

**BEFORE THE  
REAL ESTATE AGENCY  
STATE OF OREGON**

IN THE MATTER OF:  <b>CYNTHIA WEBBER, Licensee</b>	) <b>FINAL ORDER</b> ) ) OAH Case No. 2018-ABC-02279 ) Agency Case No. 2014-714 and 2015-286
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Administrative Law Judge (ALJ) Dove L Gutman heard the matter below and issued a Proposed Order on April 1, 2020 recommending that the Agency revoke Respondent’s Property Management License. Respondent did not file any exceptions to the Proposed Order.

The Real Estate Agency having considered the record, and having reviewed the Proposed Order, now adopts and incorporates by reference the attached Proposed Order dated April 1, 2020 into this Final Order thereby revoking Respondent Cynthia Webber’s Property Management License No. PM930400183.

IT IS HEREBY ORDERED that Webber’s property manager license is revoked.

Dated this 9<sup>th</sup> day of June 2020.

DocuSigned by:  
  
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 Steven Strode  
 Real Estate Commissioner

Date of Service: 06/09/2020

NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days of the service of this order. Judicial review is pursuant to the provisions of ORS 183.482 to the Oregon Court of Appeals.

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
REAL ESTATE AGENCY**

IN THE MATTER OF: ) **PROPOSED ORDER**  
 )  
**CYNTHIA WEBBER** ) OAH Case No. 2018-ABC-02279  
 ) Agency Case No. 2014-714 and 2015-286

**HISTORY OF THE CASE**

On August 7, 2018, the Real Estate Agency (REA or Agency) issued a Notice of Intent to Revoke to Cynthia Webber (Respondent). On August 15, 2018, Respondent requested a hearing.

On December 6, 2018, REA referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) Samantha Fair to preside at hearing.

On January 22, 2019, Senior ALJ Jennifer Rackstraw, on behalf of ALJ Fair, convened a prehearing telephone conference. Senior Assistant Attorney General Catriona McCracken represented REA. Selena Barnes and Meghan Lew appeared on behalf of REA. Respondent did not appear. The hearing was scheduled for September 11 through September 13, 2019.

On April 11, 2019, the OAH reassigned the case to Senior ALJ Gutman.

On September 4, 2019, the REA filed an Expedited Motion for Protective Order (Motion), and Protective Order. On September 9, 2019, Respondent indicated that she had no objection to the Motion. On September 9, 2011, ALJ Gutman granted the Motion and issued the Protective Order.

On September 11, 2019, a hearing was held in Eugene, Oregon. ALJ Gutman presided. Respondent represented herself. Ms. McCracken represented REA. Ms. Lewis appeared on behalf of REA. Respondent, Deanna Hewitt, Frances Hlawatsch and Ms. Lewis provided testimony.

On September 12, 2019, the hearing continued. ALJ Gutman presided. Respondent represented herself. Ms. McCracken represented REA. Ms. Lewis appeared on behalf of REA. Ms. Lewis and Respondent provided testimony. The record closed on September 12, 2019.

**ISSUES**

1. Whether, by allowing multiple tenants' security funds to be used to repair Barker's rental property, Respondent violated ORS 696.301(12) (2011) and ORS 696.301(3) as it

incorporates OAR 863-025-0030(1)(a), (b), (c), and (d) (2011).<sup>1</sup>

2. Whether, by disbursing tenants' security deposit funds to a single owner, Respondent violated ORS 696.301(12) (2011) and ORS 696.890(3)(a), (b), (c), (e), and (f) (2011).

3. Whether, by failing to use the required identifying language in the account name for security deposits account ending in #2415, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(4) (2014).

4. Whether, by failing to timely produce and provide the requested records for clients' trust account ending in #7643 and security deposits account ending in #2415, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0035(2)(a) (2014).

5. Whether, by failing to use the required identifying language in the account name for clients' trust account ending in #7643, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(2) (2014).

6. Whether, by failing to have the required transaction descriptions and identifying codes for all entries in the receipts and disbursements journal, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0040(2)(a)(C), and (c) (2014).

7. Whether, by failing to have the required transaction dates or descriptions on the owners' ledger, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(b)(B), (D), (c)(A), and (E) (2014).

8. Whether, by failing to balance all three clients' trust account reconciliations for account ending in #7643 for the months of February, March and April 2015, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(20)(b) (2014).

9. Whether Respondent failed to resolve the difference of \$2,889.06 on the February 2015 reconciliation in a timely manner by the March 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014).

10. Whether Respondent failed to completely resolve the deficiency from the February 2015 reconciliation in a timely manner by the April 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014).

11. Whether Respondent failed to completely resolve the deficiency from the February 2015 reconciliation in a timely manner by the May 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014).

12. Whether, by failing to maintain the registered business name with the Oregon

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<sup>1</sup> The citations herein refer to administrative rules in effect at the time of the alleged violations.

Secretary of State, Respondent violated ORS 696.301(3) as it incorporates OAR 863-024-0095(1) (2013 and 2014).

13. Whether Respondent failed to assign an identifying code to the property management agreement signed with Marlin Lay (Lay), in violation of ORS 696.301(3) as it incorporates OAR 863-025-0020(2)(k) (2013).

14. Whether, between June 2, 2014 through April 6, 2015, Respondent failed to include the required detail on tenant ledger for unit #11, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(c), (d)(B), (C), (D), (e)(A), (B), (C), (D), and (E) (2014).

15. Whether, between April 21, 2014 through April 23, 2015, Respondent failed to include required details on the tenant ledger for unit #6, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(c), (d)(B), (C), and (D) (2013 and 2014).

16. Whether, by failing to provide a corrected owner statement to Lay, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0055(4) (2013).

17. Whether Respondent failed to include identifying information on Lay's owner ledger for time period of April 2, 2015 through May 29, 2015, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(a), and (b)(C) (2013 and 2014).

18. Whether, by failing to properly account for receipts and disbursements of clients' trust funds on the owners' and tenant ledgers, Respondent violated ORS 696.890(4)(c), (d), and (e) (2013 and 2015).

19. Whether Respondent failed to timely deliver the tenant agreements requested by Lay in violation of ORS 696.301(3) as it incorporates OAR 863-025-0068(2) (2014).

20. Whether, by failing to properly account for the \$455, Respondent demonstrated incompetence in violation of ORS 696.301(12) (2015).

21. Whether Respondent demonstrated incompetence in performing any act for which Respondent is required to hold a license, in violation of ORS 696.301(12) (2011, 2013, and 2015).

22. Whether Respondent's property manager license should be revoked. ORS 696.301(12) (2011, 2013, and 2015).

### **EVIDENTIARY RULING**

Exhibits A1 through A10, offered by REA, were admitted into the record without objection.<sup>2</sup>

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<sup>2</sup> REA withdrew pages 49 and 50 of Exhibit A9, and pages 4, 5, 17, 20 and 22 of Exhibit A10.

## FINDINGS OF FACT

### *Background information*

1. Cynthia Webber (Respondent) is licensed as a Property Manager, License No. PM930400183, with the REA in Oregon. Respondent's license was issued on May 16, 2008. Respondent is doing business under the registered business name of Preferred Professional Property Management (PPPM). PPPM is located at 380 Q Street in Springfield, Oregon. PPPM was previously located at 107 West Q Street in Springfield, Oregon. (Test. of Webber; Exs. A7 at 9, A8 at 10.)

2. On January 4, 2010, Respondent registered PPPM with the Oregon Secretary of State as a DBA (doing business as). On April 4, 2013, Respondent cancelled the registration. In 2013, Respondent registered PPPM with the Oregon Secretary of State as an LLC. In 2015, Respondent dissolved the LLC. Between 2015 and 2019, Respondent did not maintain PPPM's registered business name with the Oregon Secretary of State. In 2019, Respondent registered PPPM with the Oregon Secretary of State as a DBA. Respondent did not update the filings with REA. (Test. of Webber; Ex. A8 at 17-18.)

3. Dorothy Ziebert (Ziebert), Respondent's mother, was licensed as a Principal Broker, License No. PB780402930, with REA in Oregon. Ziebert's license was issued on September 1, 2012.<sup>3</sup> During the relevant times at issue in this matter, Ziebert was doing business under the registered business name of Preferred Northwest Realty (PNR). Ziebert also owned and operated a maintenance and repair company. (Test. of Webber; Exs. A7 at 10, 15, A8 at 11.)

4. Respondent and Ziebert were partners in business. Respondent was 49 percent shareholder in PPPM. Ziebert was 51 percent shareholder in PPPM. Ziebert handled most of PPPM's field work, including property inspections and showing rentals to prospective clients. Ziebert also managed PPPM's bookkeeping and accounting records. Respondent was responsible for clerical work and client relations. (Test. of Webber; Ex. A7 at 2, 10, 15.)

5. Prior to October 15, 2014, there was no written delegation of authority between Ziebert and Respondent. Prior to October 15, 2014, Ziebert's license was not associated with PPPM, and PPPM was not affiliated with PNR. (Test. of Webber; Exs. A7 at 2, 10, A8 at 11.)

### *2012 behavior with tenants' security deposit funds*

6. In 2012, PPPM managed a rental home located at 35 E. C Street in Halsey, Oregon. Ziebert's close friend, Phyllis Barker (Barker), owned the home. On or about April 9, 2012, Barker's home sustained major damage from a storm. Barker's insurance company paid \$17,867.20 for the damage. There was a shortfall amount of \$10,780. Barker did not have sufficient funds in her owner account to cover the out of pocket costs of the repairs. Because Barker was her close friend, Ziebert decided to use security deposit funds from PPPM's tenants to pay Barker's shortfall amount. Respondent was aware of Ziebert's decision. Respondent

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<sup>3</sup> Ziebert's license was revoked on December 16, 2019. (*In the Matter of Dorothy D. Ziebert, OAH Case No. 2018-ABC-02277, Final Order by Default, dated December 16, 2019.*)

knew it was wrong to use the tenants' security deposit funds for Barker's repairs. (Test. of Webber; Ex. A7 at 2-3, 17, 20.)

7. On May 4, 2012, Ziebert transferred \$10,780 via check #456 out of PPPM's tenants' security deposit account ending in #2293 and into Barker's owner's account. The description noted on the internal record of disbursement for the check entry was "[trust 7643] PPPM Barker." The funds from the check were used to pay the outstanding repair costs on Barker's home. (Test. of Webber; Ex. A7 at 3, 17, 41-42.)

8. Ziebert and Respondent did not get permission from PPPM's tenants to use their funds for Barker's property repair. Ziebert and Respondent did not get permission from the property owners to use the tenants' funds for Barker's property repair. Ziebert and Respondent did not notify PPPM's tenants or the property owners of their actions. (Test. of Webber.)

9. Ziebert and Respondent considered the \$10,780 to be a loan. Ziebert and Respondent did not have a written contract, payment plan or promissory note with Barker regarding the debt. Ziebert and Respondent did not require Barker to put up any collateral for the loan. Ziebert and Respondent planned to withhold a portion of Barker's monthly owner draws and apply those funds to the security deposit account to repay Barker's debt. (Test. of Webber; Ex. A7 at 3, 17.)

10. Ziebert and Respondent did not start withholding a portion of Barker's monthly owner draws to repay the loan until July 9, 2014. (Test. of Webber; Ex. A7 at 21.)

#### *2014 audit and subsequent investigation*

11. On May 22, 2014, REA sent a letter to Respondent notifying her that PPPM had been randomly selected for a mandatory mail in audit of its Clients' Trust Account Security Deposits ending in #2293. REA requested documentation for the month of February 2014. (Test. of Hewitt; Ex. A9 at 53.)

12. On June 20, 2014, REA received PPPM's response to the mail in audit. REA Compliance Specialist Danette Rozell, in the Regulations Division, reviewed the documentation submitted. Ms. Rozell noted that Ziebert, whose license was not associated with PPPM, had responded to the audit instead of Respondent. Ms. Rozell also noted several areas of concern in the documentation provided, including that there was no security deposit ledger provided, there was insufficient detail on the receipts and disbursement journal, there was no copy of a signed notice of clients' trust account, and there was incorrect verbiage on the security deposits account. Ms. Rozell contacted both Ziebert and Respondent by phone and notified them of the areas of concern and requested additional documentation. (Test. of Hewitt; Exs. A7 at 2, A9 at 53.)

13. On June 30, 2014, REA received PPPM's second packet of information that was in response to Ms. Rozell's request for additional documentation. Ms. Rozell noted that the documents that were submitted were still missing detailed information. Ms. Rozell also noted that the check register, security deposit ledgers, and trust account reconciliation did not balance. Ms. Rozell contacted Ziebert and explained the deficiencies. (Ex. A10 at 53.) Ms. Rozell then sent an email to Respondent, notifying her of the deficiencies and requesting additional

information, as follows:

Corrected accounting documents were received by fax today from you on your mail in audit process. This is the second packet of information to date received and the corrections are still not sufficiently supplied to address the account concerns.

The check register you provided does not detail the owner and tenant names to reflect who you are receiving funds from and what owner they are being received on behalf of. You need to provide all detail as reflected in Oregon Administrative Rule (OAR) 863-025-0040 for a check register detail and/or receipts and disbursement journal.

The total you are reporting on the check register is not the same total you are reporting on your trust account reconciliation report and does not balance to your security deposit ledger. In fact there are three different totals that do not balance at all.

You must show the exact accounting detail for the month of February 2014 and report in writing any differences that have occurred during the month and why this account is not in balance.

The security deposit ledger does not reflect any dates and [] your reporting totals per owner on the actual report provided are not totaled correctly. You are reporting \$9,685.09 on your report ledger and only totaling up to \$7,685.09 for owner by the name of "Barker." Please reference [] OAR 863-025-0050 for tenant ledger requirements and OAR 863-025-0025(21) for the required three components in balancing a Clients' Trust Account Security Deposits.

Your overall total on the actual report is showing a ledger balance of \$38,345.93 and that actual machine tape balance shows \$48,342.16 with a difference of \$9,996.23. Then the actual trust account reconciliation report is showing \$35,620.29 and in fact does not balance to your security deposit report ledger or the check register you have provided, and is off by \$2,725.64.

Your verbiage for your account also needs to reflect Clients' Trust Account Security Deposits. At this time it is not correct as it reads Preferred Professional PM Security Trust. This verbiage will need to be updated to be able to close your audit and it needs to be corrected on the bank statement, checks, and deposit slips. OAR 863-025-0010(16) explains the correct verbiage requirement per authority of the law in Oregon Revised Statute (ORS) 696.241.

You also need to provide a copy of your “Notice of Clients’ Trust Account” form per ORS 696.245, and this form is available from our web site under forms and publications, available to print and both the licensee and the banker at your bank need to sign this document. What you provided are not the copies requested by the OREA requirement.

