

REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of

DENA LE BURIAN BLACKLAW

FINAL ORDER BY DEFAULT

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1.1 On May 29, 2018, the Real Estate Commissioner issued, by certified mail, a Notice of Intent to Revoke Blacklaw's real estate property manage license. The Oregon Real Estate Agency (Agency) sent the notice of intent to Blacklaw's last known address of record with the Agency. The notice of intent was also mailed to Blacklaw by regular first class mail in a handwritten envelope.

1.2 The certified mailing of the Notice of Intent and the first class mailing of the Notice of Intent were sent to Blacklaw at PO Box 3027, Albany, OR 97321. Both mailings have been returned to the Agency.

1.3 On July 16, 2018, additional mailings of the Notice of Intent were mailed out to 5623 Peterson Ln NE, Albany, OR 97322 (the physical address of record for Blacklaw) and also to 623 Clover Ridge Rd, NE, Albany Oregon 97322 (Blacklaw's mother's residence). The July 16, 2018 mailings consisted of a certified mailing and a handwritten envelope sent first class mail for each of the additional addresses

1.4 The Notice of Intent was also emailed to Blacklaw on July 16, 2018, at her email address on record with the Agency.

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

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

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

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

2.2 Blacklaw's last known address of record with the Agency was PO Box 3027, Albany, OR 97321.

2.3 A certified mailing of the Notice of Intent was mailed to Blacklaw at her last known address of record on May 29, 2018. The Notice of Intent was also mailed on the same day to Blacklaw by regular first class mail in a handwritten envelope. The certified mailing of the Notice was returned to the Agency marked "Return to Sender Unclaimed Unable to Forward Return to Sender."

2.4 The mailing in the handwritten envelope was also returned to the Agency. In accordance with ORS 40.135(1)(q), there is a presumption that the mailing properly addressed and placed with the U.S. Postal Service was delivered. The handwritten mailing was returned marked, "Return to Sender Not Deliverable As Addressed Unable to Forward."

2.5 On July 16, 2018, additional mailings of the Notice of Intent were mailed out to 5623 Peterson Ln NE, Albany, OR 97322 (the physical address of record for Blacklaw) and also to 623 Clover Ridge Rd, NE, Albany Oregon 97322 (Blacklaw's mother's residence). The July 16, 2018 mailings consisted of a certified mailing and a handwritten envelope sent first class mail for each of the additional addresses. Neither of these mailings have been returned to the Agency.

2.6 The Notice of Intent was also emailed to Blacklaw on July 16, 2018, at her email address on record with the Agency.

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

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2.8 Pursuant to ORS 696.775, the expiration of Blacklaw's license does not prohibit the Commissioner from proceeding with further action.

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FINDINGS OF FACT

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CONCLUSIONS OF LAW

7 3.1 Blacklaw was licensed as a real estate property manager doing business under
8 the registered business name of Unique Property Management (UPM). Blacklaw's license was
9 formerly associated with Superior Property Management Services (SPMS) and Blacklaw later
10 transitioned to UPM on August 22, 2011.

11 3.2 On December 5, 2017, OREA received a complaint from Jay and Christina
12 Bergmann (Bergmanns) regarding Blacklaw. The complaint alleged they received late rent
13 proceeds several times, and reported in one instance, a check failed to clear due to insufficient
14 funds. Additionally, Bergmanns alleged they did not receive the security deposits, tenant
15 rental agreement or keys after termination of the property management agreement. OREA
16 opened an investigation.

17 3.3 On December 7, 2017, OREA sent Blacklaw a letter requesting a response to the
18 complaint by December 21, 2017. Blacklaw did not respond to the request nor contact OREA
19 by the deadline. Blacklaw in general did not cooperate with the investigation. She failed to
20 respond to emails and letters requesting contact. OREA Investigator/Auditor Jeremy Brooks
21 made multiple visits to her residence to attempt contact. Blacklaw did send a 25 page fax to
22 OREA, but this was the only contact she had with OREA during the investigation.

3.4 OREA records indicate Blacklaw failed to register any clients' trust accounts with OREA from the time Blacklaw associated her license with UPM on August 22, 2011.

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1 (1) **Violation:** By failing to open and maintain at least one clients' trust account, Blacklaw
2 violated ORS 696.301(3) as it incorporates OAR 863-025-0025(2) (1-1-18, 11-15-16, 5-15-14,
3 4-1-13, 9-14-12, 9-1-11, 4-15-11 Editions) which requires a property manager to open and
4 maintain at least one clients' trust account as defined in OAR 863-025-0010. Blacklaw also
5 failed to properly register clients' trust accounts with OREA, violating ORS 696.301(3) as it
6 incorporates ORS 696.241(4) (2011, 2013, and 2015 Editions), and ORS 696.301(3) as it
7 incorporates ORS 696.245(2) (2017 Edition), which requires a property manager to register
8 and notify OREA of each clients' trust account within 10 business days after the date the
9 account is opened.

