of the
29 person who tendered the funds.

30 ///

1 1.23 The owners' cash flow reports submitted in lieu of owners' ledgers did not contain
2 identifying codes or address information for the owners' properties. There was no detail
3 showing who payments were received from or any check numbers.

4 **Violation:** By failing to include the required identifying details on the owners' ledgers
5 such as the identifying code, the purpose of all funds received or check numbers, Walls
6 violated OAR 863-025-0055(3)(a)(b)(B)(C) (5-15-2014 Edition) which states (3) all owner
7 ledgers must contain the following: (a) the owner's name and identifying code; (b) for each
8 deposits of funds: (B) the purpose of the funds and identity of the person who tendered the
9 funds; and (C) the check number, cash receipt number, or a unique series of letters and/or
10 numbers that establish an audit trail of the receipt of funds.

11 1.24 The October 2015 clients' trust account reconciliation document indicated there
12 was \$11,524.68 on the bank statement and check register that was not accounted for on the
13 owners' ledger. No sufficient explanation was provided. The only explanations given
14 referenced the fraud that had occurred, had been corrected in September and that Looman,
15 "may have missed some outstanding checks." The notation stated they, "were going over
16 everything to check for any mistakes."

17 **Violation:** By failing to properly balance the reconciliation, and failing to clearly identify
18 and explain any needed adjustment, and failure to take proper corrective action Walls violated
19 OAR 863-025-0025(20)(b) (5-15-2014 Edition) which states the balances of the three
20 components of the reconciliation must be equal to and reconciled with each other. If any
21 adjustment is needed, the adjustment must be clearly identified and explained on the
22 reconciliation document. Additionally, Walls violated OAR 863-025-0025(22) (5-15-14) which
23 requires a property manager to take corrective action to resolve all adjustments made in a
24 reconciliation prior to the next reconciliation, or document good faith efforts the property
25 manager has taken to resolve the adjustment.

26 1.25 On December 10, 2015, Looman provided explanations for some of the issues
27 that were identified in the December 3, 2015 submission. No explanation was provided for
28 why outstanding checks may not have been accounted for.

29 **Violation:** By failing to properly account for outstanding checks Walls violated OAR
30 863-025-0025(20)(c) (5-15-2014 Edition) which states outstanding checks must be listed by
check number, issue date, payee and amount.

ORDER

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

IT IS FURTHER ORDERED that Walls complete the 27-hour Property Manager Advanced Practices Course, (detailed in OAR 863-022-0022) no later than four (4) months from the effective date of this order. Walls must submit documentation, such as a certificate to OREA showing completion of the 27- hour Property Manager Advanced Practices course. The certificate showing completion must be submitted to OREA no later than 10 days after the education has been completed. (Walls has already complied with this requirement by submitting his course completion certificate for the 27-hour Property Manager Advanced Practices course completed on February 18, 2017).

IT IS SO STIPULATED:

IT IS SO ORDERED:



DONALD G. WALLS

GENE BENTLEY

Real Estate Commissioner

Date 5/24/2017

Date 6.2.17

Date of Service: 6/2/2017