

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
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4 In the Matter of the Real Estate License of)
5)
6 SHERRY LEE HOYER) STIPULATED FINAL ORDER
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10 The Oregon Real Estate Agency (Agency) and Sherry Lee Hoyer (Hoyer) do hereby
11 agree and stipulate to the following:

12 FINDINGS OF FACT
13 &
14 CONCLUSIONS OF LAW

15 1.

16 1.1 At all times mentioned herein, Hoyer was licensed as a property manager with
17 First Rate Property Management, LLC.

18 1.2 In the summer of 2017 during a clients' trust account audit, Hoyer relayed to the
19 Agency that her bookkeeper had recently left and had stolen money from her clients' trust
20 account. On July 24, 2017, the Agency opened an investigation.

21 1.3 On July 25, 2017, Hoyer told Agency Investigator/ Auditor Meghan Lewis (Lewis)
22 in the last few years she had employed 3 different bookkeepers. She entrusted her
23 bookkeepers to complete the client trust account reconciliations, accept rent from tenants,
24 make bank deposits and transfer funds. Hoyer did not have any written delegations allowing
25 her bookkeepers to do these duties.

26 **(1) Violation:** By failing to have a written delegation of authority for employees who
27 performed monthly reconciliations Hoyer violated ORS 696.301(3) as it incorporates OAR 863-
28 025-0015(6)(b) (5-15-14, and 11-15-16 Edition) which states the following delegations of a
29 property manager's authority must be in writing, dated, and signed by the property manager,
30 and kept with written policies: (b) review, and approve reconciliations and receive and disburse
funds under OAR 863-025-0025(23).

1 1.4 Agency records showed Hoyer had a clients' trust account ending in #8441 and a
2 security deposits account ending in #8468.

3 1.5 As of July 25, 2017, Hoyer had not completed April, May or June 2017
4 reconciliations for her clients' trust account and security deposit account. Hoyer stated she
5 didn't think her records were accurate because her computer software wasn't working right,
6 and she couldn't be sure entries into the check register and ledgers were current in order to
7 complete the reconciliations.

8 **(2) Violation:** By failing to complete monthly reconciliations with the required three
9 components for both the clients' trust account and security deposits account for April and May
10 2017, Hoyer violated ORS 696.301(3) as it incorporates OAR 863-025-0025(20) and (21) (11-
11 15-16 Edition) which requires a property manager to reconcile each clients' trust account and
12 security deposits account within 30 calendar days of the date of the bank statement, with the
13 three required components which must be equal to and reconciled with each other. The
14 reconciliation document must be signed and dated by the property manager. Hoyer also
15 violated ORS 696.301(3) as it incorporates OAR 863-025-0035(1)(j)(11-15-16 Edition) which
16 states records of the management of rental real estate are complete and adequate if records
17 contain at least, (j) records of the reconciliation of each client trust account and security
18 deposit account including the reconciliation document.

19 1.6 In regards to the missing money, Hoyer told Lewis in July 2017 that she was
20 prepared to deposit money in her clients' trust account ending in #8441 to replace what was
21 missing. Hoyer presented a cashier's check in the amount of \$7,600.00 to Lewis. Hoyer was
22 asked how she had identified the missing money in her clients' trust account ending in #8441.
23 She admitted she had not identified where and when the shortages occurred. Hoyer explained
24 she compared the bank statements with the owners' ledgers and it appeared there was as
25 much as \$8,000.00 less in the bank account than there should be.

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1 1.7 On August 1, 2017, Lewis received an email from Hoyer with an attached deposit
2 slip for \$7,023.31 showing the funds deposited into clients' trust account ending in #8441.
3 Lewis requested supporting documentation showing how Hoyer determined the missing
4 amount to be \$7,023.31, and asking which owners' ledgers received part of this deposit.
5 Hoyer was unable to provide adequate supporting documentation showing how she identified
6 the missing money, and which owners' ledgers suffered loss of money and were then made
7 whole by the deposit of \$7,023.31.