Please call me directly to discuss your accounting corrections or if you have further questions on providing balanced report detail information needed. An explanation of all corrections needs to be in writing.

(Ex. A10 at 18-19.) That same day, Ms. Rozell sent a second email to Respondent, notifying her that because she was the licensed property manager for PPPM, she personally needed to respond to the mail in audit process for PPPM, not Ziebert. Ms. Rozell also notified Respondent that she needed to sign the trust account reconciliation and provide the required accounting documents to bring the audit to a close. Ms. Rozell gave Respondent until July 7, 2014, to provide the requested documentation. (*Id.* at 23.)

14. On July 1, 2014, Ms. Rozell notified Respondent that all of the corrected documents needed to be submitted to REA no later than close of business on July 8, 2014. (Ex. A10 at 15.)

15. On July 9, 2014, after receiving PPPM’s third packet of information, Ms. Rozell sent an email to Respondent notifying her of corrections and documentation that still needed to be provided. The email stated, in part:

Attached is the document/form \* \* \* “Notice of Clients’ Trust Account,” which must be signed by both you as the licensee and the bank. Please reference Oregon Revised Statute (ORS) 696.241 and 696.245 for verbiage and form detail requirement by law.

\* \* \* If you wish to change your affiliation in any way this can be done through our licensing division directly \* \* \*.

You need more information to be provided for just the month of February 2014 for what transactions took place for your “Security Deposit Ledger” with a beginning balance, an ending balance, and daily detail for all specific tenant and owner accounting detail. I have a document that does show only three transactions for the month of February 2014 for your check register, however completed information for your tenant ledger needs to provide dates, with the actual beginning balance, and detail of what has occurred by tenant on behalf of each owner, with a balance of your actual check register and bank statement balance to match as you have already provided on your “Trust Account Reconciliation.”



Reference: Oregon Administrative Rule (OAR) 863-025-0050  
Tenant Ledger

You must correct your verbiage for your account as follows, with no abbreviations. Please reference ORS 696.241, and OAR 863-025-0010(16), which is the definition of a:

Clients' Trust Account Security Deposits

The above information is exactly how your verbiage on your account needs to read on your bank statement, checks, deposit slips, and the eLicense program with no abbreviations.

The correct verbiage for your operating Clients' Trust Account, should be with no abbreviations and exactly the same on all bank statements, checks, deposit slips, and the eLicense program per the definition of OAR 863-025-0010(4). The information in our eLicense program is correct for this account, however I would like you to make sure it is correct on [] your other accounting documents a[s] stated.

We need an explanation of the \$28.00 fee that was taken from the bank account on February 6, 2014 for a stop item charge. Your explanation needs to be provided in writing and we need documentation that this was handled with corrective action at the bank. You may provide this explanation as a separate document or provide the information on a new signed "Trust Account Reconciliation."

This account is a multiple owner account with multiple tenants and must be reconciled per OAR 863-025-0025(21).

Please submit all corrections by close of business on Monday, July, 14, 2014.

(Ex. A10 at 12-13.)

16. On July 16, 2014, after receiving additional information from Respondent, Ms. Rozell emailed Respondent and notified her of the following:

Thank you for your faxed documents regarding your mail in audit for the month of February 2014 for your Clients' Trust Account Security Deposits, account ending in 2293.

The Oregon Real Estate Agency (OREA) has been able to accept

the signed "Notice of Clients' Trust Account" as requested, and your explanation for the fees that were withdrawn by the bank, for a stopped item charge, have been adjusted on June 20, 2014, in the amount of \$28.00.

On behalf of the OREA and according to OAR 863-025-0040 (Record of Receipts and Disbursements) and OAR 863-025-0050 (Tenant Ledger), [you must] provide a chronological detail of the date the funds were received, the purpose of the funds received, and any disbursements that have occurred while identifying each tenant and each owner with the proper codes for whom these transactions represent.

The concern is that you are holding \$35,620.29 in a security deposit ledger without any detail or dates for accounting detail requirements.

I am also in receipt of two forms submitted requesting an affiliated and subsidiary business name change, and copies of these forms have been provided to our licensing Program Specialist, Madeline Alvarado (Maddy) for her review.

Maddy spoke with you and your mother last Friday, July 11, 2014, by phone in regards to deciding on a licensing change for your registered business. However, the issue is that you need to decide on only one specific change request as you cannot submit both requests. Maddy suggested you and your mother speak with an attorney in regards to your changes if you do not understand or know how you would like to proceed. The request then needs to be addressed to the licensing division directly as they cannot be handled in the regulations division.

I am including both Maddy from the licensing division, and my immediate lead Compliance Manager, Deanna Hewitt (Deanna), in this email as I believe Deanna has also spoken with you recently regarding the audit and the licensing issues specified in this email and have also been addressed in prior email correspondence.

The OREA needs to request your security deposit ledger with all accounting detail be provided by Monday, July 21, 2014.

The audit cannot be finalized and closed until these accounting requirements have been successfully submitted.

(Ex. A10 at 10-11.) On July 21, 2014, Respondent notified Ms. Rozell that she had a family emergency and would not be back in the office until July 29, 2014. (*Id.* at 7.)

17. On August 7, 2014, REA Compliance Manager Deanna Hewitt and Ms. Rozell conducted a telephone conference with Respondent to discuss the continued deficiencies and areas of concern of PPPM's mandatory mail in audit of its Clients' Trust Account Security Deposits ending in #2293. Ms. Hewitt discussed with Respondent that she had not changed the verbiage on the account, and that she had not provided sufficient accounting documentation to balance the security deposits ledger to the check register and the bank statement for the month requested. Ms. Hewitt also discussed with Respondent three separate ledger transactions that needed identification, including a \$40 transaction, a \$10,780 transaction, and a \$600 transaction. Respondent explained that the \$40 transaction was unidentified funds, the \$10,780 transaction was given to Barker for storm repairs, and the \$600 transaction could not be identified. Ms. Hewitt asked Respondent to provide her tenant ledgers for identifying how she was tracking funds received from tenants and to provide the dates of the transactions for rents and security deposits. Ms. Hewitt also asked Respondent to provide who the tenants were for the other owners listed on the security deposit ledger and to provide the dates that the funds were received. Ms. Hewitt gave Respondent until August 18, 2014, to submit the requested documentation and corrections. (Exs. A7 at 12-13, A9 at 52.)

18. On August 20, 2014, after not receiving all of the requested documentation and corrections from Respondent, Ms. Hewitt and REA Regulations Division Manager Selina Barnes referred Respondent's mandatory mail in audit case for a full investigation. Ms. Hewitt flagged various areas of concern for investigation, including the \$10,780 that was given to Barker, and the insufficient accounting details on Respondent's ledgers, accounts and forms. (Test. of Hewitt; Exs. A9 at 51, A10 at 6.)

19. On September 17, 2014, REA Financial Investigator Frances Hlawatsch was assigned to conduct the investigation of PPPM's failed audit. At the start of the investigation, Ms. Hlawatsch confirmed that Ziebert's principal broker license was not associated with PPPM, and PPPM was not affiliated with PNR. Ms. Hlawatsch also reviewed the documents prepared in the failed audit. (Test. of Hlawatsch; Ex. A7 at 2.)

20. On October 15, 2014, Ziebert filed documentation with REA to associate her license with PPPM and to affiliate PNR with PPPM. (Ex. A8 at 11.)

21. On January 26, 2015, Ms. Hlawatsch interviewed Respondent and Ziebert at their office location at 107 W. Q Street in Springfield. During the interview, Ms. Hlawatsch learned that PPPM and PNR operated out of the same office. Ms. Hlawatsch asked Respondent about the structure of the businesses and the duties delegated to each licensee. Respondent stated that she and Ziebert co-owned PPPM. Respondent explained that she had a disability, which limited her mobility. Respondent stated that Ziebert handled most of the field work and, up until October 2014, also managed the company's bookkeeping and accounting. Respondent stated that in October 2014, she and Ziebert hired a bookkeeper, Sue Harris, to manage PPPM's bookkeeping and accounting.<sup>4</sup> Ms. Hlawatsch asked Ziebert about her license affiliation and pointed out that she had conducted property management activity in the past for PPPM. Ziebert admitted that she had conducted professional activity for both PPPM and PNR, stating that she

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<sup>4</sup> At the time of interview, there was no written delegation of authority on file for Harris. (Ex. A7 at 2.)

was entitled to do so because she had an ownership interest in both. When Ms. Hlawatsch asked to see a written delegation of authority for Ziebert, Respondent and Ziebert were unable to produce one. (Test. of Hlawatsch; Ex. A7 at 2, 14-16.) Ms. Hlawatsch asked about the \$10,780 payout to Barker. Ziebert stated that Barker's rental home had sustained major damage in a storm, and that she decided to use security deposit funds from multiple tenants to pay the repairs that were not covered by Barker's insurance. When Ms. Hlawatsch asked to see the paid invoices for the repair work, Ziebert was unable to produce them. (Test. of Hlawatsch; Ex. A7 at 17.) When Ms. Hlawatsch pointed out that the tenants' deposits were not hers to lend, Ziebert stated that, "the tenants all know and trust me and [] they would not have been uncomfortable with the situation." (*Id.*) Respondent told Ms. Hlawatsch that she knew it was wrong to use tenant security money for the repairs. Respondent stated that Barker had been making payments towards the balance and was down to about \$4,000 outstanding. Respondent stated that the payment was \$1,500 per month and that she transferred the funds out of Barker's owner account. Respondent admitted that she had forgotten to do this on more than one occasion. Respondent stated that Barker had a reserve amount of approximately \$4,000 in her owner account. When Ms. Hlawatsch asked if the \$4,000 could be transferred to replenish the tenants' security deposit account, Respondent was hesitant but eventually said that it could be done. (Test. of Hlawatsch; Ex. A7 at 17-18.) Ms. Hlawatsch then asked about the \$600 transaction amount that had not been explained in the audit. Respondent stated it was just an accounting error, and Ziebert stated it was "bad math." Ms. Hlawatsch asked about the \$40 transaction amount that had not been explained in the audit. Respondent stated it was the result of depositing a rent check that had been placed on stop payment. (Test. of Hlawatsch; Ex. A7 at 18.) At the close of the interview, Respondent agreed to determine the remaining amount of Barker's debt and then transfer that amount into the security deposit account to make the tenants' deposits whole. Respondent also agreed to have this completed by February 15, 2015, and to provide an accounting of the payments previously made on Barker's debt. (Test. of Hlawatsch; Ex. A7 at 4.)

22. On February 10, 2015, Respondent emailed Ms. Hlawatsch a document titled "Barker Ledger" as proof that the \$10,780 had been repaid. The document was in the form of a handwritten note reflecting five payments purportedly made as follows:

	Pmt [sic]	BAL [sic]
5/4/12		10,780
7/9/14	1,000	9,780
8/8/2014	1,000	8,780
12/[5]/2014	1,000	7,780
1/7/2015	1,500	6,280
2/9/2015	6,280	0

(Ex. A7 at 21, 42.) Attached to the ledger was a copy of a check that was dated February 9, 2014, and made out to "PPPM CLIENT DPST TRUST" in the amount of \$6,280. (*Id.* at 22.)

23. On February 26, 2015, Ms. Hlawatsch issued a letter to Respondent requesting that she prepare and provide three-way reconciliations for PPPM's clients' trust<sup>5</sup> and tenants' security

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<sup>5</sup> A property manager must reconcile each clients' trust account within 30 calendar days of the bank statement date. The three components that must reconcile are the bank statement balance, adjusted for

deposits<sup>6</sup> accounts for the month of February 2015. Ms. Hlawatsch notified Respondent that she had until March 9, 2015, to provide the requested documentation. Ms. Hlawatsch also notified Respondent that if she did not timely provide the documentation, she could be sanctioned by the Agency. (Test. of Hlawatsch; Ex. A7 at 23-24.)

24. On March 9, 2015, Respondent, through Ziebert, faxed Ms. Hlawatsch a three-way reconciliation of PPPM's tenants' security deposits account ending in #2415 for the month of February 2015. The reconciliation form was prepared by Harris, and was approved by Ziebert on March 9, 2015.<sup>7</sup> The reconciliation form contained four parts: part one was the bank statement balance; part two was the checkbook or journal of receipts and disbursement balance; part three was the ledger balance; and part four was the reconciliation summary.<sup>8</sup> Parts one, two and three of the reconciliation were reported as balanced at \$51,341.32 on the bank statement date of February 27, 2015. Respondent, through Ziebert, attached a copy of the bank statement for the security deposits account ending in #2415. The account name on the bank statement was "Cynthia Ziebert Webber DBA Preferred Professional Property Management Client Trust Acct [sic] Security Dep [sic]."<sup>9</sup> The bank statement had an ending balance of \$51,341.32 on February 27, 2015, which supported the amount listed in part one of the reconciliation. Respondent did not provide any supporting documentation for the amounts listed in parts two and three of the reconciliation.<sup>10</sup> Respondent did not submit a three-way reconciliation of PPPM's clients' trust account ending in #7643 for the month of February 2015. (Test. of Hlawatsch; Ex. A7 at 4, 26-27.)

25. On March 10, 2015, Respondent, through Ziebert, faxed Ms. Hlawatsch a second copy of the three-way reconciliation of PPPM's tenants' security deposits account ending in #2415 for the month of February 2015. Respondent, through Ziebert, attached the same bank

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outstanding checks and other reconciling bank items; the balance of the record of receipts and disbursements or the check register as of the date of the bank statement; and the sum of all positive owners' ledgers as of the date of the bank statement. *See*, OAR 863-025-0025(20) (2014).

<sup>6</sup> A property manager must reconcile each security deposits account within 30 calendar days of the bank statement date. The three components that must reconcile are the bank statement balance, adjusted for outstanding checks and other reconciling bank items; the balance of the record of receipts and disbursements or the check register as of the date of the bank statement; and the sum of all positive balances of individual security deposits and fees held in the security deposits account. *See*, OAR 863-025-0025(21) (2014.)

<sup>7</sup> Harris used REA's reconciliation form. (*See, e.g.*, Ex. A7 at 26.)

<sup>8</sup> Part four of the reconciliation form required the property manager to document any differences between the reported amounts in parts one through three; provide an explanation for the differences; and document the corrective action taken to resolve the differences. (*See, e.g.*, A7 at 26.)

<sup>9</sup> The account name was not in compliance with the labeling requirement set forth in OAR 863-025-0010(16) (2014). (Test. of Hlawatsch, Lewis.)

<sup>10</sup> Respondent was supposed to submit supporting documentation for all three parts of the reconciliation. (Test. of Hlawatsch.)

statement to the reconciliation. Respondent did not provide any supporting documentation for the amounts listed in parts two and three of the reconciliation. Respondent did not submit a three-way reconciliation of PPPM's clients' trust account ending in #7643 for the month of February 2015. (Test. of Hlawatsch; Ex. A7 at 4, 31-32.)

