

1 REAL ESTATE AGENCY
2 BEFORE THE REAL ESTATE COMMISSIONER
3

4 In the Matter of the Real Estate License of

5
6 BRENDA DALTON LEITCH

7)
8) FINAL ORDER BY DEFAULT
9)

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11 1.1 On February 5, 2019, the Real Estate Commissioner issued, by certified mail, a
12 Notice of Intent to Revoke Brenda Dalton Leitch's (Leitch) property manager license. The
13 Oregon Real Estate Agency (Agency) sent the Notice of Intent to Leitch's last known address
14 of record with the Agency. The Notice of Intent was also mailed to Leitch by regular first class
15 mail in a handwritten envelope.

16 1.2 The certified mailing of the Notice of Intent and the first class mailing of the
17 Notice of Intent were sent to Leitch at 1049 Nautical Dr., Hammond, OR 97121. These
18 mailings have not been returned to the Agency.

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

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

24 2.

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

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

1 3.5 As of December 6, 2018, Leitch never submitted the requested documents to the
2 Agency in regards to the reconciliation mail-in review.

3 **Violation:** By failing to respond to the reconciliation mail in review and provide the
4 requested documents Leitch violated ORS 696.301(3) as it incorporates OAR 863-025-
5 0035(2)(a) (1-1-2018 Edition) which states: (2) a property manager must produce records
6 required under section (1) of this rule for inspection by the Agency as follows: (a) when the
7 Agency makes a request for production of property management records, the property
8 manager must provide such records within no less than five banking days. Leitch's actions
9 demonstrated incompetence in violation of ORS 696.301(12) (2017 Edition) which states that a
10 licensee's real estate license may be disciplined if they have demonstrated incompetence or
11 untrustworthiness in performing any act for which the licensee is required to hold a license.

12 3.6 On October 31, 2018, property owner Brad Heil (Heil) emailed the Agency
13 expressing concerns regarding his property manager Leitch.

14 3.7 On November 1, 2018, the Agency opened an investigation.

15 3.8 Leitch's registered business name B Dalton Property Management was set to
16 expire on October 1, 2018. The Agency's licensing division sent renewal notices to Leitch on
17 September 1st, 21st, and 28th, 2018. Additionally, Agency staff called Leitch on September 27,
18 2018, and left a voicemail message. Leitch made no effort to contact the Agency or renew her
19 business name. On October 1, 2018, the register business name expired, causing Leitch's
20 property manager license to become inactive. An email notification was sent to Leitch that day
21 and a warning notice advising Leitch not to conduct professional real estate activity was
22 emailed to her on October 2, 2018.

23 3.9 During the Agency investigation Leitch indicated she received the Agency's
24 notices and messages about renewing her business name. She said she had misunderstood
25 and thought it was regarding the Secretary of State business registration. Leitch's Secretary of
26 State business registry was set to expire on November 25, 2018.

27 3.10 Leitch rectified her licensing issues by creating a new registered business name
28 with the Agency and attaching her license to it on November 2, 2018.

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1 3.11 Leitch admitted to conducting professional real estate activity during the thirty
2 day period when her license was inactive. She stated it was, "business as usual."

3 **Violation:** By engaging in management of rental real estate activity while her license
4 was inactive Leitch violated ORS 696.301(3) as it incorporates OAR 863-024-0065(1) (1-1-
5 2018) which states a property manager licensee whose license is on inactive status may not
6 engage in the management of rental real estate.

7 3.12 On April 19, 2016, Leitch signed a property management agreement with Heil to
8 manage his property located at 346 Skipanon Drive, Warrenton OR (subject property). The
9 contract was set to expire after one year, on March 30, 2018. Heil stated a new property
10 management agreement was never drawn up or signed. Leitch continued to manage the
11 subject property after the expiration date of March 30, 2018.

12 **Violation:** By continuing to manage the subject property without an unexpired property
13 management agreement, Leitch violated ORS 696.301(3) as it incorporates OAR 863-025-
14 0020(1) (1-1-2018 Edition) which states a property manager must not engage in the
15 management of rental real estate without a written, unexpired property management
16 agreement between the owner and property manager.

17 3.13 The subject property was part of a homeowners association (HOA) and was
18 subject to HOA fees. Responsibility for paying the HOA fees was not specifically addressed in
19 the property management agreement.