8 **(3) Violation:** By failing to identify which owners' ledgers were missing funds, and
9 subsequently which owners' ledgers received funds from the \$7,023.31 deposit into clients'
10 trust account ending in #8441 Hoyer violated ORS 696.301(3) as it incorporates ORS
11 696.890(4)(c)(d) (e) (2017 Edition) which states (4) A real estate property manager owes the
12 property owner the following affirmative duties: (c) To exercise reasonable care and diligence;
13 (d) To account in a timely manner for all funds received from or on behalf of the owner; (e) To
14 act in a fiduciary manner for all matters relating to trust funds. Hoyer also violated ORS
15 696.301(3) as it incorporates OAR 863-025-0065(4), and (5) (11-15-16 Edition) which states,
16 (4) For each deposit made under ORS 696.241, a property manager must obtain a deposit slip
17 and make a written notation of the owners identifying code on the deposit slip. As used in this
18 rule, "deposit slip" means an independently verifiable third party document created by the third
19 party as the time of the deposit, and (5) A property manager must maintain a complete record
20 of all funds or other consideration received in the property manager's property management
21 activity. This record must show from whom the funds or other consideration was received, the
22 date of the receipt, the place and date of deposit, and the final disposition of funds.

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1 **April 2017- June 2017 CTA ending in # 8441 Reconciliations:**

2 1.8 During the investigation Hoyer provided reconciliations to Lewis for review. One
3 of the supporting documents in the reconciliation was the titled, "Detailed Property Statement",
4 which Hoyer identified as the owner ledger. The owner ledger indicated inconsistencies with
5 the bank statement and check register, for the date of funds received and deposited. For
6 example, the April 2017 reconciliation showed, for funds received and deposited on April 3,
7 2017, the bank statement indicated, \$22,534.00, the check register indicated, \$26,759.00, and
8 the owner ledger indicated, \$6,334.00. For the May 2017 reconciliation, for funds received and
9 deposited on May 1, 2017, the bank statement indicated \$4,665.00, the check register
10 indicated \$4,705.00 and the owner ledger indicated, \$28,533.00.

11 1.9 Additionally, the owner ledger was missing the following required elements: the
12 owner's name and identifying code the purpose of the funds and person who tendered the
13 funds, check number, cash receipt number, or electronic tracking number to establish an audit
14 trail, and the balance after each recorded entry.

15 1.10 The check registers lacked the following required identify information: for the
16 receipt of funds, the purpose of the funds and identity of the person who tendered the funds,
17 the purpose for any disbursement, and identifying code.

18 1.11 A review of the April through June 2017 monthly reconciliations for clients' trust
19 account ending in #8441 demonstrated that Hoyer had not maintained her required records in
20 a format which readily enabled tracing and reconciling of her clients' trust funds.

21 **(4) Violation:** By failing to include the required detail in the owner ledger, Hoyer violated
22 ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(a),(b)(A)(B)(C),(c),(d) (11-15-16 Ed.)
23 which states, (3) All owner's ledgers must contain the following information: (a) The owner's
24 name and identifying code; (b) For each deposit of funds; (A) The amount of the funds
25 received, (B) The purpose of the funds and the identity of the person who tendered the funds;
26 (C) The check number, cash receipt number, or electronica tracking number to establish an
27 audit trail to the receipt of funds; (c) For each disbursement of funds; and (d) The balance after
28 each recorded entry.

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1 **(5) Violation:** By failing to properly maintain the required records Hoyer violated ORS
2 696.301(3) as it incorporates ORS 696.280(1)(2015 Edition) which requires a property
3 manager to maintain complete and adequate records of all professional real estate activity
4 conducted by or through the real estate licensee. Hoyer also violated ORS 696.301(3) as it
5 incorporates OAR 863-025-0035(1)(b)(d)(3)(b) (11-15-16 Edition) which states, (1) The
6 property manager's records of the management of rental real estate are "complete and
7 adequate" as required under ORS 696.280 if the records contain, as least, the following; (b)
8 client trust account and security deposit account records; (d) A record for receipts and
9 disbursements or check register maintained for each clients' trust account or security deposits
10 account; (3) If a property manager uses a computerized system for creating, maintaining, and
11 producing required records and reports; (b) Posting of owner ledgers, record of receipts and
12 disbursements, tenant ledgers, and manipulation of information must be maintained in a format
13 that will readily enable tracing and reconciling. Hoyer also violated ORS 696.301(3) as it
14 incorporates OAR 863-025-0040(2)(a)(C),(b)(D), (c)(11-15-16 Ed.), which states, (2) A record
15 of receipts and disbursements, or a check register must contain at least the following
16 information, (a) for each receipts of funds: (C) The purpose of the funds and identity of the
17 person who tendered the funds, (b) For each disbursement of funds: (D) The purpose of the
18 disbursement, and (c) If there is more than one property in a clients' trust account, each entry
19 for a receipt, deposit or disbursement must be identified with the applicable identifying code.

