

REAL ESTATE AGENCY  
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of

MARY M. HOWARD



FINAL ORDER BY DEFAULT

**PROCEDURAL HISTORY**

1.

1.1 On June 18, 2020, the Real Estate Commissioner issued, by certified mail, a *Notice of Intent to Revoke* the real estate principal broker license of Mary M. Howard (Howard). The Oregon Real Estate Agency (Agency) sent the Notice of Intent to Howard's last two known addresses of record with the Agency (PO Box 2372, Gearhart, OR 97138 and 400 Shore Ter, Seaside, OR 97138). The *Notice of Intent* was also mailed to Howard by regular first class mail to both of the above addresses.

1.2 The notice was also emailed to Howard at her email address of record.

1.3 Neither the certified mailings nor the first class mailings have been returned to the Agency. 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.

2.

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 OREA.

2.2 Howard's last known mailing address of record with the Agency is PO Box 2372, Gearhart, OR 97138. Another address on file at the Agency for Howard was 400 Shore Ter, Seaside, OR 97138.

2.3 Certified mailings of the notice of intent were mailed to Howard at her two last known addresses of record (see above) on June 18, 2020. The certified mailings of the notice have not been returned to the Agency. A Domestic Return Receipt was received by the Agency for the certified mailing of the notice addressed to Howard at 400 Shore Ter Seaside, OR 97138. The date of delivery noted on the return receipt was June 22, 2020, and in the "Received By" section it was marked "Covid 19" and was followed by some writing that was illegible.

2.4 The notice was also mailed regular first class mail in a handwritten envelope to both of the above addresses for Howard. The mailings in the handwritten envelope have not been returned to OREA. 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. That presumption has not been overcome by any evidence.

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

2.6 According to ORS 696.775, the lapsing, expiration, revocation or suspension of a real estate license, whether by operation of law, order of the Real Estate Commissioner or decision of a court of law, or the inactive status of the license, or voluntary surrender of the license by the real estate licensee does not deprive the commissioner of jurisdiction to: (1) proceed with an investigation of the licensee; (2) conduct disciplinary proceedings relating to the licensee; (3) Take action against a licensee, including assessment of a civil penalty against the licensee for a violation of ORS 696.020(2); or (4) revise or render null and void an order suspending or revoking a license.

2.7 As noted in paragraph 9 of the *Notice of Intent to Revoke*, the Agency's entire investigation file was designated as the record for purposes of presenting a prima facie case upon default, including submissions from Howard and all information in the administrative file relating to the mailing of notices and any responses received.

### **FINDINGS OF FACT**

#### **3.**

3.1 At all times mentioned herein, Howard was licensed as a principal broker, doing professional real estate activity under the registered business name Astoria Coast, Inc (Astoria Coast).

3.2 On August 7, 2019, the Agency received a complaint from Cindy Bergquist against Howard. On August 9, 2019, the Agency received another complaint against Howard from Judy Ledyard (Ledyard).

3.3 On September 24, 2019, the Agency opened an investigation.

3.4 Howard maintained clients' trust account ending in #5552, and security deposits account ending in #5560.

3.5 On October 29, 2019, Agency Financial Investigator/Auditor Aaron Grimes (Grimes) interviewed Howard. Howard provided copies of the bank statements for the clients' trust account- security deposits account number ending in #5560 for 2018 and most of 2019, along with the bank statements for the clients' trust account number ending in #5552 for most of 2019. When Grimes requested Howard's most recent reconciliations with supporting documentation, Howard stated they were not completed.

3.6 Howard provided a reconciled bank balance sheet attached to the clients' trust account bank statements for account ending in #5552. In regards to the security deposits account, Howard had calculated reconciled bank balances on some of the security deposits bank statements for account ending in #5560.

3.7 Howard did not have reconciliations for either clients' trust account ending in #5552, or security deposits account ending in #5560 with the required three components contained in a single reconciliation document.

3.8 During the interview with Grimes on October 20, 2019, Howard stated she started 2018 with "fresh numbers" in her software because her numbers were "all scrambled." Howard estimated she needed update her check registers with entries that should have been posted as far back as March 2019, and as far back as April 2019 in the tenants' and owners' ledgers. Howard stated there were rents she need to post to her software, and bills to pay for a couple owners.