20 3.14 The total amount due each month had been \$36.00 through March 2018, and
21 increased to \$40.00 a month in April 2018.

22 3.15 On April 9, 2018, Heil emailed Leitch about the HOA account informing her that a
23 \$984.00 assessment was due along with another fee. Leitch did not remit this payment.

24 3.16 On October 8, 2018, Heil received notice that the HOA fees were past due for the
25 subject property. No payments had been made from February 2018 through October 2018.
26 Leitch was copied as a recipient on this email.

27 3.17 According to Heil, he said it was Leitch's responsibility to pay the HOA fees and
28 that it had been verbally agreed to.

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1 **Violation:** By failing to address the HOA fees in the property management agreement
2 Leitch violated ORS 696.301(3) as it incorporates OAR 863-025-0020(2)(b) which requires a
3 property management agreement to include the duties and responsibilities of the property
4 manager and the owner.

5 3.18 Back in November 17, 2016, Heil emailed HOA bookkeeper Teena Adams
6 (Adams) asking that she add Leitch to any emails sent pertaining to the HOA account.
7 Additionally, he authorized Leitch to make payments on his account.

8 3.19 On October 8, 2018, Heil forwarded Leitch a delinquency notice regarding the
9 HOA fees and wrote, "Brenda, I have to get this paid ASAP." Leitch responded to Heil on
10 October 10, 2018. In her message, she wrote, "I will take care of it," and added "This was Paid
11 [sic] a while back along with the assessment. Three checks were written. I will check with my
12 bank first. If not cashed, I will drive over new checks."

13 3.20 Leitch told Agency Investigator/Auditor Frances Hlawatsch (Hlawatsch) that she
14 had not been receiving the HOA statements and "did not know" she needed to pay them. She
15 said all statements were sent to Heil. Leitch said she felt badly about what had happened and
16 had recently issued payment to the HOA for the fees. She said she would take responsibility
17 for any fees, meaning late charges. Leitch indicated she was waiting for Heil to determine how
18 much was due and would send additional payment if he directed her to.

19 3.21 On October 10, 2018, Leitch issued payment of \$3,515.86 for the HOA fees.
20 According to Adams, the moorage dues still had not been paid, and there was still a past due
21 balance of \$1,019 remaining after the October payment.

22 3.22 The emailed documents Adams provided demonstrated that Leitch had been
23 copied as a recipient on numerous attempts to collect the delinquent HOA dues.

24 **Violation:** By failing to make the HOA payments timely on behalf of the property owner,
25 and causing late charges to be assessed on the account, Leitch violated ORS 696.301(3) as it
26 incorporates ORS 696.890(4)(c), and (f) (2017 Edition), which requires a property manager
27 owes the property owner the following affirmative duties: (c) to exercise reasonable care and
28 diligence; and (f) to be loyal to the owner by not taking action that is adverse or detrimental to
29 the owner's interest.

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1 3.23 On October 12, 2018, Heil emailed Leitch, "I'm concerned I can't reach you and
2 have had no response asking you to transfer all my rental funds." His email indicated that Heil
3 had previously directed Leitch to transfer his funds into his personal Wells Fargo account and
4 she had not yet done so. He went on to write that he didn't understand why she was not
5 responding to his calls or request.

6 3.24 Leitch had managed the subject property since May 2016. The subject property
7 had not been vacant during the timeframe Leitch managed it, and the rent due each month
8 was \$1,000.00. Heil estimated that Leitch could be holding as much as \$27,000.00 on his
9 behalf.

10 3.25 Heil never received a disbursement of rental funds or any owner statements
11 during the time Leitch managed the property.

12 **Violation:** By failing to provide owner statements to Heil Leitch violated ORS
13 696.301(3) as it incorporates OAR 863-025-0055(4) (1-1-18 Edition) which requires a property
14 manager to report in writing to each owner any change in the owner's ledger. A monthly report
15 showing all receipts and disbursements for the owner's account is sufficient under this section.

16 3.26 The property management agreement states that "disbursed monies are based
17 upon checks clearing in the Trust Account" and a "three-week waiting period upon receipt of
18 rents will be expected."