20 **July- August 2017 Security Deposit Reconciliations**

21 1.12 Hoyer's July 2017 reconciliation for security deposit account ending in #8468
22 showed the following:

- 23 • Part I, Bank Balance: \$69,145.49
- 24 • Part II, Check Register: \$69,145.49
- 25 • Part III, Security Deposits: \$66,330.00
- 26 • Part IV, Summary/Difference: \$2,815.49, with a written explanation as possible
27 uncleared checks or deposit made to the wrong account.

28 1.13 On August 16, 2017, Lewis received an email from Hoyer explaining they found a
29 surplus in the security deposits account, and they had gone back six months and still couldn't
30 identify the difference.

1 1.14 Hoyer's August 2017 reconciliation for security deposit account ending in #8468
2 showed the following:

- 3 • Part I: Bank Balance: \$67,000.99
- 4 • Part II: Check Register: \$67,900.99
- 5 • Part III: Security Deposits: \$68,895.00
- 6 • Part IV: Summary/Difference: \$994.01 with written explanation of possible
7 transaction posted to the wrong account.

8 1.15 A review of both July and August 2017 reconciliations for the security deposit
9 account show the out of balance amount changing from \$2,815.49 more in the bank and check
10 register compared to the total of the individual security deposits and fees held in the security
11 deposits account (Part III) to a difference of \$944.01 less in the bank account and check
12 register compared to the total of individual security deposits and fees held in the security
13 deposits account (Part III).

14 **(6) Violation:** By failing to identify and explain the differences and corrective action taken
15 for the July and August 2017 reconciliations of security deposit account ending in #8468 Hoyer
16 violated ORS 696.301(3) as it incorporates OAR 863-025-0025(22)(11-15-16 Ed.) which states
17 a property manager must take corrective action to resolve all adjustments made in a
18 reconciliation prior to the next reconciliation or to document the good faith efforts the property
19 manager has taken to resolve the adjustment. Hoyer also violated ORS 696.890(4)(c), (d),
20 (e)(2015 Edition), which states, (4) A real estate property manager owes the property owner
21 the following affirmative duties: (c) To exercise reasonable care and diligence; (d) To account
22 in a timely manner for all funds received from or on behalf of the owner; and (e) To act in a
23 fiduciary manner for all matters relating to trust funds. Hoyer's conduct is grounds for
24 discipline under ORS 696.301(12).

25 1.16 A review of four active property management agreements (with effective dates
26 between August 5, 2012 and August 17, 2017) listed the management fee as a percentage of
27 the monthly rent, however they did not designate when the management fees would be earned
28 or paid.

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1 1.17 Additionally, all four property management agreements did not disclose Hoyer's
2 use and interest in her husband's property maintenance company, Able Property Services
3 (APS). Hoyer's check registers indicate APS received payment for property maintenance
4 services.

5 **(7) Violation:** By failing to disclose in the property management agreement when the
6 management fees will be earned and paid, Hoyer violated ORS 696.301(3) as it incorporates
7 OAR 863-025-0020(2)(f)(9-1-11, 9-1-12, 4-1-13, 5-15-14, 11-15-16 Editions.), which states, (2)
8 A property management agreement must include, but is not limited to: (f) The management
9 fees, application fees, screening fees, rebates, discounts, overrides and any other form of
10 compensation to be received by the property manager for management of rental real estate
11 including when such compensation is earned and when it will be paid.