3.9 Howard failed to provide check registers for 2018 and 2019 for both clients' trust account and security deposit account for the investigation.

3.10 Prior to this investigation, and dated December 20, 2017, Howard provided the Agency with a list of security deposits held for each tenant. This list was used to compare security deposits amounts held provided by Howard during the investigation.

3.11 Bank statements for the security deposits account ending in #5560 showed the following checks written by Howard without full explanations or supporting documentation:

- April 30, 2018, check #1709 was written to Astoria Coast for \$5,000.00. The check was deposited into the clients' trust account ending in #5552. Howard provided a spreadsheet with explanations of where funds from the security deposits account went after being transferred to the clients' trust account. On the spreadsheet, Howard stated \$1,350.00 of check #1709 was forfeited for cause and noted "DUPRAU TO CARMICHAEL." (Howard's explanation was inconsistent with her December 20, 2017, list of security deposits held for each tenant, where it noted \$0.00 held for Tenant Micah Domingcil (Domingcil), the only tenant for property owner Carmichael Properties, LLC.)
- May 4, 2018, check #1710 was written to Astoria Coast for \$1,000 and deposited into a Clatsop Community Bank Account (Howard's personal bank account). When asked to explain the check, Howard said someone forfeited their deposit to her. Howard's spreadsheet noted a tenant's security deposit was forfeited for cause and another was forfeited for rent, but she only explained \$850.00 of the \$1,000.00 check.
- May 30, 2018, check #1712 was written to Astoria Coast for \$5,000.00 and deposited into the clients' trust account. Howard noted it was for "Transfer Forfeits." Howard explained \$4,970.00 of the \$5,000, being for six tenants who forfeited their deposits and one forfeited for cause. Howard provided the forfeited amount for each of the tenants. The forfeited amounts for six of these tenants when compared to Howard's December 20, 2017, list of security deposits held on behalf of each tenant did not match.

- Over the remainder of 2018 Howard wrote more checks, totaling \$9,000 from the security deposits to the clients trust account. Howard's transfers did not include complete and adequate records to support her explanations.

3.12 Howard stated she had some tenants who asked her to use their security deposit to cover rent with the understanding that the tenants would replenish their security deposits, which didn't happen. When she noted that the security deposit was forfeited for rent, Howard had applied the security deposit to cover a tenant's rent. As of December 31, 2017, Howard held \$31,902.52 in the security deposits ending in #5560. As of December 31, 2018, Howard held \$1,162.50 in the security deposits account ending in #5560.

3.13 Additionally, Howard stated if she was short in the clients' trust account she would sometimes transfer funds from the security deposits account.

3.14 When interviewed on November 15, 2019, Howard said she held deposits totaling \$3,100 for the following three tenants for property owner John Porter: Greg Lessard (Lessard), Yvonne Buckman (Buckman) and Kyle Miller (Miller). Howard submitted ledgers for each of the three tenants. Miller's ledger balance was \$1,209.00, but Howard said Miller paid \$1,200.00. Buckman's ledger balance showed he paid \$1,200.00 and Lessard's ledger balance showed he paid \$700.00.

3.15 The security deposit bank statement for period ending September 30, 2019, shows a balance of \$962.50 in that account.

3.16 Dated September 1, 2019, owner, Judy Ledyard (Ledyard), wrote Howard giving a 60-days' notice to terminate her property management agreement. On October 29, 2019, Howard told the Agency she still owed Ledyard \$850.00 for one months' rent. On November 15, 2019, Howard said Ledyard's account was "still a mess" and printed an owner's ledger that showed Howard owed Ledyard \$3,825.00, with changes Howard made dating back to March 1, 2019.

3.17 On December 13, 2019, Grimes interviewed Ledyard. Ledyard said Howard still owed her \$4,100.00 from four months of rent, less management fees, plus a reserve of \$500.00. As of December 13, 2019, Ledyard had not received any final accounting from Howard or any of the funds she was due. On February 7, 2020, Ledyard took Howard to small claims court in Clatsop County for return of her funds, \$4,100.00.

3.18 All of the above demonstrate incompetence or untrustworthiness in performing acts for which Howard is required to hold a license.