26. On March 11, 2015, Ms. Hlawatsch notified Respondent and Ziebert by email that the reconciliation for PPPM's tenants' security deposits account ending in #2415 was incomplete. Ms. Hlawatsch notified Respondent that she needed to submit supporting documentation for the amounts listed on the reconciliation, explaining that the completed form with a bank statement was not enough. Ms. Hlawatsch also notified Respondent that she needed to submit a three-way reconciliation for PPPM's clients' trust account. (Ex. A7 at 4, 36-37.)

27. On March 11, 2015, Respondent, through Ziebert, faxed Ms. Hlawatsch a copy of one page from PPPM's security deposit account's receipt and disbursement journal. The journal page showed Barker's payment of \$6,280 on February 9, 2015, with a description of "[trust 7643]/POA LOAN." (Ex. A7 at 38.) The journal page also showed an ending balance of \$51,341.32 on February 16, 2015. (*Id.*) Respondent, through Ziebert, also faxed Ms. Hlawatsch a copy of a blank check from Siuslaw Bank with the account name of "Clients' Trust Account Security Deposits Preferred Professional Property Management." Respondent did not submit any supporting documentation for the amount reported in part three of the reconciliation. (Test. of Hlawatsch; Ex. A7 at 4, 34-39.)

28. On March 12, 2015, Respondent, through Ziebert, faxed Ms. Hlawatsch a third copy of the three-way reconciliation of PPPM's tenants' security deposits account ending in #2415 for the month of February 2015. Respondent, through Ziebert, attached a copy of PPPM's security deposit account's receipt and disbursement journal, which listed transactions for the period of January 2, 2012 through February 16, 2015, and displayed a running balance. The journal showed an ending balance of \$51,341.32 on February 16, 2015. Ms. Hlawatsch noted that the transactions were broken down by property but that the purpose and/or descriptions of the funds for each transaction was not always clear. Ms. Hlawatsch also noted that the transactions were not in order by date and lacked the detail required by REA. Respondent did not submit any supporting documentation for the amount reported in part three of the reconciliation. (Test. of Hlawatsch; Ex. A7 at 5, 42-52.)

29. On April 27, 2015, Ms. Hlawatsch emailed Respondent and Ziebert a follow-up request for documentation, stating in part:

While finalizing your report and reviewing your file I noticed that we never received the requested February 2015 reconciliation on your clients' trust account (owner account). You did submit a reconciliation and supporting documents for the Security Deposit account, thank you. The document request letter dated 2/26/15 requested reconciliation on both accounts. Can you fax that to me today?

Also please review the Agency's online record of your Siuslaw

Valley Bank account. I attached a print out for reference. It appears you entered the routing number rather than the account number, which is what we require. When you log into eLicense under PPPM's record, update the section under "client trust account." If you need specific instruction please contact our licensing Dept. who can walk you through the process.

(Test. of Hlawatsch; Ex. A7 at 5, 53.)

30. On April 30, 2015, Respondent faxed Ms. Hlawatsch a three-way reconciliation of PPPM's clients' trust account ending in #7643 for the month of February 2015. The reconciliation was prepared by Harris, and was approved by Respondent on March 9, 2015. The account name was listed as "Real Estate Trust Account" on the reconciliation form. Parts one and two were reported to be reconciled at \$1,644.15 on the bank statement date of February 28, 2015. Part three was left blank. No supporting documentation was provided with the faxed submission. (Test. of Hlawatsch; Ex. A7 at 5, 54.)

31. On May 8, 2015, Respondent, through Harris, faxed Ms. Hlawatsch a copy of PPPM's clients' trust account bank statement for account ending in #7643. The account name on the bank statement was "Preferred Professional Property Managem [sic] Real Estate Trust Account."<sup>11</sup> The bank statement listed an ending balance of \$1,644.45 on February 28, 2015.<sup>12</sup> (Ex. A7 at 5, 60-61.) The fax cover sheet contained a note from Harris that stated, "Please clarify the 'ledger' documentation you indicated you need."<sup>13</sup> (*Id.* at 59.)

32. On May 12, 2015, Respondent, through Harris, faxed Ms. Hlawatsch a three-way reconciliation packet for PPPM's clients' trust account ending in #7643 for the months of February through April 2015. Each packet included a reconciliation form, a bank statement, a receipts and disbursement journal, and a report meant to serve as an owner's ledger. The clients' trust account ending in #7643 held funds for multiple properties. (Test. of Hlawatsch; Ex. A7 at 5, 65-99.)

33. The three-way reconciliation for PPPM's clients' trust account ending in #7643 for the month of February 2015 was prepared by Harris, and was approved by Ziebert on May 12, 2015. The account name was listed as "Real Estate Trust Account" on the reconciliation form. The bank statement date was listed as February 28, 2015. Part one of the reconciliation listed a bank statement balance of \$1,644.45. Part two listed a receipts and disbursement journal balance of \$<9,765.62>. Part three listed a ledger balance of \$5,232.11. (Ex. A7 at 65.) Part four listed

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<sup>11</sup> The account name was not in compliance with the labeling requirement set forth in OAR 863-025-0010(4) (2014). (Test. of Hlawatsch, Lewis.)

<sup>12</sup> The bank statement ending balance of \$1,644.45 did not match the purported reconciled amount of \$1,644.15 on the reconciliation form submitted on April 30, 2015. (*See*, Ex. A7 at 54, 60.)

<sup>13</sup> As the licensed property manager, Respondent should have known the ledger documentation that was required by REA. (Test. of Hlawatsch.)

the reported difference between the three parts as \$<2,889.06> with the following explanation:

During the month of February, an error in computing was discovered in the property management software. We have been in contact with technical assistance for correction. We are researching other software programs. This computer error interfered with the ability to balance. We have corrected the errors internally.

(*Id.*) Part four did not detail the corrective actions or good faith efforts taken to resolve the difference.<sup>14</sup> (*Id.*) The account name on the bank statement attached to the reconciliation was “Preferred Professional Property Managem [*sic*] Real Estate Trust Account.” (*Id.* at 67.) The receipts and disbursement journal attached to the reconciliation contained several entries that did not identify the purpose of the funds and the person who tendered the funds (*i.e.*, transaction descriptions), or the identifying codes for each receipt, deposit or disbursement. (*Id.* at 70-71.) The owner’s ledger attached to the reconciliation did not contain transaction dates or transaction descriptions (*i.e.*, the purpose of the funds and the identity of the person who tendered the funds, or the purpose of the disbursement) for every entry. (*Id.* at 72-75.)

34. The three-way reconciliation for PPPM’s clients’ trust account ending in #7643 for the month of March 2015 was prepared by Harris, and was approved by Ziebert on May 12, 2015. The account name was listed as “Real Estate Trust Account” on the reconciliation form. The bank statement date was listed as March 31, 2015. Part one of the reconciliation listed a bank statement balance of \$9,313.33. Part two listed a receipts and disbursement journal balance of \$9,313.33. Part three listed a ledger balance of \$10,899.99. (Ex. A7 at 76.) Part four listed the reported difference between the three parts as \$1,586.66 with the explanation of “Continued correction from February 2015 discovery.” (*Id.*) Part four did not detail the corrective actions or good faith efforts taken to resolve the difference. (*Id.*) The account name on the bank statement attached to the reconciliation was “Preferred Professional Property Managem [*sic*] Real Estate Trust Account.” (*Id.* at 78.) The receipts and disbursement journal attached to the reconciliation contained several entries listed as “RENT INCOME” that did not identify the tenant who paid the rent or the identifying code of the property for which the rent was paid. (*Id.* at 81-82.) The owner’s ledger attached to the reconciliation did not contain transaction dates or transaction descriptions (*i.e.*, the purpose of the funds and the identity of the person who tendered the funds, or the purpose of the disbursement) for every entry. (*Id.* at 83-86.)

35. The three-way reconciliation for PPPM’s clients’ trust account ending in #7643 for the month of April 2015 was prepared by Harris, and was approved by Ziebert on May 12, 2015. The account name was listed as “Real Estate Trust Account” on the reconciliation form. The bank statement date was listed as April 30, 2015. Part one of the reconciliation listed a bank statement balance of \$11,232.46. Part two listed a receipts and disbursement journal balance of \$11,232.46. Part three listed a ledger balance of \$12,189.12. (Ex. A7 at 87.) Part four listed the reported difference between the three parts as \$956.66 with the explanation of “Continued

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<sup>14</sup> A property manager must take corrective action to resolve all adjustments made in a reconciliation prior to the next reconciliation or document the good faith efforts the property manager has taken to resolve the adjustment. (*See*, OAR 863-025-0025(22) (2014); test. of Hlawatsch.)



correction from February 2015 discovery.” (*Id.*) Part four did not detail the corrective actions or good faith efforts taken to resolve the difference. (*Id.*) The account name on the bank statement attached to the reconciliation was “Preferred Professional Property Managem [*sic*] Real Estate Trust Account.” (*Id.* at 89.) The receipts and disbursement journal attached to the reconciliation contained several entries listed as “RENT INCOME” that did not identify the tenant who paid the rent or the identifying code of the property for which the rent was paid. (*Id.* at 92-93.) The owner’s ledger attached to the reconciliation did not contain transaction dates or transaction descriptions (*i.e.*, the purpose of the funds and the identity of the person who tendered the funds, or the purpose of the disbursement) for every entry. (*Id.* at 96-99.)

36. On June 10, 2015, Ms. Hlawatsch spoke with Harris about the reconciliations received thus far, including the rental income entries. Harris explained that PPPM collected rent and then lumped the payments together into daily deposits. When asked about how the detail for the payments were tracked, Harris indicated that PPPM had the detail recorded on daily deposit slips. Ms. Hlawatsch requested that Harris submit this documentation. (Test. of Hlawatsch; Ex. A7 at 7.) In a follow-up email, Ms. Hlawatsch notified Harris of the following:

Just to recap, we will expect to receive [] balanced 3 way reconciliations from you for the month of May. We require one for the owners’ account and one for the security deposit account. Be sure to submit the signed form along with all supporting documents (bank statement, check register, tenant ledger and owner ledger). As we discussed earlier, the detail that is required to be present in the report can be found in OAR 863 chapter 25 – property management section. Some key areas to review:

863-025-0015(1)(2)(3)(5) – Written delegation of authority  
863-025-0040 – Records of receipts and disbursements (please review the entire section)  
863-025-0050 – Tenant ledgers (please review the entire section)  
863-025-0055 – Owner ledger (please review the entire section)  
863-025-0065(5) – Deposits and funds received

You can easily gain access to these rules by clicking the web link below. \* \* \* .

(Ex. A7 at 129-130.)

37. On June 17, 2015, Ms. Hlawatsch notified Respondent and Ziebert that the duties Harris was performing for PPPM required a written delegation of authority per OAR 863-025-0015. Ms. Hlawatsch requested that Respondent and Ziebert read the rule, prepare the written delegation of authority, and provide a copy of it to REA. (Ex. A7 at 128-129.)

38. On June 22, 2015, Respondent, through Harris, faxed a packet of documents to Ms. Hlawatsch. The packet included a three-way reconciliation for PPPM’s clients’ trust account

ending in #7643 for the month of May 2015.<sup>15</sup> The packet also included a bank statement, a receipts and disbursement journal, a copy of the report that had previously been used and submitted as the owner's ledger, a copy of a new report that listed each individual owners' monthly transactions and was meant to serve as the owner's ledger for the May 2015 reconciliation, and a written delegation of authority signed by Respondent and Ziebert. (Ex. A7 at 6, 100-125.) The reconciliation was prepared by Harris, and was approved by Ziebert on June 22, 2015. The account name was listed as "Real Estate Trust Account" on the reconciliation form. The bank statement date was listed as May 31, 2015. Part one of the reconciliation listed a bank statement balance of \$21,478.37. Part two listed a receipts and disbursement journal balance of \$21,478.37. Part three listed a ledger balance of \$21,295.03. (*Id.* at 101.) Part four listed the reported difference between the three parts as \$183.34 with the following explanation:

Phyllis Barker has had rents come in after the owner payout. She also has a reserve of \$4,000.

Part IV difference is a continued correction from February 2015 discovery.

(*Id.*) Part four did not detail the corrective actions or good faith efforts taken to resolve the difference. (*Id.*) The account name on the bank statement attached to the reconciliation was "Preferred Professional Property Managem [*sic*] Real Estate Trust Account." (*Id.* at 103.) The receipts and disbursement journal contained more detail than the previous months, including payee names, transaction descriptions, and some identifying codes, but still had entries listed as "RENT INCOME" that did not identify the tenant who paid the rent or the identifying code of the property for which the rent was paid. (*Id.* at 107-108.) The old owners' ledger report did not contain transaction dates or transaction descriptions. (*Id.* at 111-114.) The new owner's ledger report did not contain a beginning balance but did provide transaction detail and a final balance. (*Id.* at 115-124.) The written delegation of authority granted permission to Harris and Bill Maas, an accountant, to speak with representatives of REA but did not specifically describe Harris' duties. (*Id.* at 125.)

39. On July 9, 2015, Ms. Hlawatsch sent a follow-up email to Respondent and Ziebert about the May 2015 reconciliation, stating, in part:

First, I'd like to thank you for authorizing Sue to speak with me. She has been a big help and I am happy to keep the authorization in our file. However, the document submitted does not meet the requirements of OAR 863-025-0015(5), which states: "Policies must include provisions that specify the production and maintenance of all reports, records and documents required under this division." Please create a document which specifically authorizes Sue to conduct the duties outlined in the OAR. The effect[ive] date should be the date you authorized her to [do] the

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<sup>15</sup> Respondent, through Harris, did not submit a three-way reconciliation for PPPM's security deposits account. (Ex. A7 at 100-125.)

work, basically the day she started working with you.

Regarding the reconciliation's supporting documents, we still need more detail to meet the Administrative Rule requirements. Your check register lacks detail on the aggregated rent deposits. Sue explained that you may deposit several rent payments on any given day[.] [T]hat is understandable. Your check register currently identifies these deposits as "RENTAL INCOME." This is insufficient. Do you keep itemized deposit slips for each daily deposit that shows exactly which owners received payments and from which tenants? If that information is not on the deposit slips then you should be keeping a separate document. Please see OAR 863-025-0040(6), which states:

A property manager may aggregate individual deposits or individual disbursements and record the aggregated total in the record of receipts and disbursements or check register only if the property manager:

- (a) Aggregates the deposits or disbursements on a daily basis;
- (b) Maintains a separate report that details the individual deposits or disbursements, which states the information for each deposit and disbursement as required in section (2) of this rule; and
- (c) Preserves and maintains the detailed report as a required record.