12 **(8) Violation:** By failing to disclose in the property management agreement her pecuniary
13 interest and use of Able Property Services Hoyer violated ORS 696.301(3) as it incorporates
14 OAR 863-025-0020(2)(i)(9-1-11, 9-1-12, 4-1-13, 5-15-14, 11-15-16 Eds.), which states, (2) A
15 property management agreement must include, but is not limited to: (i) Disclosure of the use
16 of employees or a business in which the property manager has a pecuniary interest at the time
17 of the execution of the property management agreement. Hoyer also violated ORS
18 696.890(3)(g) (2011 and 2013 Editions) and ORS 696.890 (4)(g) (2015 Edition) which states,
19 (4) A real estate property manager owes the property owner the following affirmative duties: (g)
20 To disclose in a timely manner to the owner any existing, or contemplated conflict of interest.
21 Hoyer's conduct is grounds for discipline under ORS 696.301(12).

22 1.18 Agency records showed Hoyer's clients' trust account and security deposit
23 account were held with Bank of the Cascades. On August 11, 2017, First Interstate Bank
24 acquired Bank of the Cascades and became First Interstate Bank. As of October 27, 2017,
25 Hoyer had failed to update the Agency licensing database with the new bank name as
26 required.

27 **(9) Violation:** By failing to update the new bank name in the Agency's licensing database
28 Hoyer violated ORS 696.301(3) as it incorporates ORS 696.241(4)(a) (2015 Edition), which
29 states, (2) within 10 business days from the date a clients' trust account is opened , the
30 licensee shall notify the Agency the account has been opened, and the notice must include,
but not limited to: (a) The name of the bank where the account is located.

1 1.19 The above violations demonstrate Hoyer's incompetence in performing an act for
2 Hoyer is required to hold a license.

3 **(10) Violation:** ORS 696.301(12) (2015 Edition) which states a licensee's real estate license
4 may be disciplined if they have demonstrated incompetence or untrustworthiness in performing
5 any act for which the real estate licensee is required to hold a license.

6 2.

7 2.1 The foregoing violations are grounds for discipline pursuant to ORS 696.301.

8 2.2 The Agency reserves the right to investigate and pursue additional complaints
9 that may be received in the future regarding this licensee.

10 2.3 In establishing the violations alleged above, OREA may rely on one or more of
11 the definitions contained in ORS 696.010.

12 STIPULATION & WAIVER

13 I have read and reviewed the above findings of fact and conclusions of law which have
14 been submitted to me by the Agency and further, the order which follows hereafter. I
15 understand that the findings of fact, conclusions of law and this stipulation and waiver embody
16 the full and complete agreement and stipulation between the Agency and me. I further
17 understand that if I do not agree with this stipulation I have the right to request a hearing on
18 this matter and to be represented by legal counsel at such a hearing. Hearings are conducted
19 in accordance with the procedures set forth in ORS Chapter 183 and in accordance with the
20 Rules of Practice and Procedure adopted by the Attorney General of the State of Oregon. I
21 freely and voluntarily waive my rights to a hearing, to representation by legal counsel at such a
22 hearing, and to judicial review of this matter.

23 I hereby agree and stipulate to the above findings of fact and conclusions of law and
24 understand that the order which follows hereafter may be completed and signed by the Real
25 Estate Commissioner or may be rejected by the Real Estate Commissioner. I understand that,
26 in accordance with the provisions of ORS 696.445(3), notice of this order shall be published in
27 the Oregon Real Estate News Journal.

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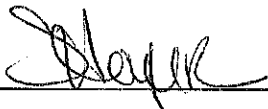
ORDER

IT IS HEREBY ORDERED that the property manager license of Hoyer be, and hereby is reprimanded.

IT IS FURTHER ORDERED that Hoyer complete the 27- hour Property Manager Advanced Practices course, (detailed in OAR 863-022-0022, 1-1-2018 Edition) within four months from the effective date of this order. Hoyer must submit a certificate to the Agency showing completion of the 27-hour Property Manager Advanced Practices Course. This certificate must be submitted to the Agency no later than 10 days after the education has been completed.

IT IS SO STIPULATED:

IT IS SO ORDERED:



SHERRY LEE HOYER

DEAN OWENS

Acting Real Estate Commissioner

Date 2-12-19

Date 2-19-2019

Date of Service: 2-19-2019