#### **STATEMENT OF LAW**

#### 4.

4.1 ORS 696.301(3) which states a real estate licensee's real estate license may be disciplined if they have: ORS 696.301(3) which states a real estate licensee's real estate license may be disciplined if they have: (3) disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or any rule of the Real Estate Agency

4.2 ORS 696.301(12) (2017 and 2019 Editions) which states a licensee's real estate license can be disciplined if they have demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

4.3 ORS 696.301(3) as it incorporates:

a. ORS 696.280(1) (2017 and 2019 Editions) which requires a principal broker to maintain within this state, except as provided in subsection (6) of this section, complete and adequate records of all professional real estate activity conducted by or through the principal real estate broker.

b. ORS 696.890(4)(c),(d), and (e) (2017 and 2019 Editions) which states (4) a real estate property manager owes the property owner the following affirmative duties: (c) to exercise reasonable care and diligence; (d) to account in a timely manner for all funds received from or on behalf of the owner; (e) to account in a fiduciary manner in all matters relating to trust funds.

4.4 ORS 696.301(3) as it incorporates:

a. OAR 863-025-0028(2)(a)(A),(B),(C),(b),(c),(d)(A),(B) and (e) and (3)(a)(A),(B),(C),(b),(c),(d)(A),(B)and (e) (1-1-2018 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 required 3 components.

b. OAR 863-025-0030(1)(a),(b),(c),(d) (1-1-2018 Edition) states except as provided in section (3) of this rule, all tenants' security deposits received by a property manager must be deposited and maintained in a security deposits account until: (a) the property manager

forwards the tenant's security deposit to the owner of the property according to the terms of the tenant's rental or lease agreement and the property management agreement; (b) the property manager disburses the tenant's security deposit for purposes authorized by the tenant's rental or lease agreement and the property management agreement; (c) the property manager refunds a deposit to the tenant according to the terms of the tenant's rental or lease agreement and the property management agreement; or (d) the property management agreement is terminated and the property manager transfers the tenant's security deposit to the owner unless the owner directs the property manager, in writing, to transfer the security deposits and fees to another property manager, escrow agent, or person.

c. OAR 863-025-0035(1)(d) (1-1-2018 Edition) states (1) the property manager's records the management of rental real estate are "complete and adequate" as required under ORS 696.280 if the records contain, at least the following: (d) a record of receipts and disbursements or check register maintained for each clients' trust account or security deposits account.

d. OAR 863-025-0035(1)(j) (1-1-2018 Edition) states (1) the property manager's records the management of rental real estate are "complete and adequate" as required under ORS 696.280 if the records contain, at least the following: (j) records of the reconciliation of each clients' trust account and security deposits account, including the reconciliation document.

e. OAR 863-025-0040(1) (1-1-2018 Edition) requires a property manager to prepare and maintain a chronological record of receipts and disbursements or a check register for each clients' trust account and each security deposits account in which the manager must record each receipt of funds and each disbursement of funds.

f. OAR 863-025-0040(5) (1-1-2018 Edition) requires upon any activity, the property manager must record each receipt, deposit or disbursement as required in this rule and record each deposit or disbursement on the corresponding owner's ledger as required in OAR 863-025-0050 and/or tenant's ledger as required in 863-025-0050.

g. OAR 863-025-0070(2)(a),(b)(A),(B) (1-1-2018) states not later than 60 days after the effective date of the termination, the property manager must: (a) disburse all obligated funds to the party or parties entitled to the funds; and (b) provide the owner with the following: (A) a final accounting of the owner's ledger account; (B) all funds belonging to the owner as shown

on the owner's ledger, unless the owner directs the property manager, in writing, to transfer the funds to another property manager, escrow agent or person.

### **ULTIMATE FINDINGS OF FACT**

#### 5.

5.1 Howard failed to complete the required monthly three-way reconciliations for clients' trust account ending in #5552, and security deposits account ending in #5560.

5.2 Howard failed to keep the required record of each receipt and disbursement, posted upon any activity.

5.3 Howard transferred \$20,000 out of the security deposits account into the clients' trust account in 2018 without complete and adequate supporting documentation.