Finally, you submitted two documents to serve as the owners' ledger. The itemized document does not include a beginning balance as required. Can this be added to that report? If so, the problem would be solved. You may want to contact your software provider to learn how you can do this. The second document, a list of owners' running balances, lacks detailed dates and transaction descriptions and is therefore rendered useless. Please get the itemized ledger corrected to show each month[']s beginning balance. Please review the owners' ledger requirements per OAR 863-025-0055(3) which states:

All owners' ledgers must contain at least the following information:

- (d) The balance after each recorded entry.

Please let me know when I can expect these items to be corrected.

(Ex. A7 at 127-128.)

40. On July 14, 2015, Respondent emailed Ms. Hlawatsch the following response:

Here is the explanation to your questions. Each of our owners are assigned a specific number and each of their units have corresponding numbers to identify them each separately. When we receive rent from that tenant, it is itemized on each deposit slip with their individually assigned code number. Please see the attached.

Our property management program does not allow us to obtain a beginning balance although it does give us an ending balance each month which is then used as the beginning balance for each month. There is no way around this. When an entry is made the ledger shows the running balance after each transaction.

Dorothy has already provided you with the authorization for Sue Harris and also Bill Maas to speak with you.

(Ex. A7 at 126.) Respondent attached a copy of a deposit slip and detail report which provided the deposit detail information that the receipt and disbursement journal lacked. The document contained the date, amount and property along with the payer information for each daily deposit. (*Id.* at 133-134.) Ms. Hlawatsch determined Respondent was still not in compliance with REA's requirements. (Test. of Hlawatsch; Ex. A7.)

41. On August 4, 2015, Ms. Hlawatsch prepared an investigative report documenting her findings for REA. (Ex. A7.)

*2014 behavior with client Marlin Lay*

42. In April 2014, Marlin Lay (Lay) owned property located at 725 28<sup>th</sup> Street in Springfield, Oregon (Mar Shell Court or the property).<sup>16</sup> The property consisted of a single family residence, five recreational vehicle spaces, and ten mobile homes. Lay also had a workshop on the property, which he visited occasionally. (Test. of Lewis; Ex. A8 at 2.)

43. Sometime prior to April 14, 2014, Lay sought a new property manager for the property. Lay was referred to PPPM by a friend. Lay and his wife, Shelly Lay, met with Respondent and Ziebert to discuss PPPM's services. Lay also showed the property to Ziebert before agreeing upon terms. (Test. of Lewis; Ex. A8 at 2.)

44. On April 14, 2014, Lay and Respondent signed a property management agreement (PMA) authorizing PPPM, as Lay's Agent, to lease/rent and manage the property, commencing

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<sup>16</sup> Lay had owned the property for approximately 20 years and was retired. (Ex. A8 at 2.)

on April 14, 2014 and terminating on April 14, 2015.<sup>17</sup> (Ex. A8 at 19-22.) Section 4 (C) of the PMA, under “Authority of Agent,” stated, in part: “The expense to be incurred for any one item of alteration or repair shall not exceed the sum of \$400 (four hundred dollars) for any one expenditure unless authorized by Owner, except under such circumstances as Agent shall deem to be an emergency.” (*Id.* at 20.) Section 5 (H) of the PMA, under “Owner Agrees,” stated, in part: “As Agent’s compensation for services, Owner shall pay Agent at the rate of Ten percent (10%) of all rental income collected by Agent or any other party of person during the term of this agreement.” (*Id.* at 21.) The PMA did not contain an identifying code. (Test. of Lewis; Ex. A8 at 19-22.)

*a. Making repairs that exceeded \$400 without authorization*

45. In June 2014, Lay noticed that rental unit #4, a mobile home on the property, sat vacant for over a month. Lay also observed that work was being done on unit #4 in June and July 2014. Lay became alarmed when he received invoices with his owner statements from PPPM showing that over \$5,000 had been charged for labor and repairs on unit #4.<sup>18</sup> Lay did not give Respondent or Ziebert authorization for expenditures over \$400 for unit #4. Lay contacted PPPM and spoke with Ziebert and told her that he should have been notified for approval of the repairs on unit #4. Lay told Ziebert that the trailers were not worth repairing unless it was a patch or two. Lay told Ziebert that it was foolish to spend thousands of dollars on the trailer, and that the money was not PPPM’s to spend. Lay also told Ziebert, “Don’t do this again.” (Test. of Lewis; Ex. A8 at 3, 43-44.)

46. Lay’s owner statement for June 2014 showed he was charged \$1,156.78 in parts and \$3,086.56 in labor for repairs to unit #4. Lay’s owner statement for July 2014 showed he was charged \$776.89 in parts and \$222.58 in labor for repairs to unit #4. The total expense for unit #4 was \$5,242.81. (Test. of Lewis; Ex. 8 at 3, 24-39.)

47. In November and/or December 2014, Lay received invoices with his owner statements from PPPM showing that over \$4,000 for labor and repairs had been charged for repairs on rental unit #16, a mobile home on the property.<sup>19</sup> Lay did not give Respondent or Ziebert authorization for expenditures over \$400 for unit #16. (Test. of Lewis; Ex. A8 at 3, 45-79.)

48. Lay’s owner statement for November 2014 showed he was charged \$1,675.23 in supplies and \$1,233.25 in labor for repairs to unit #16. Lay’s owner statement for December

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<sup>17</sup> Although the PMA contained a termination date, it also contained the following caveat: “This Agreement shall continue until either party terminates same by delivering written notice to the other party at least forty-five (45) days prior to the date specified in the termination.” (Ex. A8 at 19.)

<sup>18</sup> The owner statements and attached invoices show that the parts were purchased at Jerry’s, a local hardware store, and that the labor was performed by Lance Montgomery and John Graham. (Ex. A8 at 24-39.) Lance Montgomery is a related to Ziebert and Respondent. (*Id.* at 82.)

<sup>19</sup> The owner statements and attached invoices show that the supplies were purchased from Jerry’s, and the labor was performed by Lance Montgomery and John Graham. (Ex. A8 at 45-79.)

2014 showed he was charged \$156.32 in supplies and \$1,185 in labor for repairs to unit #16. The total expense for unit #16 was \$4,249.80. (Test. of Lewis; Ex. A8 at 3, 45-79.)

*b. Rent received but not shown on the owner statement*

49. During the relevant period of May 1, 2014 through May 31, 2015, Cleason Hoggatt (Hoggatt) rented unit #6 on the property. The rent for unit #6 was \$430 per month, and the security deposit at move-in was \$350. (Ex. A8 at 99.)

50. On April 23, 2015, PPPM received a check in the amount of \$430 for unit #6 for the rental period of May 1, 2015 to May 30, 2015. In the tenant ledger for unit #6, Respondent documented that rent had been received in the amount of \$430 by check. Respondent did not document the check number, the identity of the person who tendered the check, or the date the check was deposited. (Test. of Lewis; Ex. A8 at 6, 99.)

51. Lay's owner statement dated May 11, 2015 showed that PPPM charged Lay a management fee of \$43 for unit #6 on April 23, 2015. The owner statement did not show that Lay's account had been credited in the amount of \$430 for the rent received from unit #6 on April 23, 2015. Lay contacted Respondent requesting that she correct the error and send him an updated owner statement. Lay never received a corrected owner statement from Respondent. (Test. of Lewis; Ex. A8 at 6, 94.)

*c. Security deposit of tenant who trashed the rental unit*

52. During the relevant period of April 25, 2014 through April 30, 2015, Nicholas Stoval (Stoval) rented unit #11 on the property. The rent for unit #11 was \$495 per month, and the security deposit at move-in was \$495. (Ex. A8 at 93.) The tenant ledger for unit #11 showed cash received of \$990 on April 25, 2014, for rent of \$495 and a security deposit of \$495. The funds were identified with receipt #847014. (*Id.*)

53. On April 6, 2015, PPPM received \$260 for unit #11 for the rental period of April 1, 2015 to April 30, 2015. In the tenant ledger for unit #11, Respondent documented that rent had been received in the amount of \$260 on April 6, 2015, and that a balance of \$235 was owed. Respondent did not document how the \$260 had been tendered (*i.e.*, by check, cash or money order), the identity of the person who tendered the funds, or the date the funds were deposited. (Ex. A8 at 93.) The entry on April 6, 2015 was the final entry in the tenant ledger. (*Id.*)

54. On April 23, 2015, Stoval notified Ziebert that he had lost his job and would be moving out of unit #11. Stoval told Ziebert to use his security deposit for the remaining rent owed in April. Stoval promised to clean the unit and be out on May 1, 2015. (Ex. A8 at 91.) Respondent and Ziebert did not view the unit after Stoval left. (*Id.* at 13.)

55. Sometime in May 2015, Lay entered unit #11 and found that Stoval had left the unit a complete mess. Lay found rotting food, dirty dishes and furniture left behind in the unit. Lay also found that the unit was infested with fleas. Lay took four truckloads of trash out of the unit to the dump. (Ex. A8 at 13, 42-43.)

56. Lay's owner statement dated May 29, 2015 showed that PPPM credited Lay's account on May 13, 2015, in the amount of \$495 for the security deposit from unit #11.<sup>20</sup> The owner statement also showed that PPPM charged Lay on May 14, 2015, with a management fee of \$49.50 and a late fee of \$55 for unit #11. (Ex. A8 at 89.)

*d. Termination of PMA*

57. Sometime prior to May 12, 2015, Lay told Ziebert that he decided to sell the mobile homes on the property and wanted to give the tenants the first opportunity to purchase. Lay went to the property and informed the tenants that he planned to sell the trailers and that they could buy the trailers if they wanted to. (Ex. A8 at 84.)

58. On May 12, 2015, Respondent signed a document attesting that all keys to the property were released to Lay. (Ex. A8 at 87.)

59. On May 13, 2015, Lay gave Respondent and Ziebert a 45-day written notice terminating the PMA. The notice stated, in part:

This is a 45 day written termination notice of management for MarShell Court located at 725 28<sup>th</sup> St. Springfield, Oregon effective immediately.

Please make arrangements with Marlin Lay (owner) to pick up all necessary paperwork and materials concerning MarShell Court such as contracts, keys, security deposits and any money owned to Marlin Lay/MarShell Court.

Please do not speak or have any contact with tenants! MarShell Court is under new Management.

(Ex. A8 at 85.)

60. On May 14, 2015, Ziebert faxed Lay the following statement regarding his cancellation notice:

Hello Shelly & Marlin: just a quick note to let you know that we sent out a correct form regarding our cancellation of the current & in force property management agreement. We will follow the letter of the Law on this final go around with your business. If you read your contract correctly you will find the format that we will be following which, by the way is all in the Oregon State Law book of Real Estate and Property Management. I suggest you read it.

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<sup>20</sup> Respondent did not document in the tenant ledger for unit #11 the date the security deposit funds were disbursed, the amount, the check number, the payee, or the purpose of the disbursement. (Ex. A8 at 93.)

I have informed my attorney, Bryce Jessen, of the situation and you will be receiving correct documentation and forms that will be followed in this transaction. I have already notified him of your taking the keys from the office and not bringing them back as you promised to do and he has informed me that I must report this to the State of Oregon Real Estate Commission. This could cause a full audit on your business by the State of Oregon Real Estate Commission, Property Management Division.

Documents can be drawn up and the cost will be shared 50/50. Immediately upon your signature at the attorney's office the current contract null & void.

Otherwise the deposit monies will not be transferred until the 45 day period expires. You have zero access to them and we will not release them until all tenants have been NOTIFIED BY US on what is happening and again ALL rules and State regulations will be followed.

(Ex. A8 at 88; emphasis in original.)

61. On May 19, 2015, Lay submitted a second termination notice titled "Mutual Termination," pursuant to Ziebert's request that stated, in part:

This letter is to terminate the management contract between Marlin Lay and Preferred Professional Property Management company. As of May 29, 2015, the contract will be mutually terminated. I Marlin Lay request copies of all rental contracts and to have the security deposits turned over to Keystone Real Estate, 1501 18<sup>th</sup> suite 100 Springfield Or. 97477 no later than June 5, 2015.

(Ex. A8 at 86.) On May 20, 2015, Ziebert signed the mutual termination notice. On May 21, 2015, Respondent signed the mutual termination notice. (*Id.* at 108.)

*e. Request for copies of 30-day notices*

62. On June 1, 2015, Lay, through his wife, emailed Respondent and requested copies of the thirty-day notices from the tenants in rental units #4, #6, #7, and #14. (Ex. A8 at 102.)

63. On June 1, 2015, Ziebert issued check #546 to Keystone Property Management in the amount of \$5,480 from the Clients' Trust Account Security Deposits, representing the eleven tenant security deposits remaining in the account. (Ex. A8 at 105-107.)

64. On June 4, 2015, Lay, through his wife, emailed Respondent and made a second request for copies of the thirty-day notices from the tenants in rental units #4, #6, #7, and #14.



Lay also requested that Respondent provide a copy of the tenant rental agreements, which had not been received by Lay's new property manager. (Ex. A8 at 103.)

65. On June 10, 2015, Ziebert faxed Lay's new property manager, stating the following about Lay's wife:

Steve – here's a little more of Shelly's email of today. She is really "something." If she continues I will have no alternative but to call the State and let them know how they handled the contract. Help!! Please.

(Ex. A8 at 104.)

66. Lay never received the documents that he requested from Respondent. (Ex. A8 at 14.)

*2015 complaint and subsequent investigation*

67. On June 24, 2015, REA received a complaint from Lay against Respondent and Ziebert. In the complaint, Lay alleged that Respondent and Ziebert used or took monies that did not belong to them, allowed tenants to move out without proper notice, refunded a security deposit to a tenant who owed rent and trashed the unit, and had repairs done to the property that exceeded the PMA limit of \$400 without getting his approval. Lay also alleged that Respondent and Ziebert failed to provide him with requested documentation. (Test. of Lewis; Ex. A8 at 2, 12.)