19 3.27 Prior to October 2018, Heil had never asked for funds to be disbursed and had
20 not complained to Leitch about the lack of disbursement. Leitch stated Heil wanted his owner
21 funds in his account as a "savings" and did not want monthly disbursements. She said this
22 had been a verbal arrangement with Heil.

23 3.28 As of December 6, 2018, Leitch had not yet disbursed any owner funds to Heil.

24 3.29 The tenants (James and Janye Reuterthal) had been living in the subject
25 property since October 2017. At the time of the move-in Leitch collected the \$1,000 cash from
26 the tenants, however, Leitch did not have her receipt book with her to provide a receipt for
27 funds collected.

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1 **Violation:** Leitch failed to record the collection of move-in funds received from the
2 tenants in violation of ORS 696.301(3) as it incorporates OAR 863-025-0065(5) (11-15-16
3 Edition) which requires a property manager to maintain a complete record of all funds or
4 consideration received in the property manager's property management activity. This record
5 must show from whom the funds or other consideration was received, the date of the receipt,
6 the place and date of deposit, and, the final disposition of the funds or other consideration.

7 **Violation:** By failing to provide tenants with a receipt for the \$1,000 move in funds
8 Leitch violated ORS 696.301(3) as it incorporates OAR 863-025-0060(1) (11-15-16) which
9 requires a property manager to prepare a legible written receipt for any cash funds received
10 under a property management agreement.

11 3.30 The Reuterdhals said Leitch did not have a lease agreement for them to sign at
12 move-in and assured them she would create one. The tenants stated they requested a lease
13 agreement on more than one occasion but Leitch never brought them one to sign. In her
14 interview with Hlawatsch, Leitch claimed to have created a lease agreement with the tenants
15 but that she had accidentally left the original executed document with the tenants. She
16 claimed to have requested it be returned from the tenants but they never returned it.

17 **Violation:** By failing to either have tenants sign a lease agreement or failing to maintain
18 a copy of the signed lease agreement Leitch violated ORS 696.301(3) as it incorporates OAR
19 863-025-0045(1) (11-15-16 Edition) which requires the property manager to file and maintain
20 legible copies of all tenant rental or lease agreements for the time period required under OAR
21 863-025-0035.

22 3.31 In early November 2017, Mrs. Reuterdhal contacted Leitch to ask how she
23 wanted them to remit their rent payment. Leitch drove to the subject property to collect the
24 rent and Mrs. Reuterdhal went down to Leitch's car to personally deliver the cash payment and
25 collect a receipt. Leitch informed Mrs. Reuterdhal that she had again forgotten her receipt
26 book and could not provide a receipt. She promised to mail the tenant the receipts for both
27 October and November's rent payments. Leitch never provided a receipt for the November
28 rent payment.

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1 **Violation:** By failing to record the November rent received from the tenant Leitch
2 violated ORS 696.301(3) as it incorporates OAR 863-025-0065(5) (11-15-16 Edition) which
3 requires a property manager to maintain a complete record of all funds or consideration
4 received in the property manager's property management activity. This record must show from
5 whom the funds or other consideration was received, the date of the receipt, the place and
6 date of deposit, and, the final disposition of the funds or other consideration.

7 **Violation:** By failing to provide tenants with a receipt for November's rent Leitch
8 violated ORS 696.301(3) as it incorporates OAR 863-025-0060(1) (11-15-16) which requires a
9 property manager to prepare a legible written receipt for any cash funds received under a
10 property management agreement.

11 3.32 In early December 2017 Mrs. Reuterdhal reached out to Leitch to arrange
12 payment of rent. On December 11, 2017, Leitch drove to the subject property to pick up the
13 rent payment. Again, she did not have her receipt book or lease with her but made promises to
14 follow through soon.

15 3.33 In January 2018, the Reuterdhals made numerous attempts to contact Leitch by
16 phone and text message to arrange payment of their rent. The Reuterdhals said they did not
17 hear from Leitch for the entire month of January so they held onto their rent money waiting to
18 hear from her.

19 3.34 In February 2018, the Reuterdhals tried to reach Leitch by phone and text as
20 they had \$2,000 in rent that was due (January and February 2018 rent). They did not hear
21 from Leitch until the end of March 2018, when Leitch called Mrs. Reuterdhal and demanded to
22 be paid \$3,000 immediately. When Leitch came by to collect the \$3,000 in cash for the three
23 months of rent (January, February, and March rent), she again did not have her receipt book.
24 Leitch never provided the receipt for the \$3,000 payment of rent.