10 3.5 On January 25, 2011, Bergmanns entered into a property management
11 agreement with SPMS to manage their property at 1892 NW Laura Vista Drive, Albany, OR
12 (subject property). The property management agreement indicated the property manager was
13 to hold and maintain the security deposits. The property management agreement required the
14 property manager to, "Mail rent payment to "Owner" via U.S. Postal Service by the 10th of the
15 month unless notified, including any invoices, statements and notification pertinent to the
16 dwellings(s), unit(s), property."

17 3.6 On August 15, 2017, Blacklaw sent Jay Bergmann a text indicating there may be
18 a problem with the August 2017 rent proceeds check. Multiple text messages were sent from
19 Jay Bergmann to Blacklaw regarding the August 2017 rent proceeds. Jay Bergman received
20 several automated text responses from Blacklaw stating she was driving at the time. Blacklaw
21 sent one text message indicating her car had broken down when she was out of town delaying
22 her from dealing with the issue.

23 3.7 During the first week of September 2017, Bergmanns sent UPM a letter
24 terminating their property management agreement. The letter stated they had not received the
25 rent payment from August. Bergmanns requested Blacklaw to return the \$1,500 security
26 deposit and the \$1,500 prepaid last month's rent along with the \$1,365 due for August rent.
27 The letter requested Blacklaw to forward the total amount due, \$4,356.00, rental agreement,
28 and keys to Diversified Property Management no later than September 20, 2017.

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1 3.8 Bergmanns finally received the August 2017 rent check from Blacklaw. From the
2 documentation collected during the investigation, it appears that the tenants did not pay
3 Blacklaw the prepaid last month's rent.

4 **(2) Violation:** By failing to timely deliver the August 2017 rent proceeds to the Bergmanns,
5 Blackman violated 696.890(4)(a), (d), and (e) (2015 Edition) which states a property manager
6 owes the property owner the following affirmative duties: (a) to deal honestly and in good faith;
7 (d) to account in a timely manner in all matters relating to trust funds; and (e) to act in a
8 fiduciary manner in all matters relating to trust funds. Blacklaw's conduct is grounds for
9 discipline under ORS 696.301(12) and (15).

10 3.9 In Bergmann's December 2017 complaint, Bergmanns stated Blacklaw had not
11 provided the keys to the subject property, the rental agreement, the tenants' security deposit of
12 \$1,500, or the \$500.00 pet deposit.

13 3.10 On January 8, 2018, Brooks interviewed Jay Bergmann. Bergmann said in his
14 interview, Blacklaw still had not sent him the \$1,500 security deposit, \$500.00 pet deposit,
15 tenants' lease and keys to the subject property. Tenants of the subject property confirmed
16 they had paid Blackman a total of \$2,000.00 in security deposits.

17 **(3) Violation:** By failing to provide the tenants' security deposit, pet deposit and tenant
18 rental agreements to the property owner or new property manager after the termination of the
19 property management agreement within 60 days, Blacklaw violated ORS 696.301(3) as it
20 incorporates OAR 863-025-0070(2)(b)(D) and (E)(11-15-2016 and 1-18-2018 Editions) which
21 requires a property manager not later than 60 days after the effective date of the termination to
22 (b) provide the owner with the following: (D) all tenant security deposits and fees held for
23 tenants, unless the owner directs the property manager, in writing, to provide such documents
24 to another property manager, escrow agent, or person and (E) copies of all current tenant
25 rental or lease agreements, unless the owner waives such requirement in writing or directs the
26 property manager, in writing, to provide such documents to another property manager, escrow
27 agent or person. Blacklaw also violated ORS 696.890(4)(a), (d), and (e) (2015 Edition) and
28 ORS 696.301(3) as it incorporates ORS 696.890(4)(a), (d), and (e) (2017 Edition), which state
29 a property manager owes the property owner the following affirmative duties: (a) to deal
30 honestly and in good faith; (d) to account in a timely manner in all matters relating to trust

1 funds; and (e) to act in a fiduciary manner in all matters relating to trust funds. In regards to
2 violations of ORS 696.890(4)(a), (d), and (e) (2015 Edition), Blacklaw's conduct is grounds for
3 discipline under ORS 696.301(12) and (15).

4 3.11 OREA Investigator/Auditor Jeremy Brooks (Brooks) made multiple contact
5 attempts to reach Blacklaw. Several request for production of record letters were left at
6 Blacklaw's address of record, and emailed to Blacklaw. The records were required to be
7 received no later than January 9, 2018.