68. REA Financial Investigator Meghan Lewis was subsequently assigned to conduct the investigation. (Test. of Lewis.)

69. On December 21, 2015, Ms. Lewis interviewed Lay and his wife. (Test. of Lewis; Ex. A8 at 42-44.) Regarding the tenant who owed rent and trashed unit #11, Lay told Ms. Lewis that the tenant owed back rent of \$730, that the tenant did not give proper notice, that the tenant left the unit trashed, that PPPM gave the tenant back his security deposit, and that no rent had been collected from the tenant in May 2015 yet PPPM charged him a management fee and late fee in May 2015. Lay also told Ms. Lewis that he asked Respondent and Ziebert to refund the fees but they did not. (Test. of Lewis; Ex. A8 at 42-43.) Regarding PPPM not providing requested documentation, Lay told Ms. Lewis that five tenants moved out abruptly after the PMA was terminated, that PPPM gave all of those tenants their security deposits back, and that when he and his wife requested copies of the 30-day notices pertaining to those tenants, Respondent and Ziebert refused to provide them. (Test. of Lewis; Ex. A8 at 43.) Regarding rent not showing on his owner statement, Lay told Ms. Lewis that PPPM collected rent from unit #6 in April 2015, that his owner statement dated May 11, 2015 did not show that rent had been collected yet he was charged a management fee for that rent, and that when he reported the error to Respondent and asked for a corrected statement, Respondent never provided him with a corrected owner statement. (Test. of Lewis; Ex. A8 at 43.) Regarding the repairs done without approval, Lay told Ms. Lewis that Ziebert had repairs done to units #4 and #16 that exceeded the

\$400 limit in the PMA without notifying him or obtaining his authorization. Lay stated that he saw some repair work being done on the property but assumed it was under the \$400 amount because Ziebert never requested authorization from him to exceed that amount. Lay stated that he was shocked when he got the invoices. Lay stated that the trailers were not even worth the repair costs. Lay stated that he contacted Ziebert and told her not to do that again. (Test. of Lewis; Ex. A8 at 43-44.) Regarding PPPM's bookkeeping, Mrs. Lay told Ms. Lewis that the bookkeeping was confusing and hard to track, that the owner statement never had a running balance, and that they never understood how much money they had in the client trust account because of the accounting system that PPPM used. (*Id.* at 42.)

70. On February 19, 2016, Ms. Lewis interviewed Respondent and Ziebert about the complaints. (Test. of Lewis; Ex. A8 at 80-83.) Regarding the tenant in unit #11 that left the unit trashed, Respondent told Ms. Lewis that the tenant gave notice on April 16, 2015, and that she calculated his rent from April 16, 2015 to May 15, 2015 to be charged against his security deposit. Respondent told Ms. Lewis that she credited Lay's account with the security deposit on May 13, 2015. (Test. of Lewis; Ex. A8 at 6, 81.) Regarding the tenants that moved out abruptly without notice, Respondent and Ziebert told Ms. Lewis that a tenant can move out without any notice and that they were not obligated to provide 30-day notices to Lay. (Test. of Lewis; Ex. A8 at 81.) Regarding the rent for unit #6 not showing up on Lay's owner statement, Respondent admitted that she might not have sent Lay a corrected owner statement. Respondent then showed Ms. Lewis an owner ledger from her computer records that showed a credit of \$430 to Lay's account on April 23, 2015, for the rent received from unit #6. (Test. of Lewis; Ex. A8 at 82, 100.) Regarding the repairs made to units #4 and #16, Ziebert admitted that the repairs were never discussed with Lay, but stated that when she previewed the property before signing the PMA, she told Lay that there would need to be repairs done on the property to bring it up to code. (Test. of Lewis; Ex. A8 at 81-82.) Regarding the documents that Ms. Lay requested and never received, Ziebert told Ms. Lewis that she sent all of the documents to the new property manager. (*Id.* at 82-83.) Ms. Lewis asked Respondent to show her the report that indicated the final distributions to Lay and Keystone. Respondent produced a report titled "Transactions," that set forth receipts and disbursements for the dates of May 6 through May 29, 2015. On the report, Respondent circled the amount of \$131.95 on the transaction date of May 29, 2015, and stated that this amount was the final distribution to Lay. Respondent then circled the amount of \$9,647 at the bottom of the report and stated this was the amount of the check PPPM sent to Keystone.<sup>21</sup> (Test. of Lewis; Ex. A9 at 2, 7.) The transaction report did not show a balance after each entry. The report contained three different month totals at the bottom of the report, including a month total of <\$9,192> following the May 2015 transactions; a month total of \$0 following a single voided transaction of \$0 on June 12, 2015; and a month total of <\$9,647> following a single transaction of \$455 on July 14, 2015, paid to PPPM by check #4842 for a "Management Fee." The report showed that there was no income received in June or July 2015 for which a management fee could be charged. The report also showed that the payment on July 14 2015, was after Keystone Management had taken over managing Lay's rental property. (Test. of Lewis; Ex. A9 at 2-3, 7.) At Ms. Lewis's request, Respondent produced a detailed owner ledger for Lay for the dates of April 2, 2015 through May 29, 2015, which set forth a balance following each transaction. The owner ledger was missing Lay's name and contained multiple receipts of

<sup>21</sup> Respondent was incorrect. The amount paid to Keystone Management was \$5,480. (Ex. A8 at 106.)

funds that were missing a check number, cash receipts number or unique series of letters or numbers to establish an audit trail. The owner ledger also showed an ending balance of \$455 following the final transaction of May 29, 2015, that was owed to Lay. (Test. of Lewis; Exs. A8 at 7, 100-101, A9 at 3, 8-9.)

71. Ms. Lewis subsequently reviewed additional records and documentation provided by the Lays and Respondent, including the PMA and the tenant ledgers. (*See*, Exs. A8, A9.) In her review of the PMA, Ms. Lewis noted that there was no identifying code associated to the PMA. Ms. Lewis also noted that although Respondent used the code “Mar Shell” in her computerized record keeping system, the code “Mar Shell” was not found on the PMA or the tenant ledgers. (Test. of Lewis; Ex. A8 at 3, 19-22.) In her review of the tenant ledger for unit #11, Ms. Lewis noted that there was required information that was missing from the tenant ledger. For the entries ranging from June 2014 through April 2015, the tenant ledger for unit #11 was missing an identifying code, the identity of the person who tendered the funds, a check number, cash receipt number or unique series of letters or numbers to establish an audit trail, and the date the funds were deposited. The tenant ledger for unit #11 was also missing the details regarding Respondent’s use of Stoval’s security deposit funds for rent owed on April 16, 2015, and the disbursement of those funds to Lay on May 13, 2015, including the date the security deposit funds were disbursed, the amount, the check number used, the payee, or the purpose of the disbursement. (Test. of Lewis; Ex. A8 at 6, 99.) In her review of the tenant ledger for unit #6, Ms. Lewis noted that there was required information that was missing from the ledger. For entries ranging from April 21, 2014 through April 23, 2015, the tenant ledger for unit #6 was missing an identifying code, the identity of the person who tendered the funds, a check number, cash receipt number or unique series of letters or numbers to establish an audit trail, and the date the funds were deposited. (Test. of Lewis; Ex. A8 at 6, 99.)

72. On March 17, 2016, Ms. Lewis emailed Respondent and Ziebert and requested that they provide any “written policy and delegation of authority” detailing “who does what” for PPPM. (Test. of Lewis; Ex. A9 at 39.) Ms. Lewis did not receive a response from Respondent and Ziebert. (Test. of Lewis.)

73. On March 21, 2016, Ms. Lewis emailed Respondent and Ziebert and requested that they provide an explanation for the disbursement on July 14, 2015, by check #4842 in the amount of \$455 to PPPM for management fees. Ms. Lewis also requested that Respondent and Ziebert provide a reconciliation of their clients’ trust account ending in #7643 for the months of June 2015 and July 2015. (Test. of Lewis; Ex. A9 at 3, 10.)

74. On March 25, 2016, Ms. Lewis received the requested reconciliations by fax. (Ex. A9 at 12-28.) The reconciliation for PPPM’s clients’ trust account ending in #7643 for June 2015 was prepared by Harris and approved by Ziebert on July 15, 2015. The account name was listed as “Real Estate Trust Account” on the reconciliation form. The bank statement date was listed as June 30, 2015. Part one listed a bank statement balance of \$17,122.69. Part two listed a receipts and disbursement journal balance of \$17,122.69. Parts three and four were left blank. (Ex. A9 at 12.) Respondent, through Harris, attached PPPM’s bank statement for the account ending in #7643 for June 2015, which supported the amount in part one of the reconciliation. The account name on the bank statement was “Preferred Professional Property Managem [*sic*]

Real Estate Trust Account.”<sup>22</sup> (*Id.* at 14-17.) Respondent, through Harris, also attached three different transaction reports, which did not support the balance in part two of the reconciliation. (*Id.* at 18-21.) The first transaction report, dated March 25, 2016, showed the disbursement from Lay’s account on July 14, 2015, by check #4842 in the amount of \$455 to PPPM for “management fee.” (*Id.* at 18.) On that transaction report, Harris wrote the following note: “This report shows the computer error. There were no monies received to pay another owner payout. This was an internal error.” (*Id.*)

75. The reconciliation for PPPM’s clients’ trust account ending in #7643 for July 2015 was prepared by Harris and approved by Ziebert on August 17, 2015. The account name was listed as “Real Estate Trust Account” on the reconciliation form. The bank statement date was listed as July 31, 2015. Part one listed a bank statement balance of \$23,710.29. Part two listed a receipts and disbursement journal balance of \$23,710.29. Part three was left blank. (Ex. A9 at 22.) Part four had the following statement: “Part III is blank because client security deposits are held in a client deposit trust account. This account is an operating trust account.” (*Id.*) Respondent, through Harris, attached PPPM’s bank statement for the account ending in #7643 for July 2015, which supported the amount in part one of the reconciliation. The account name on the bank statement was “Preferred Professional Property Management [*sic*] Real Estate Trust Account.” (*Id.* at 24-27.) The bank statement also showed that check #4842 in the amount of \$455 was posted on July 16, 2015 with transaction #8950703266. (*Id.* at 25.) Harris also attached the same transaction report from the June reconciliation that contained her handwritten note asserting that the payout to PPPM was “an internal error.” (*Id.* at 28.) The transaction report did not support the amount in part two of the reconciliation. (*Id.*)

76. On March 29, 2016, Ms. Lewis prepared her first investigative report documenting her findings for REA. (Ex. A8.)

77. On April 4, 2016, Ms. Lewis notified Respondent and Ziebert by email of her concerns regarding their explanation for check #4842 and their incomplete reconciliations as follows:

Thank you for providing your monthly reconciliations for June 2015 and July 2015, and somewhat an explanation for check #4842 for \$455. I did want to follow up \* \* \*. Please strongly consider my notes below, and feel free to respond to me with corrected reconciliations, as you move forward in your professional property management activity.

**Check #4842 for \$455.00:**

This check cleared your account ending #7643 on July 16, 2015, with bank reference number 8950703266. It does not appear to have been a computer entry error as Ms. Harris notes. The check was written and posted.

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<sup>22</sup> The account name was not in compliance with the labeling requirements set forth in OAR 863-025-0010(4) (2014). (Test. of Lewis.)

Please retrieve a copy of this check to verify to whom the funds were paid from owner Marlin Lay client trust funds. Were they management fees due Preferred Professional Property Management (PPPM)?

The “Transaction” report which I retrieved from [Respondent] during our visit on February 19, 2016, shows an ending balance of \$455.00 in Marlin Lay’s account on 5/29/16. A check is then written to PPPM on 7/14/2015 for \$455.00. This check shows as cleared your bank account ending in #7643 on 7/16/15.

The “Transaction” report dated March 25, 2016, which you submitted as supporting documentation for your reconciliations does not show the daily balance or the ending balance of \$455.00 for Marlin Lay’s owner ledger.

#### **Clients’ Trust Account Reconciliations:**

I want to apprise you that Part III should not be blank for either of your clients’ trust account reconciliations, unless you have separate client trust accounts for each of your owners, which I don’t believe is your case. I believe you have pooled “multiple owner” owner and security deposit accounts, and therefore this is a three way reconciliation. The entries here denote only two-way, which is deemed incomplete. Please review OAR 863-025-0025 Clients’ Trust Accounts in Property Management, Division 25 Oregon Administrative Rules.

For CTA #7643, Part III on the three way reconciliation form is the **total of the ledgers** for your client trust account – rental income (“operating” trust account per Ms. Harris) which means the “sum of all owner ledgers” as of the date of the bank statement, and as shown on the total of your owner ledgers.

For example, clients’ trust account – rental income #7643, if you have \$1,000.00 on owner ledger A, and \$5,000.00 on owner ledger B, and \$500.00 on owner ledger C, the total of owner ledgers to enter for Part III is \$6,500.00. If you reconcile the client trust account for owner A, B, and C, a balanced reconciliation would be \$6,500.00 for all parts: Part I, the bank statement, \$6,500.00 for Part II, the check register, and \$6,500.00 for Part III, **total of ledgers**.

For CTA #2415, Part III on the three way reconciliation form is for the **total of security deposits** for the security deposit account,

which means the “sum of the individual security deposits and fees held in the security deposits account” as of the date of the bank statement, and as shown on your tenant ledgers.

The same for a clients’ trust account – security deposits, #2415. For example, if the tenant A, has \$1,000.00 held as security deposit, tenant B has \$450.00, and tenant C has \$1,200.00 the total of security deposits is \$2,650.00. If you reconcile the security deposit trust account for tenant A, B, and C, a balanced reconciliation would be \$2,650.00 for all parts: Part I, the bank statement, \$2,650.00 for Part II, the check register, [] and Part III, \$2,650.00 for a **total of security deposits**.

**Part I, the bank statement, Part II, the check register and Part III, owner ledger or security deposits ledger should all balance to the same amount. This form states this requirement! If the three parts do not balance, then in Part IV, you must write an explanation for the difference and take corrective action to resolve the difference before the next reconciliation period.**

Please review your practices to ensure you are meeting Oregon Revised Statutes and Oregon Administrative Rules licensing requirements.

(Ex. A9 at 4, 29-31; emphasis in original.)

78. On April 7, 2016, Harris emailed Ms. Lewis the following response:

Attached please find scanned documentation that contains further explanation of the check #4842 as I think there may have been a misunderstanding in my previous notation. If the attached ledger is different than the one you received when you were in the office with [Ziebert] and [Respondent], I would appreciate a scanned copy of what you have for reference.

(Ex. A9 at 29.) The attached document stated, in part:

Attached please find a copy of the detailed transaction report that was sent to you by fax. It should look similar, if not the same, as the one provided to you when you were in this office.

You will see that at the end of May, after the final payout to Marlin Lay, the ledger balance was \$0.00. No rents came in after the account was brought to \$0.00. No further money is owed to Marlin Lay.

Then you see where the computer erroneously generated a check payable to Preferred Professional Property Management for management fees in the amount of \$455.00. Check #4842.

After that transaction, the ledger now shows a **negative** balance of \$455.00.<sup>23</sup> That check should never have been generated by the computer. There was not any money in the ledger to issue a check. Hence, my original description of “computer error.” Marlin Lay is not owed any money, especially when the account is in a negative. This is an internal error that is being corrected. We have alerted the software company of this error.

(*Id.* at 32; emphasis in original.)