5.4 Howard failed to maintain security deposit funds in the security deposits account.

5.5 Howard failed to timely return a final accounting and funds due to Ledyard, despite acknowledging that she owed her at least \$3,825.

5.6 Howard demonstrated incompetence or untrustworthiness in her actions relating to the above violations.

5.7 In summary, the facts above establish grounds to revoke Howard's principal broker license.

### **CONCLUSIONS OF LAW**

#### 6.

6.1 Pursuant to ORS 183.417(4) and OAR 137-003-0670 Howard is in default.

6.2 The material facts establish a violation of a ground for discipline under ORS 696.301 as set forth in the *Notice of Intent to Revoke*.

6.3 Based on these violations, the Agency may revoke Howard's principal broker license.

6.4 Specifically, Howard is subject to discipline pursuant to ORS 696.301(3) and (12). A revocation of Howard's principal broker license is appropriate for violations of ORS 696.301(3) and (12) which states in part a licensee's real estate license may be disciplined if they have: (3) disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or any rule of the Real Estate Agency; and (12)



demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

6.5 A revocation of Howard's principal broker license is appropriate under ORS 696.396(2)(c)(B). According to ORS 696.396(2)(c)(B) the Agency may suspend a real estate license if the material facts establish a violation of a ground of discipline under ORS 696.301 that (B) exhibits incompetence in the performance of professional real estate activity.

6.6 Based on the evidence in the record, the preponderance of the evidence weighs in favor of the revocation of Howard's principal broker license.

### **OPINION**

#### 7.

The Agency takes its consumer protection role very seriously. Howard's violations centered around failing to properly maintain and account for owner and tenant funds under her control, and returning unobligated funds to at least one owner timely. During 2018, \$20,000 was transferred out of the security deposits account. When asked to provide an explanation for each transfer, she provided information which contradicted, and/or failed to completely and adequately explain, the removal of the security deposit funds. Additionally, Howard failed to post owners' and tenants' ledgers upon any activity. In November 2019, Howard admitted she posted activity from as far back as March 2019 to the ledger for an owner. Although "still a mess," according to Howard, the ledger showed the owner was owed \$3,825. To this day, Howard has failed to provide a final accounting and return of the funds to the owner. The above facts and violations noted below show Howard's incompetence in her property management activity. Howard's utter failure to properly account for the funds of others provide a sufficient basis for the revocation of Howard's license.

The specific violations are repeated here below:

(1) Violation: By failing to complete the required monthly three-way reconciliations for clients' trust account ending in #5552, and security deposits account ending in #5560, Howard violated ORS 696.301(3) as it incorporates OAR 863-025-0028(2)(a)(A),(B),(C),(b),(c),(d)(A),(B) and (e) and (3)(a)(A),(B),(C),(b),(c),(d)(A),(B)and (e) (1-

1-2018 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 required 3 components. Howard also violated ORS 696.301(3) as it incorporates ORS 696.280(1) (2017 and 2019 Editions) and OAR 863-025-0035(1)(j) (1-1-2018 Edition) ORS 696.280(1) requires a principal broker to maintain complete and adequate records of all professional real estate activity conducted by the principal real estate broker. OAR 863-025-0035(1)(j) states (1) the property manager's records the management of rental real estate are "complete and adequate" as required under ORS 696.280 if the records contain, at least the following: (j) records of the reconciliation of each clients' trust account and security deposits account, including the reconciliation document.

(2) Violation: By failing to keep a record of each receipt and disbursement, posted upon any activity, Howard violated ORS 696.301(3) as it incorporates OAR 863-025-0040(1) and (5) (1-1-2018 Edition), ORS 696.280(1) (2017 and 2019 Editions) and OAR 863-025-0035(1)(d) (1-1-2018 Edition). OAR 863-025-0040(1) requires a property manager to prepare and maintain a chronological record of receipts and disbursements or a check register for each clients' trust account and each security deposits account in which the manager must record each receipt of funds and each disbursement of funds. OAR 863-025-0040(5) requires upon any activity, the property manager must record each receipt, deposit or disbursement as required in this rule and record each deposit or disbursement on the corresponding owner's ledger as required in OAR 863-025-0050 and/or tenant's ledger as required in 863-025-0050. OAR 863-025-0035(1)(d) states (1) the property manager's records the management of rental real estate are "complete and adequate" as required under ORS 696.280 if the records contain, at least the following: (d) a record of receipts and disbursements or check register maintained for each clients' trust account or security deposits account.