8 3.12 Per production request letter, Blacklaw was required to produce the following records for the time period of July 2017 through October 2017:

- 10 • General ledger for clients' trust accounts and security deposits
- 11 • Tenant and owner ledgers
- 12 • Bank statements for clients' trust accounts and security deposits account
- 13 • Monthly three way reconciliations
- 14 • All tenant lease agreements within the requested timeframe

15 3.13 On January 9, 2018, Blacklaw sent a 25 page fax to OREA in response to the
16 OREA's letter requesting records.

17 3.14 In her cover letter with the fax, Blacklaw stated she was going through her
18 records, some which were in storage. She indicated she also had computer issues several
19 months back and some documentation had been lost and she had been trying to regenerate
20 them.

21 3.15 In her documentation, Blacklaw stated as of the end of September, she no longer
22 had many tenants or owners. She included a copy of a letter dated October 1, 2017, which
23 she said she had previously sent to the "Real Estate Board," (never received by OREA), which
24 stated she would be closing UPM, and would keep the files in storage.

25 3.16 Regarding her bank statements, she said she was unable to get into her
26 computer to copy the bank statements, and would be going to the bank to obtain the records
27 and send them in to OREA at a later date. Blacklaw never produced the requested bank
28 statements to OREA.

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1 3.17 Blacklaw produced the following documents in her fax

2 • Owner "Reconcil" for the months of July 2017 and August 2017 (provided for 4
3 different properties)

4 • Owner invoices for July 2017 and August 2017 (provided for 4 different
5 properties)

6 • Rental Agreements (provided for 3 of the 4 properties)

7 **(4) Violation:** By failing to properly maintain her property management records, Blacklaw
8 violated ORS 696.301(3) as it incorporates ORS 696.280 (1) and (3) (2015 Edition) which
9 requires: (1) the property manager to maintain complete and adequate records of all
10 professional real estate activity conducted by the property manager; and (3) records to be
11 open for inspection by the Real Estate Commissioner or commissioner's authorized
12 representatives. Blacklaw also violated ORS 696.301(3) as it incorporates ORS 696.280(4)(c)
13 (2015 Edition) which requires records to be maintained for a period of not less than six years
14 after the following date: (c) for management of rental real estate, the date on which the record
15 expired, was superseded or terminated, or otherwise ceased to be in effect.

16 Blacklaw also violated ORS 696.301(3) as it incorporates OAR 863-025-0035(1)(b),
17 (c),(d),(e),(f), and (h), (11-15-16 Edition), which states (1) the property manager's records of
18 the management of rental real estate are "complete and adequate" as required under ORS
19 696.280 if the records contain, at least the following: (b) client trust account and security
20 deposit account records as required by OAR 863-025-0000 to 863-025-0080 and Chapter 696;
21 (c) and owner's ledger for each property management agreement; (d) a record of receipts and
22 disbursements or check register maintained for each clients' trust account or security deposits
23 account; (e) a legible copy of each tenant agreement; (f) a tenant's ledger for each tenant; (h)
24 all paid bills and receipts required under OAR 863-025-0040(8).

25 3.18 The reconciliations Blacklaw faxed to OREA were incomplete (lacked the
26 required 3 components) and did not contain any information regarding clients' trust accounts,
27 ledger balances, or check register/record of receipt and disbursement balances as requested
28 by OREA's request for record production letter.

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(5) Violation: By failing to properly reconcile the clients' trust account and security deposits account Blacklaw violated ORS 696.301(3) as it incorporates OAR 863-025-0025(20) and (21) (11-15-2016 Edition) which requires a property manager to reconcile each clients' trust account and security deposits account within 30 calendar days of the date of the bank statement with the three required components contained in the reconciliation document.

3.19 After the January 9, 2018, fax from Blacklaw, Brooks made multiple contact attempts to reach Blacklaw to discuss the investigation. Blacklaw has not responded to OREA.

3.20 All of the above demonstrate incompetence or untrustworthiness for which Blacklaw is required to hold a license. . .

(6) Violation: ORS 696.301(12) (2015 and 2017 Editions), which states a licensee's real estate license may be disciplined if they have demonstrated incompetence in performing any act for which the licensee is required to hold a license.

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The above violations are grounds for discipline pursuant to ORS 696.301. Based on these violations, OREA is revoking Blacklaw's property manager license. A revocation is appropriate under ORS 696.396(2)(c)(B) (2017 Edition). According to ORS 696.396, OREA may revoke a real estate license if material facts establish a violation of a ground of discipline under ORS 696.301 that exhibits incompetence in the performance of professional real estate activity.

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ORDER

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

Dated this 13th day of August, 2018.

OREGON REAL ESTATE AGENCY



DEAN OWENS

Acting Real Estate Commissioner

Date of Service: 8/13/2018

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.