79. Ms. Lewis subsequently prepared her own monthly ledger for Lay, documenting all of the rents received by PPPM, as well as all of the property management fees paid to PPPM. Ms. Lewis determined that after PPPM was paid all of its allowable fees, there was a balance owing to Lay of \$455. (Test. of Lewis; Ex. A9 at 33-38.) Ms. Lewis determined that Respondent and Ziebert had failed to properly account for the \$455 paid to PPPM by check #4843. Ms. Lewis also determined that Respondent’s and Ziebert’s actions demonstrated incompetence. (Test. of Lewis.)

80. On May 9, 2016, Ms. Lewis prepared her second investigative report documenting her findings for REA. (Ex. A9.)

### CONCLUSIONS OF LAW

1. By allowing multiple tenants’ security funds to be used to repair Barker’s rental property, Respondent violated ORS 696.301(12) (2011) and ORS 696.301(3) as it incorporates OAR 863-025-0030(1)(a), (b), (c), and (d) (2011).

2. By disbursing tenants’ security deposit funds to a single owner, Respondent violated ORS 696.301(12) (2011) and ORS 696.890(3)(a), (b), (c), (e), and (f) (2011).

3. By failing to use the required identifying language in the account name for security deposits account ending in #2415, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(4) (2014).

4. By failing to timely produce and provide the requested records for clients’ trust account ending in #7643 and security deposits account ending in #2415, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0035(2)(a) (2014).

5. By failing to use the required identifying language in the account name for clients’ trust account ending in #7643, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(2) (2014).

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<sup>23</sup> It is a violation for an owner ledger to show a negative balance for more than one day. (Test. of Lewis.)

6. By failing to have the required transaction descriptions and identifying codes for all entries in the receipts and disbursements journal, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0040(2)(a)(C), and (c) (2014).

7. By failing to have the required transaction dates or descriptions on the owners' ledger, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(b)(B), (D), (c)(A), and (E) (2014).

8. By failing to balance all three clients' trust account reconciliations for account ending in #7643 for the months of February, March and April 2015, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(20)(b) (2014).

9. Respondent failed to resolve the difference of \$2,889.06 on the February 2015 reconciliation in a timely manner by the March 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014).

10. Respondent failed to completely resolve the deficiency from the February 2015 reconciliation in a timely manner by the April 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014).

11. Respondent failed to completely resolve the deficiency from the February 2015 reconciliation in a timely manner by the May 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014).

12. By failing to maintain the registered business name with the Oregon Secretary of State, Respondent violated ORS 696.301(3) as it incorporates OAR 863-024-0095(1) (2013 and 2014).

13. Respondent failed to assign an identifying code to the property management agreement signed with Lay, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0020(2)(k) (2013).

14. Between June 2, 2014 through April 6, 2015, Respondent failed to include the required detail on tenant ledger for unit #11, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(c), (d)(B), (C), and (D) (2014).

15. Between April 21, 2014 through April 23, 2015, Respondent failed to include required details on the tenant ledger for unit #6, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(c), (d)(B), (C), and (D) (2014).

16. By failing to provide a corrected owner statement to Lay, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0055(4) (2013).



17. Respondent failed to include identifying information on Lay's owner ledger for time period of April 2, 2015 through May 29, 2015, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(a), and (b)(C) (2014).

18. By failing to properly account for receipts and disbursements of clients' trust funds on the owners' and tenant ledgers, Respondent violated ORS 696.890(4)(c), (d), and (e) (2013 and 2015).

19. Respondent failed to timely deliver the tenant agreements requested by Lay in violation of ORS 696.301(3) as it incorporates OAR 863-025-0068(2) (2014).

20. By failing to properly account for the \$455, Respondent demonstrated incompetence in violation of ORS 696.301(12) (2015).

21. Respondent demonstrated incompetence in performing any act for which Respondent is required to hold a license, in violation of ORS 696.301(12) (2011, 2013, and 2015).

22. Respondent's property manager license should be revoked.

## OPINION

REA contends that Respondent violated its statutes and rules, and should have her property manager license revoked. REA bears the burden of proving its allegations by a preponderance of the evidence. ORS 183.450(2) and (5); *Reguero v. Teachers Standards and Practices Commission*, 312 Or 402, 418 (1991) (burden is on Commission in disciplinary action); *Dixon v. Board of Nursing*, 291 Or App 207, 213 (2018) (in administrative actions, the standard of proof that generally applies in agency proceedings, including license-related proceedings, is the preponderance standard.) Proof by a preponderance of the evidence means that the fact finder is convinced that the facts asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

### *The violations*

1. *Whether, by allowing multiple tenants' security funds to be used to repair Barker's rental property, Respondent violated ORS 696.301(12) (2011) and ORS 696.301(3) as it incorporates OAR 863-025-0030(1)(a), (b), (c), and (d) (2011).*

REA contends that by allowing multiple tenants' security funds to be used to repair Barker's rental property, Respondent violated ORS 696.301(12) (2011) and ORS 696.301(3) as it incorporates OAR 863-025-0030(1)(a), (b), (c), and (d) (2011). Respondent contends to the contrary.

ORS 696.301, in effect in 2011, is titled "Grounds for discipline" and provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may

suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

\* \* \* \* \*

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

\* \* \* \* \*

(12) Demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

Pursuant to the authority cited above, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee who has disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency; or who has demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

The terms “incompetence” and “untrustworthiness” are not defined in REA’s statutes and rules. As such, the plain meanings of the terms are examined.

“Incompetence” means “the state or fact of being incompetent,” and “lack of physical, intellectual or moral ability.” *Webster’s Third New Int’l Dictionary* 1144 (unabridged ed. 2002). “Incompetent” means “one incapable of doing properly what is required.” *Id.*

“Untrustworthiness” means “the quality or state of being untrustworthy.” *Id.* at 2514. “Untrustworthy” means “not trustworthy” and “unreliable.” *Id.*

OAR 863-025-0030, in effect in 2011, is titled “Tenant Security Deposits” and provides in part:

(1) Except as provided in section (3) of this rule,<sup>24</sup> 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

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<sup>24</sup> The exception in section (3) is not applicable in this matter. *See*, OAR 863-025-0030(3).

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.

As indicated above, all tenants' security deposits received by a property manager must be deposited and maintained in a security deposits account until: 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; 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; 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 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.

In 2012, Respondent was a licensed property manager doing business under the registered business name of PPPM. At that time, Respondent managed a rental home in Halsey, Oregon, that was owned by Barker, a family friend. On April 9, 2012, Barker's rental home sustained major damage from a storm. Barker's home insurance did not cover all the damage, leaving a shortfall of \$10,780. Ziebert, who was 51 percent owner but whose license was not associated with PPPM, decided to use PPPM's tenants' security deposit funds to pay Barker's shortfall amount. Respondent was aware of Ziebert's decision and knew that it was wrong.

On May 4, 2012, Ziebert transferred \$10,780 via check #456 out of PPPM's tenants' security deposit account ending in #2293 and into Barker's owner account. Respondent allowed the transfer of funds to take place. The funds from the check were used to pay the outstanding repair costs on Barker's home. Respondent did not get permission from PPPM's tenants or property owners to use the tenants' funds for Barker. In addition, Respondent did not notify PPPM's tenants or property owners of the subsequent transfer and use of funds. Respondent engaged in actions that were not trustworthy and/or that lacked intellectual or moral ability. Respondent also engaged in actions that violated the affected tenants' rental agreements and the affected property owners' PMA's.

I find that Respondent's actions of allowing the transfer of multiple tenants' security deposits into Barker's owner account to be used to repair Barker's rental property did not comply with the tenant security deposits requirements set forth in OAR 863-025-0030(1) above. I find that Respondent did not forward the tenants' security deposits to the property owners according to the terms of the tenants' rental agreement and the PMA. I find that Respondent did not

disburse the tenants' security deposits for purposes authorized by the tenants' rental agreement and the PMA. I find that Respondent did not refund the tenants' security deposits according to the terms of the tenants' rental agreement and the PMA. I find that Respondent did not transfer the tenants' security deposits to the owner or to another property manager.

I conclude that by allowing multiple tenants' security funds to be used to repair Barker's rental property, Respondent violated ORS 696.301(12) (2011) and ORS 696.301(3) as it incorporates OAR 863-025-0030(1)(a), (b), (c), and (d) (2011). This is a basis for discipline under ORS 696.301.

*2. Whether, by disbursing tenants' security deposit funds to a single owner, Respondent violated ORS 696.301(12) (2011) and ORS 696.890(3)(a), (b), (c), (e), and (f) (2011).*

REA contends that by disbursing tenants' security deposit funds to Barker, Respondent violated ORS 696.301(12) (2011) and ORS 696.890(3)(a), (b), (c), (e), and (f) (2011). Respondent contends to the contrary.

ORS 696.301, in effect in 2011, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

\* \* \* \* \*

(12) Demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

ORS 696.890, in effect 2011, is titled "Duties of Real Estate Property Managers" and provides, in part:

(3) A real estate property manager owes the property owner the following affirmative duties:

- (a) To deal honestly and in good faith;
- (b) To disclose material facts known by the property manager and not apparent or readily ascertainable to the owner;
- (c) To exercise reasonable care and diligence;

\* \* \* \* \*

(e) To act in a fiduciary manner in all matters relating to trust

funds;

(f) To be loyal to the owner by not taking action that is adverse or detrimental to the owner's interest.

As indicated above, a real estate property manager owes the property owner the following affirmative duties: to deal honestly and in good faith; to disclose material facts known by the property manager and not apparent or readily ascertainable to the owner; to exercise reasonable care and diligence; to act in a fiduciary manner in all matters relating to trust funds; and to be loyal to the owner by not taking action that is adverse or detrimental to the owner's interest.

On May 4, 2012, Ziebert, with Respondent's knowledge, transferred \$10,780 out of PPPM's tenants' security deposits account ending in #2293 and into Barker's owner account to pay the outstanding repair costs on Barker's rental home. Respondent did not get permission from PPPM's property owners to use the tenants' funds for Barker. In addition, Respondent did not notify PPPM's property owners of the subsequent transfer and use of funds. Moreover, although Respondent considered the funds to be a loan to Barker, Respondent did not have a written contract, payment plan or promissory note with Barker regarding the debt. Furthermore, Respondent did not require Barker to provide collateral for the loan of funds. Respondent engaged in actions that were not trustworthy and/or that lacked intellectual or moral ability. Respondent also engaged in actions that did not safeguard the tenants' funds.

I find that Respondent did not deal honestly or in good faith with PPPM's property owners, and did not disclose material facts that were not apparent or readily ascertainable to the property owners. I find that Respondent did not exercise reasonable care and diligence regarding the property owners' interests and the tenants' funds. I find that Respondent did not act in a fiduciary manner in all matters related to the tenants' funds. I find that Respondent engaged in actions that were adverse and detrimental to PPPM's property owners' interests.

I conclude that by disbursing tenants' security deposit funds to a single owner (Barker), Respondent violated ORS 696.301(12) (2011) and ORS 696.890(3)(a), (b), (c), (e), and (f) (2011). This is a basis for discipline under ORS 696.301.

*3. Whether, by failing to use the required identifying language in the account name for security deposits account ending in #2415, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(4) (2014).*

REA contends that by failing to use the required identifying language in the account name for security deposits account ending in #2415, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(4) (2014). Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license

to an applicant who has done any of the following:

\* \* \* \* \*

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0025, in effect in 2014, is titled “Clients’ Trust Account and Security Deposits Account Requirements” and provides, in part:

(4) Except as provided in section (7) of this rule, a property manager who receives security deposits on behalf of an owner must open and maintain a security deposits account, as defined in OAR 863-025-0010, that is separate from the property manager’s clients’ trust account.

As indicated above, except as provided in section (7) of OAR 863-025-0025, a property manager who receives security deposits on behalf of an owner must open and maintain a security deposits account, as defined in OAR 863-025-0010, that is separate from the property manager’s clients’ trust account.

“Security Deposits Account” means a federally insured clients’ trust account labeled as “Clients’ Trust Account – Security Deposits” on all bank records and checks that is established and maintained by a property manager, acting in a fiduciary capacity on behalf of an owner under a property management agreement, for depositing, holding and disbursing security deposit funds. OAR 863-025-0010(16) (2014).

On June 30 and July 9, 2014, during the mail in audit, Ms. Rozell notified Respondent that the correct language to use on her tenants’ security deposits account was “Clients’ Trust Account Security Deposits.” Ms. Rozell also notified Respondent of the pertinent administrative rule to review for the correct verbiage.

On March 9, 2015, during the full investigation, Respondent, through Ziebert, faxed Ms. Hlawatsch, as supporting documentation for the three way reconciliation of PPPM’s tenants’ security deposits account ending in #2415, a copy of the bank statement for the security deposits account ending in #2415. The account name on the bank statement was “Cynthia Ziebert Webber DBA Preferred Professional Property Management Client Trust Acct [*sic*] Security Dep [*sic*],” which was not in compliance with REA’s previous instructions to Respondent, nor REA’s administrative rule.

I find that, despite being notified in June and July 2014 of the correct identifying language to use on her security deposits account, Respondent used the wrong identifying language in March 2015 in the account name for her security deposits account ending in #2415. I also find that Respondent’s actions of continuing to use the wrong identifying language in the account name for her security deposits account indicate a lack of intellectual ability or an

inability to do properly what is required.

I conclude that by failing to use the required identifying language in the account name for security deposits account ending in #2415, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(4) (2014). This is a basis for discipline under ORS 696.301.

*4. Whether, by failing to timely produce and provide the requested records for clients' trust account ending in #7643 and security deposits account ending in #2415, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0035(2)(a) (2014).*

REA contends that by failing to timely produce and provide the requested records for clients' trust account ending in #7643 and security deposits account ending in #2415, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0035(2)(a) (2014). Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

\* \* \* \* \*

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0035, in effect in 2014, is titled, "Records; Required Records; Maintenance; Production" and provides, in part:

(2) A property manager must produce records required under section (1) of this rule for inspection by the Agency as follows:

(a) When the Agency makes a request for production of property management records, the property manager must provide such records within no less than five banking days;

As indicated above, when the Agency makes a request for production of property management records, the property manager must provide such records within no less than five banking days.

On February 26, 2015, Ms. Hlawatsch issued a letter to Respondent requesting that she prepare and provide three-way reconciliations for her clients' trust and tenants' security deposits accounts for the month of February 2015. Ms. Hlawatsch notified Respondent that she had until March 9, 2015, to provide the requested documentation.

On March 9, 2015, Respondent, through Ziebert, faxed Ms. Hlawatsch a three-way reconciliation of PPPM's tenants' security deposits account ending in #2415 for the month of February 2015. The reconciliation form was prepared by Harris and approved by Ziebert. Parts one, two and three of the reconciliation were reported as balanced at \$51,341.32 on February 27, 2015. Respondent, through Ziebert, attached a printout of the bank statement for the account ending in #2415 to support the amount in part one of the reconciliation. The bank statement had an ending balance of \$51,341.32 on February 27, 2015. Respondent did not provide any supporting documentation for the amounts listed in parts two and three of the reconciliation. In addition, Respondent did not provide Ms. Hlawatsch with a three-way reconciliation of PPPM's clients' trust account ending in #7643 for the month of February 2015.