25 3.35 Mrs. Reuterdhal expressed her frustration to Leitch and asked if there was an
26 easier way to remit rent payment. She asked if they could mail money orders or take cash to
27 Lietch's bank each month. Leitch said she would provide her banking information so the
28 Reuterdhals could make deposits there.

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1 **Violation:** By failing to properly record the December, January, February and March
2 rents received from the tenants Leitch violated ORS 696.301(3) as it incorporates OAR 863-
3 025-0065(5) (11-15-16 Edition) and (8) (1-1-18 Edition) which requires a property manager to
4 maintain a complete record of all funds or consideration received in the property manager's
5 property management activity. This record must show from whom the funds or other
6 consideration was received, the date of the receipt, the place and date of deposit, and, the final
7 disposition of the funds or other consideration.

8 **Violation:** By failing to provide tenants with a receipt for the rent paid for December,
9 January, February and March Leitch violated ORS 696.301(3) as it incorporates OAR 863-025-
10 0060(1) (11-15-16, 1-1-2018 Edition) which requires a property manager to prepare a legible
11 written receipt for any cash funds received under a property management agreement.

12 3.36 On April 9, 2018, Leitch sent a text message stating "need cash today," to the
13 Reuterdhals. Leitch suggested the tenants take cash to Wauna Federal Credit Union as they
14 could do "guaranteed funds." They were confused as to what this meant, but assumed Leitch
15 wanted them to deposit cash at the credit union and asked Leitch for an account number.
16 Leitch did not respond or provide any account numbers for them to do this, so they held onto
17 the April rent.

18 3.37 In May 2018, Leitch contacted Mr. Reuterdhal by phone and demanded
19 \$5,000.00. Leitch told him they were 5 months past due on rent and she would be issuing an
20 eviction notice. Mr. Reuterdhal told Leitch they were ready to pay \$2,000.00 and reminded her
21 they had paid \$3,000.00 in March. Leitch initially denied this and suggested that Mrs.
22 Reuterdhal had been lying to her husband about paying rent and perhaps had a gambling
23 problem. He asserted Leitch was wrong and they only owed \$2,000 for April and May. Leitch
24 denied this but eventually said she would "take \$2,000 and call it even."

25 3.38 Mr. Reuterdhal paid the \$2,000 by depositing cash into an account at Columbia
26 Bank as directed by Leitch.

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1 **Violation:** By failing to keep an accurate record of rents received and due Leitch
2 demonstrated incompetence in violation of ORS 696.301(12) (2017 Edition) which states a
3 licensee's real estate license may be disciplined if they have demonstrated incompetence or
4 untrustworthiness in performing any act for which the real estate licensee is required to hold a
5 license.

6 3.39 On November 2, 2018, during a phone interview with Hlawatsch, Leitch promised
7 to provide her most recent completed clients' trust and security deposit account reconciliations
8 and supporting documents (Leitch indicated she was behind on reconciling and indicated the
9 last month she had completed was August 2018). She promised the documents would be
10 provided no later than November 5, 2018.

11 3.40 On November 6, 2018, the documents had not been provided, and OREA issued
12 a formal demand for the documents. Leitch was directed to provide her August reconciliations
13 and supporting documents no later than November 13, 2018. The demand was sent to Leitch
14 by email, phone voice mail message and regular mail.

15 3.41 Leitch failed to submit the requested documents by the November 13, 2018
16 deadline. As of December 6, 2018, Leitch has not submitted the requested documents.

17 **Violation:** By failing to produce the requested documents, Leitch violated ORS
18 696.301(3) as it incorporates OAR 863-025-0035(2)(a), (c) (1-1-2018 Edition), which requires a
19 property manager to produce records required under section (1) of this rule for inspection by
20 the Agency as follows: (a) When the Agency makes a request for production of property
21 management records, the property manager must provide such records within no less than five
22 banking days and (c) failure to produce such records within the timelines stated in subsection
23 (a) or (b) of this section is a violation of ORS 696.301. Leitch's actions also demonstrate
24 incompetence in violation of ORS 696.301(12) which states a licensee's real estate license
25 may be disciplined if they have demonstrated incompetence or untrustworthiness in performing
26 any act for which the real estate licensee is required to hold a license.