(3) Violation: By transferring \$20,000 out of the security deposits account into the clients' trust account in 2018 without complete and adequate documentation of where the funds went, Howard violated ORS 696.301(3) as it incorporates ORS 696.890(4)(c), (d), and (e) (2017 Edition) which states (4) a real estate property manager owes the property owner the following affirmative duties: (c) to exercise reasonable care and diligence; (d) to account in a timely

manner for all funds received from or on behalf of the owner; (e) to account in a fiduciary manner in all matters relating to trust funds.

(4) Violation: By failing to maintain security deposit funds in the appropriate security deposits account, Howard violated ORS 696.301(3) as it incorporates OAR 863-025-0030(1)(a),(b),(c),and (d) (1-1-2018 Edition). Additionally, Howard violated ORS 696.301(3) as it incorporates ORS 696.890(4)(c),(d), and (e) (2017 and 2019 Editions). OAR 863-025-0030(1) states except as provided in section (3) of this rule, all tenants' security deposits received by a property manager must be deposited and maintained in a security deposits account until: (a) the property manager forwards the tenant's security deposit to the owner of the property according to the terms of the tenant's rental or lease agreement and the property management agreement; (b) the property manager disburses the tenant's security deposit for purposes authorized by the tenant's rental or lease agreement and the property management agreement; (c) the property manager refunds a deposit to the tenant according to the terms of the tenant's rental or lease agreement and the property management agreement; or (d) the property management agreement is terminated and the property manager transfers the tenant's security deposit to the owner unless the owner directs the property manager, in writing, to transfer the security deposits and fees to another property manager, escrow agent, or person. Per ORS 696.890(4)(c),(d), and (e), a real estate property manager owes the property owner the following affirmative duties: (c) to exercise reasonable care and diligence; (d) to account in a timely manner for all funds received from or on behalf of the owner; (e) to act in a fiduciary manner in all matters relating to trust funds.

(5) Violation: By failing to return a final accounting and funds due to Ledyard, timely, Howard violated ORS 696.301(3) as it incorporates ORS 696.890(4)(c),(d), and (e) (2019 Edition) and OAR 863-025-0070(2)(a),(b)(A),(B) (1-1-2018). ORS 696.890(4)(c),(d),(e) states: (4) a real estate property manager owes the property owner the following affirmative duties: (c) to exercise reasonable care and diligence; (d) to account in a timely manner for all funds received from or on behalf of the owner; (e) to act in a fiduciary manner in all matters relating to trust funds. OAR 863-025-0070(2) states not later than 60 days after the effective date of the termination, the property manager must: (a) disburse all obligated funds to the party or parties entitled to the funds; and (b) provide the owner with the following: (A) a final accounting

of the owner's ledger account; (B) all funds belonging to the owner as shown on the owner's ledger, unless the owner directs the property manager, in writing, to transfer the funds to another property manager, escrow agent or person.

(6) Violation: ORS 696.301(12) (2017 and 2019 Edition) which states a licensee's real estate license can be disciplined if they have demonstrated incompetence or untrustworthiness in performing an act for which the licensee is required to hold a license.

ORDER

IT IS HEREBY ORDERED that Howard's principal broker license be, and hereby is revoked.

Dated this 14th day of July, 2020.

OREGON REAL ESTATE AGENCY

DocuSigned by:

*Steven Strobe*

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Steven Strobe

Real Estate Commissioner

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NOTICE OF RIGHT TO APPEAL: 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 to the Oregon Court of Appeals, pursuant to the provisions of ORS 183.482.

## Certificate of Service

On July 14, 2020, I mailed and emailed the foregoing Final Order By Default issued on this date in Agency Case No. 2019-394 and 2019-434

By: First Class Mail

MARY M HOWARD  
400 Shore Ter  
Seaside, OR 97138-7837

MARY M HOWARD  
P.O. Box 2372  
Gearhart, OR 97138

By: Email:

mary@astoriacoast.com

Rick Marsland  
Licensing Specialist