On March 10, 2015, Respondent, through Ziebert, faxed Ms. Hlawatsch a second copy of the three-way reconciliation of PPPM's tenants' security deposits account ending in #2415 for the month of February 2015. Respondent did not provide any supporting documentation for the amounts listed in parts two and three of the reconciliation. In addition, Respondent did not provide Ms. Hlawatsch with a three-way reconciliation of PPPM's clients' trust account ending in #7643 for the month of February 2015.

On March 11, 2015, Ms. Hlawatsch notified Respondent and Ziebert by email that the reconciliation for PPPM's tenants' security deposits account ending in #2415 was incomplete, and that Respondent needed to supply supporting documentation for the amounts listed on the reconciliation. Ms. Hlawatsch also notified Respondent that she needed to submit a three-way reconciliation for PPPM's clients' trust account.

On March 12, 2015, Respondent, through Ziebert, faxed Ms. Hlawatsch a third copy of the three-way reconciliation of PPPM's tenants' security deposits account ending in #2415 for the month of February 2015. Respondent, through Ziebert, attached a copy of PPPM's security deposit account's receipt and disbursement journal, which listed transactions for the period of January 2, 2012 through February 16, 2015, and displayed a running balance. The journal showed an ending balance of \$51,341.32 on February 16, 2015. Respondent did not submit supporting documentation for the amount reported in part three of the reconciliation. In addition, Respondent did not submit a three-way reconciliation for PPPM's clients' trust account.

On April 27, 2015, Ms. Hlawatsch notified Respondent by email that although she had received from Respondent a three-way reconciliation of the security deposits account with supporting documentation, she still had not received from Respondent a three-way reconciliation of the clients' trust account for the month of February 2015. Ms. Hlawatsch asked Respondent to fax her a reconciliation that day.

On April 30, 2015, Respondent faxed Ms. Hlawatsch a three-way reconciliation of PPPM's clients' trust account ending in #7643 for the month of February 2015. The reconciliation was prepared by Harris and approved by Respondent. Parts one and two of the reconciliation were reported to be reconciled at \$1,644.15 on February 28, 2015. Part three was left blank. Respondent did not provide supporting documentation for the amounts listed in the reconciliation.



I find that although Respondent provided a three-way reconciliation of PPPM's tenants' security deposits account ending in #2415 for the month of February 2015 to Ms. Hlawatsch on March 9, 2015, the reconciliation was incomplete and did not contain all of the supporting documentation required. I also find that Respondent did not provide a three-way reconciliation of PPPM's clients' trust account ending in #7643 for the month of February 2015 to Ms. Hlawatsch on March 9, 2015.

I find that Respondent failed to timely produce and provide the requested records for both the security deposits account ending in #2415 and the clients' trust account ending in #7643 to Ms. Hlawatsch by the due date of March 9, 2015. I also find that Respondent's actions indicate a lack of intellectual ability or an inability to do properly what is required.

I conclude that by failing to timely produce and provide the requested records for clients' trust account ending in #7643 and security deposits account ending in #2415, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0035(2)(a) (2014). This is a basis for discipline under ORS 696.301.

*5. Whether, by failing to use the required identifying language in the account name for clients' trust account ending in #7643, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(2) (2014).*

REA contends that by failing to use the required identifying language in the account name for clients' trust account ending in #7643, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(2) (2014). Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

\* \* \* \* \*

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0025, in effect in 2014, provides, in part:

(2) A property manager must open and maintain at least one clients' trust account as defined in OAR 863-025-0010.

As indicated above, a property manager must open and maintain at least one clients' trust account as defined in OAR 863-025-0010.

“Clients’ Trust Account” means a federally insured bank account labeled as “Clients’ Trust Account” on all bank records and checks that is established and maintained by a property manager, acting on behalf of an owner under a property management agreement, for depositing, holding and disbursing funds received by the property manager on behalf of an owner, including application fees and application screening fees. OAR 863-025-0010(4) (2014).

On July 9, 2014, during the mail in audit, Ms. Rozell notified Respondent that the correct language to use on all bank statements, checks, and deposit slips for her operating clients’ trust account was “Clients’ Trust Account.” Ms. Rozell also notified Respondent of the pertinent administrative rule to review for the correct verbiage.

On May 8, 2015, during the full investigation, Respondent, through Harris, faxed Ms. Hlawatsch, as supporting documentation for the three-way reconciliation of PPPM’s clients’ trust account ending in #7643, a copy of the bank statement for the clients’ trust account ending in #7643. The account name on the bank statement was “Preferred Professional Property Managem [sic] Real Estate Trust Account,” which was not in compliance with REA’s previous instructions to Respondent, nor REA’s administrative rule.

I find that, despite being notified in July 2014 of the correct identifying language to use on her clients’ trust account, Respondent used the wrong identifying language in May 2015 in the account name for her clients’ trust account ending in #7643. I also find that Respondent’s actions of continuing to use the wrong identifying language in the account name for her clients’ trust account indicate a lack of intellectual ability or an inability to do properly what is required.

I conclude that by failing to use the required identifying language in the account name for clients’ trust account ending in #7643, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(2) (2014). This is a basis for discipline under ORS 696.301.

*6. Whether, by failing to have the required transaction descriptions and identifying codes for all entries in the receipts and disbursements journal, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0040(2)(a)(C), and (c) (2014).*

REA contends that by failing to have the required transaction descriptions and identifying codes for all entries in the receipts and disbursements journal, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0040(2)(a)(C), and (c) (2014). Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

\* \* \* \* \*

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0040, in effect in 2014, is titled "Record of Receipts and Disbursements" and provides, in part:

(1) Except as provided in section (4) of this rule, a property manager must prepare and maintain a chronological record of receipts and disbursements or a check register for each client's trust account and each security deposits account in which the manager must record each receipt of funds and each disbursement of funds.

(2) A record of receipts and disbursements or a check register must contain at least the following information:

(a) For each receipt of funds:

\* \* \* \* \*

(C) The purpose of the funds and identity of the person who tendered the funds;

\* \* \* \* \*

(c) If there is more than one property in a clients' trust account, each entry for a receipt, deposit or disbursement must be identified with the applicable identifying code;

As indicated above, a property manager must prepare and maintain a chronological record of receipts and disbursements or a check register for each client's trust account and each security deposits account in which the manager must record each receipt of funds and each disbursement of funds. In addition, for each receipt of funds, a record of receipts and disbursements or a check register must contain the purpose of the funds and identity of the person who tendered the funds. Moreover, if there is more than one property in a clients' trust account, a record of receipts and disbursements or check register must contain the applicable identifying code for each receipt, deposit or disbursement.

On May 12, 2015, Respondent, through Harris, faxed Ms. Hlawatsch a three-way reconciliation packet for PPPM's clients' trust account ending in #7643 for the months of February through April 2015. Each packet included a reconciliation form, a bank statement, a receipts and disbursement journal, and a report meant to serve as an owner's ledger. The clients' trust account ending in #7643 held funds for multiple properties.

For the month of February 2015, the receipts and disbursement journal that was attached to the reconciliation contained several entries that did not identify the purpose of the funds and the person who tendered the funds (*i.e.*, transaction descriptions), or the identifying codes for each receipt, deposit or disbursement. In addition, for the months of March and April 2015, the receipts and disbursement journal that was attached to the reconciliations contained several entries listed as “RENT INCOME” that did not identify the tenant who paid the rent or the identifying code of the property for which the rent was paid.

I find that Respondent failed to document the required transaction descriptions and identifying codes for all entries in her receipts and disbursements journal for the months of February through April 2015. I also find that Respondent’s actions indicate a lack of intellectual ability or an inability to do properly what is required.

I conclude that by failing to have the required transaction descriptions and identifying codes for all entries in the receipts and disbursements journal, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0040(2)(a)(C), and (c) (2014). This is a basis for discipline under ORS 696.301.

*7. Whether, by failing to have the required transaction dates or descriptions on the owners’ ledger, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(b)(B), (D), (c)(A), and (E) (2014).*

REA contends that by failing to have the required transaction dates or descriptions on the owners’ ledger, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(b)(B), (D), (c)(A), and (E) (2014). Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

\* \* \* \* \*

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0055, in effect in 2014, is titled “Owner Ledger” and provides, in part:

(3) All owner ledgers must contain at least the following information:

\* \* \* \* \*

(b) For each deposit of funds:

\* \* \* \* \*

(B) The purpose of the funds and identity of the person who tendered the funds;

\* \* \* \* \*

(D) The date the funds were deposited;

(c) For each disbursement of funds:

(A) The date the funds were disbursed;

\* \* \* \* \*

(E) The purpose of the disbursement;

As indicated above, for each deposit of funds, an owner's ledger must contain the purpose of the funds and the identity of the person who tendered the funds, and the date the funds were deposited. In addition, for each disbursement of funds, an owner's ledger must contain the date the funds were disbursed and the purpose of the disbursement.

As stated previously, on May 12, 2015, Respondent, through Harris, faxed Ms. Hlawatsch a three-way reconciliation packet for PPPM's clients' trust account ending in #7643 for the months of February through April 2015. Each packet included a reconciliation form, a bank statement, a receipts and disbursement journal, and a report meant to serve as an owner's ledger.

The owners' ledger that was attached to the reconciliations for all three months was missing the transaction dates for every entry. In addition, the owners' ledger was missing the required transaction descriptions for every deposit and disbursement of funds, including the purpose of the funds and the identity of the person who tendered the funds.

I find that Respondent failed to document the required transaction dates and descriptions for all entries in her owners' ledger for the months of February through April 2015. I also find that Respondent's actions indicate a lack of intellectual ability or an inability to do properly what is required.

I conclude that by failing to have the required transaction dates or descriptions on the owners' ledger, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(b)(B), (D), (c)(A), and (E) (2014). This is a basis for discipline under ORS 696.301.

*8. Whether, by failing to balance all three clients' trust account reconciliations for account ending in #7643 for the months of February, March and April 2015, Respondent*

*violated ORS 696.301(3) as it incorporates OAR 863-025-0025(20)(b) (2014).*

REA contends that by failing to balance all three clients' trust account reconciliations for account ending in #7643 for the months of February, March and April 2015, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(20)(b) (2014). Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

\* \* \* \* \*

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0025, in effect in 2014, provides, in part:

(20) A property manager must reconcile each clients' trust account within 30 calendar days of the date of the bank statement pursuant to the requirements contained in this section.

(a) The reconciliation must have three components that are contained in a single reconciliation document:

(A) The bank statement balance, adjusted for outstanding checks and other reconciling bank items;

(B) The balance of the record of receipts and disbursements or the check register as of the date of the bank statement; and

(C) The sum of all positive owners' ledgers as of the date of the bank statement.

(b) The balance of each component in section (20)(a) of this rule must be equal to and reconciled with each other. If any adjustment is needed, the adjustment must be clearly identified and explained on the reconciliation document.

As indicated above, a property manager must reconcile each clients' trust account within 30 calendar days of the date of the bank statement. The reconciliation must have three components that are contained in a single reconciliation document: the bank statement balance,

adjusted for outstanding checks and other reconciling bank items; the balance of the record of receipts and disbursements or the check register as of the date of the bank statement; and the sum of all positive owners' ledgers as of the date of the bank statement. In addition, the balance of each component must be equal to and reconciled with each other. If any adjustment is needed, the adjustment must be clearly identified and explained on the reconciliation document.

As previously stated, on May 12, 2015, Respondent, through Harris, faxed Ms. Hlawatsch a three-way reconciliation packet for PPPM's clients' trust account ending in #7643 for the months of February through April 2015. Each packet included a reconciliation form, a bank statement, a receipts and disbursement journal, and a report meant to serve as an owner's ledger. The reconciliation forms were prepared by Harris, and were approved by Ziebert on May 12, 2015.

For the month of February 2015, part one of the reconciliation listed a bank statement balance of \$1,644.45 as of the bank statement date of February 28, 2015. Part two listed a receipts and disbursement journal balance of \$<9,765.62>. Part three listed a ledger balance of \$5,232.11. Part four listed the reported difference between the three parts as \$<2,889.06> with the explanation of "an error in computing." (Exhibit A7 at 65.) Part four did not detail the corrective actions or good faith efforts Respondent had taken to resolve the difference. The three components remained unbalanced through the following reconciliation.

For the month of March 2015, part one of the reconciliation listed a bank statement balance of \$9,313.33 as of the bank statement date of March 31, 2015. Part two listed a receipts and disbursement journal balance of \$9,313.33. Part three listed a ledger balance of \$10,899.99. Part four listed the reported difference between the three parts as \$1,586.66 with the explanation of "Continued correction from February 2015 discovery." (Exhibit A7 at 76.) Part four did not detail the corrective actions or good faith efforts Respondent had taken to resolve the difference. The three components remained unbalanced through the following reconciliation.

For the month of April 2015, part one of the reconciliation listed a bank statement balance of \$11,232.46 as of the bank statement date of April 30, 2015. Part two listed a receipts and disbursement journal balance of \$11,232.46. Part three listed a ledger balance of \$12,189.12. Part four listed the reported difference between the three parts as \$956.66 with the explanation of "Continued correction from February 2015 discovery." (Exhibit A7 at 87.) Part four did not detail the corrective actions or good faith efforts Respondent had taken to resolve the difference. The three components remained unbalanced through the following reconciliation.

I find that Respondent failed to reconcile the clients' trust account ending in #7643 within 30 calendar days of the date of the bank statement for the months of February through April 2015. I also find that Respondent's actions indicate a lack of intellectual ability or an inability to do properly what is required.

I conclude that by failing to balance all three clients' trust account reconciliations for account ending in #7643 for the months of February, March and April 2015, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(20)(b) (2014). This is a basis for discipline under ORS 696.301.

9. *Whether Respondent failed to resolve the difference of \$2,889.06 on the February 2015 reconciliation in a timely manner by the March 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014).*

REA contends that Respondent failed to resolve the difference of \$2,889.06 on the February 2015 reconciliation in a timely manner by the March 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014). Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

\* \* \* \* \*

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0025, in effect in 2014, provides, in part:

(22) A property manager must take corrective action to resolve all adjustments made in a reconciliation prior to the next reconciliation or document the good faith efforts the property manager has taken to resolve the adjustment.

As indicated above, a property manager must take corrective action to resolve all adjustments made in a reconciliation prior to the next reconciliation or document the good faith efforts the property manager has taken to resolve the adjustment.