27 3.42 Leitch sent several emails to OREA with various reasons why she had been
28 unable to provide the requested documents.

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1 3.43 On November 20, 2018 OREA issued a subpoena for Leach to provide records.
2 Service for the subpoena was attempted on November 21, 2018 at 9:30 am at her main office
3 location (1049 Nautical Drive, Hammond, OR, 97121) for B. Dalton Property Management. In
4 attempting to serve the subpoena to Leitch, it was observed there was no sign identifying the
5 location as a main office. The 1049 Nautical drive location is listed as the main office location
6 for B. Dalton Property Management in the Agency licensing database.

7 **Violation:** By failing to have a sign designating the main office Leitch violated ORS
8 696.030 as it incorporates ORS 696.200(1)(c) (2017 Edition) which requires a property
9 manager to designate the main office by a sign that contains the name under which the real
10 estate licensee conducts professional real estate activity.

11 3.44 On November 28, 2018, Leitch was served the subpoena which directed her to
12 provide the requested documents to the Agency no later than December 7, 2018. Leitch never
13 provided the requested documents to the Agency as required by the subpoena.

14 3.45 On November 12, 2018, the Agency received communication relating to another
15 property owner formerly contracted with Leitch. Property manager Carla Sowins (Sowins)
16 forwarded an email (on November 12, 2018) to Hlawatsch containing multiple emails from
17 property owner Polly Buckingham (Buckingham).

18 3.46 In her multiple emails Buckingham was reaching out to her new property
19 manager Sowins expressing frustration about Leitch's failure to respond to the notice or deliver
20 the items requested as follows: owner records, keys, lease agreement and the tenant's
21 security deposit.

22 3.47 The emails indicated that Buckingham gave notice of termination to Leitch
23 effective November 1, 2018. Buckingham wrote that she had sent Leitch the notice around or
24 on September 27, 2018.

25 3.48 In Buckingham's November 12, 2018, email she wrote she had "contacted
26 Brenda a dozen times or more and have not heard back at all."

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1 3.49 Buckingham's property had been managed by Leitch since 2012. Buckingham
2 initially received disbursements of rental funds directly into her bank account. When the bank
3 closed its Astoria branch Leitch began to mail checks to Buckingham. The payments became
4 very inconsistent with funds only arriving every 4-6 months. Buckingham said she would
5 inquire with Leitch only to be met with delayed response and excuses. Buckingham said
6 waiting months to receive her funds caused financial hardship for her.

7 3.50 Buckingham provided screenshots of texts to and from Leitch over the previous
8 year and a half. The messages presented a pattern of Buckingham requesting rental funds to
9 be disbursed and being met with delayed responses and excuses.

10 **Violation:** By failing to timely disburse rental income to the property owner Leitch
11 violated ORS 696.301(3) as it incorporates ORS 696.890(4)(c), (e) and (f) (2015 and 2017
12 Edition) which states (4) a real estate property manager owes the property owner the following
13 affirmative duties: (c) to exercise reasonable care and diligence; (e) to act in a fiduciary
14 manner in all matters relating to trust funds; and (f) to be loyal to the owner by not taking action
15 that is adverse or detrimental to the owner's interest.

16 3.51 Buckingham said she did recall some documents coming to her at tax time but
17 she had not received her monthly owner statements.

18 **Violation:** By failing to send monthly owner statements to Buckingham, Leitch violated
19 ORS 696.301(3) as it incorporates OAR 863-025-0055(4) (11-15-16, and 1-1-2018 Edition)
20 which requires a property manager to report in writing to each owner any change in the
21 owner's ledger. A monthly report showing all receipts and disbursements for the account of
22 the owner during the prior monthly period is sufficient under this section.

23 3.52 Buckingham was unsure if a lease agreement with the tenant was in place for her
24 property managed by Leitch. In November 2013, Leitch had written a statement for
25 Buckingham to use as proof of income as she could not find the lease agreement showing how
26 much rent was being paid. In the statement, Leitch wrote she was "unable to find the copy of
27 current lease."

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