As detailed previously, on May 12, 2015, Respondent, through Harris, faxed Ms. Hlawatsch a three-way reconciliation packet for PPPM's clients' trust account ending in #7643 for the months of February through April 2015. Each packet included a reconciliation form, a bank statement, a receipts and disbursement journal, and a report meant to serve as an owner's ledger. The reconciliation forms were prepared by Harris, and were approved by Ziebert on May 12, 2015.

For the month of February 2015, part one of the reconciliation listed a bank statement balance of \$1,644.45 as of the bank statement date of February 28, 2015. Part two listed a receipts and disbursement journal balance of \$<9,765.62>. Part three listed a ledger balance of \$5,232.11. Part four listed the reported difference between the three parts as \$<2,889.06> with



the explanation of “an error in computing.” (Exhibit A7 at 65.) Part four did not detail the corrective actions or good faith efforts taken by Respondent to resolve the difference. The three components remained unbalanced through the following reconciliation.

For the month of March 2015, part one of the reconciliation listed a bank statement balance of \$9,313.33 as of the bank statement date of March 31, 2015. Part two listed a receipts and disbursement journal balance of \$9,313.33. Part three listed a ledger balance of \$10,899.99. Part four listed the reported difference between the three parts as \$1,586.66 with the explanation of “Continued correction from February 2015 discovery.” (Exhibit A7 at 76.)

I find that Respondent failed to resolve the difference of \$2,889.06 on the February 2015 reconciliation in a timely manner by the March 2015 reconciliation, and failed to provide detail of any attempted corrective actions or good faith efforts taken to resolve the difference. I also find that Respondent’s actions indicate a lack of intellectual ability or an inability to do properly what is required.

I conclude that by failing to resolve the difference of \$2,889.06 on the February 2015 reconciliation in a timely manner by the March 2015 reconciliation, and by failing to provide detail of any attempted corrective actions or good faith efforts taken to resolve the difference, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014). This is a basis for discipline under ORS 696.301.

*10. Whether Respondent failed to completely resolve the deficiency from the February 2015 reconciliation in a timely manner by the April 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014).*

REA contends that Respondent failed to completely resolve the deficiency from the February 2015 reconciliation in a timely manner by the April 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014). Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

\* \* \* \* \*

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0025, in effect in 2014, provides, in part:

(22) A property manager must take corrective action to resolve all adjustments made in a reconciliation prior to the next reconciliation or document the good faith efforts the property manager has taken to resolve the adjustment.

As indicated above, a property manager must take corrective action to resolve all adjustments made in a reconciliation prior to the next reconciliation or document the good faith efforts the property manager has taken to resolve the adjustment.

As set forth previously, on May 12, 2015, Respondent, through Harris, faxed Ms. Hlawatsch a three-way reconciliation packet for PPPM's clients' trust account ending in #7643 for the months of February through April 2015. Each packet included a reconciliation form, a bank statement, a receipts and disbursement journal, and a report meant to serve as an owner's ledger. The reconciliation forms were prepared by Harris, and were approved by Ziebert on May 12, 2015.

For the month of February 2015, part one of the reconciliation listed a bank statement balance of \$1,644.45 as of the bank statement date of February 28, 2015. Part two listed a receipts and disbursement journal balance of \$<9,765.62>. Part three listed a ledger balance of \$5,232.11. Part four listed the reported difference between the three parts as \$<2,889.06> with the explanation of "an error in computing." (Exhibit A7 at 65.) Part four did not detail the corrective actions or good faith efforts Respondent had taken to resolve the difference. The three components remained unbalanced through the following reconciliation.

For the month of March 2015, part one of the reconciliation listed a bank statement balance of \$9,313.33 as of the bank statement date of March 31, 2015. Part two listed a receipts and disbursement journal balance of \$9,313.33. Part three listed a ledger balance of \$10,899.99. Part four listed the reported difference between the three parts as \$1,586.66 with the explanation of "Continued correction from February 2015 discovery." (Exhibit A7 at 76.) Part four did not detail the corrective actions or good faith efforts Respondent had taken to resolve the difference. The three components remained unbalanced through the following reconciliation.

For the month of April 2015, part one of the reconciliation listed a bank statement balance of \$11,232.46 as of the bank statement date of April 30, 2015. Part two listed a receipts and disbursement journal balance of \$11,232.46. Part three listed a ledger balance of \$12,189.12. Part four listed the reported difference between the three parts as \$956.66 with the explanation of "Continued correction from February 2015 discovery." (Exhibit A7 at 87.)

I find that Respondent failed to completely resolve the deficiency from the February 2015 reconciliation in a timely manner by the April 2015 reconciliation, and failed to provide detail of any attempted corrective actions or good faith efforts taken to resolve the difference. I also find that Respondent's actions indicate a lack of intellectual ability or an inability to do properly what is required.

I conclude that by failing to completely resolve the deficiency from the February 2015

reconciliation in a timely manner by the April 2015 reconciliation, and by failing to provide detail of any attempted corrective actions or good faith efforts taken to resolve the difference, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014). This is a basis for discipline under ORS 696.301.

*11. Whether Respondent failed to completely resolve the deficiency from the February 2015 reconciliation in a timely manner by the May 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014).*

REA contends that Respondent failed to completely resolve the deficiency from the February 2015 reconciliation in a timely manner by the May 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014). Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

\* \* \* \* \*

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0025, in effect in 2014, provides, in part:

(22) A property manager must take corrective action to resolve all adjustments made in a reconciliation prior to the next reconciliation or document the good faith efforts the property manager has taken to resolve the adjustment.

As indicated above, a property manager must take corrective action to resolve all adjustments made in a reconciliation prior to the next reconciliation or document the good faith efforts the property manager has taken to resolve the adjustment.

As stated previously, on May 12, 2015, Respondent, through Harris, faxed Ms. Hlawatsch a three-way reconciliation packet for PPPM's clients' trust account ending in #7643 for the months of February through April 2015. Each packet included a reconciliation form, a bank statement, a receipts and disbursement journal, and a report meant to serve as an owner's ledger. The reconciliation forms were prepared by Harris, and were approved by Ziebert on May 12, 2015.

For the month of February 2015, part one of the reconciliation listed a bank statement balance of \$1,644.45 as of the bank statement date of February 28, 2015. Part two listed a receipts and disbursement journal balance of \$<9,765.62>. Part three listed a ledger balance of \$5,232.11. Part four listed the reported difference between the three parts as \$<2,889.06> with the explanation of “an error in computing.” (Exhibit A7 at 65.) Part four did not detail the corrective actions or good faith efforts Respondent had taken to resolve the difference. The three components remained unbalanced through the following reconciliation.

For the month of March 2015, part one of the reconciliation listed a bank statement balance of \$9,313.33 as of the bank statement date of March 31, 2015. Part two listed a receipts and disbursement journal balance of \$9,313.33. Part three listed a ledger balance of \$10,899.99. Part four listed the reported difference between the three parts as \$1,586.66 with the explanation of “Continued correction from February 2015 discovery.” (Exhibit A7 at 76.) Part four did not detail the corrective actions or good faith efforts Respondent had taken to resolve the difference. The three components remained unbalanced through the following reconciliation.

For the month of April 2015, part one of the reconciliation listed a bank statement balance of \$11,232.46 as of the bank statement date of April 30, 2015. Part two listed a receipts and disbursement journal balance of \$11,232.46. Part three listed a ledger balance of \$12,189.12. Part four listed the reported difference between the three parts as \$956.66 with the explanation of “Continued correction from February 2015 discovery.” (Exhibit A7 at 87.) Part four did not detail the corrective actions or good faith efforts Respondent had taken to resolve the difference. The three components remained unbalanced through the following reconciliation.

On June 22, 2015, Respondent, through Harris, faxed Ms. Hlawatsch a three-way reconciliation for PPPM’s clients’ trust account ending in #7643 for the month of May 2015. Part one of the reconciliation listed a bank statement balance of \$21,478.37. Part two listed a receipts and disbursement journal balance of \$21,478.37. Part three listed a ledger balance of \$21,295.03. Part four listed the reported difference between the three parts as \$183.34 with the explanation of “continued correction from February 2015 discovery.” (Exhibit A7 at 101.)

I find that Respondent failed to completely resolve the deficiency from the February 2015 reconciliation in a timely manner by the May 2015 reconciliation, and failed to provide detail of any attempted corrective actions or good faith efforts taken to resolve the difference. I also find that Respondent’s actions indicate a lack of intellectual ability or an inability to do properly what is required.

I conclude that by failing to completely resolve the deficiency from the February 2015 reconciliation in a timely manner by the May 2015 reconciliation, and by failing to provide detail of any attempted corrective actions or good faith efforts taken to resolve the difference, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014). This is a basis for discipline under ORS 696.301.

*12. Whether, by failing to maintain the registered business name with the Oregon Secretary of State, Respondent violated ORS 696.301(3) as it incorporates OAR 863-024-0095(1) (2013 and 2014).*

REA contends that by failing to maintain the registered business name with the Oregon Secretary of State, Respondent violated ORS 696.301(3) as it incorporates OAR 863-024-0095(1) (2013 and 2014).

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

\* \* \* \* \*

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-024-0095, in effect in 2013, is titled “Business Name Registration” and provides, in part:

(1) Before conducting business in a name other than the licensee’s legal name, the property manager must register the business name with the Agency. For purposes of this rule, “business name” means an assumed name or the name of a business entity, such as a corporation, partnership, limited liability company, or other business entity recognized by law. A licensee must maintain the registered business name with the Oregon Secretary of State’s Corporation Division.

As indicated above, before conducting business in a name other than the licensee’s legal name, the property manager must register the business name with the Agency. A licensee must maintain the registered business name with the Oregon Secretary of State’s Corporation Division.

On January 4, 2010, Respondent registered PPPM with the Oregon Secretary of State as a DBA. On April 4, 2013, Respondent cancelled the registration. In 2013, Respondent registered PPPM with the Oregon Secretary of State as an LLC. In 2015, Respondent dissolved the LLC. Between 2015 and 2019, Respondent did not maintain PPPM’s registered business name with the Oregon Secretary of State. In 2019, Respondent registered PPPM with the Oregon Secretary of State as a DBA. Respondent did not update the filings with REA.

I find that between 2015 and 2019, Respondent failed to maintain the registered business name of PPPM with the Oregon Secretary of State. I also find that Respondent’s actions indicate a lack of intellectual ability or an inability of doing properly what is required.

I conclude that by failing to maintain the registered business name with the Oregon Secretary of State, Respondent violated ORS 696.301(3) as it incorporates OAR 863-024-0095(1) (2013 and 2014). This is a basis for discipline under ORS 696.301.

*13. Whether Respondent failed to assign an identifying code to the property management agreement signed with Marlin Lay (Lay), in violation of ORS 696.301(3) as it incorporates OAR 863-025-0020(2)(k) (2013).*

REA contends that Respondent failed to assign an identifying code to the property management agreement signed with Marlin Lay (Lay), in violation of ORS 696.301(3) as it incorporates OAR 863-025-0020(2)(k) (2013).

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

\* \* \* \* \*

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0020, in effect in 2013, is titled “Property Management Agreements” and provides, in part:

(2) A property management agreement must include, but is not limited to:

\* \* \* \* \*

(k) An identifying code;

As indicated above, a property management agreement (PMA) must include, but is not limited to, an identifying code.

In April 2014, Marlin Lay (Lay) owned property located at 725 28<sup>th</sup> Street in Springfield, Oregon (Mar Shell Court or the property). The property consisted of a single family residence, five recreational vehicle spaces, and ten mobile homes.

On April 14, 2014, Lay and Respondent signed a PMA authorizing PPPM, as Lay’s Agent, to lease/rent and manage the property, commencing on April 14, 2014. The PMA did not contain an identifying code.

I find that Respondent failed to assign an identifying code to the PMA signed with Lay. I also find that Respondent’s actions in not assigning an identifying code to the PMA indicate a lack of intellectual ability or an inability of doing properly what is required.

I conclude that by failing to assign an identifying code to the property management agreement signed with Lay, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0020(2)(k) (2013). This is a basis for discipline under ORS 696.301.

*14. Whether, between June 2, 2014 through April 6, 2015, Respondent failed to include the required detail on tenant ledger for unit #11, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(c), (d)(B), (C), (D), (e)(A), (B), (C), (D), and (E) (2014).*

REA contends that between June 2, 2014 through April 6, 2015, Respondent failed to include the required detail on tenant ledger for unit #11, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(c), (d)(B), (C), (D), (e)(A), (B), (C), (D), and (E) (2014). Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

\* \* \* \* \*

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0050, in effect in 2014, is titled “Tenant Ledger” and provides, in part:

(1) Except as provided in section (3) of this rule, a property manager must prepare and maintain at least one tenants’ ledger for each tenant or individual from whom the property manager has received any funds under a property management agreement, whether or not the tenant has executed a written rental or lease agreement at the time of the payment of funds to the property manager.

\* \* \* \* \*

(4) A tenant’s ledger must contain at least the following information:

\* \* \* \* \*

(c) The identifying code;

(d) For each deposit of funds:

\* \* \* \* \*

(B) The purpose of the funds and identity of the person who tendered the funds;

(C) The check number, cash receipt number or a unique series of letters and/or numbers that established an audit trail to the receipt of funds; and

(D) The date the funds were deposited;

(e) For each disbursement of funds:

(A) The date the funds were disbursed;

(B) The amount of funds disbursed;

(C) The check number or bank-generated electronic tracking number;

(D) The payee of the disbursement;

(E) The purpose of the disbursement;

As indicated above, a property manager must prepare and maintain at least one tenants' ledger for each tenant or individual from whom the property manager has received any funds under a property management agreement. A tenant's ledger must contain the identifying code. In addition, for each deposit of funds, a tenant's ledger must contain: the purpose of the funds and identity of the person who tendered the funds; the check number, cash receipts number or a unique series of letters and/or numbers that established an audit trail to the receipt of funds; and the date the funds were deposited. Moreover, for each disbursement of funds, a tenant's ledger must contain: the date the funds were disbursed; the amount of funds disbursed; the check number or bank-generated electronic tracking number; the payee of the disbursement; and the purpose of the disbursement.

During the period of April 25, 2014 through April 30, 2015, Stoval rented unit #11 on the property. The rent for unit #11 was \$495 per month, and the security deposit was \$495.

On April 6, 2015, PPPM received \$260 for unit #11 for the rental period of April 1, 2015 to April 30, 2015. In the tenant ledger for unit #11, Respondent documented that rent had been received in the amount of \$260 on April 6, 2015, and that a balance of \$235 was owed.



Respondent did not document how the \$260 had been tendered, the identity of the person who tendered the funds, or the date the funds were deposited. The entry on April 6, 2015 was the final entry in the tenant ledger.

On April 23, 2015, Stoval notified Ziebert that he had lost his job and would be moving out of unit #11. Stoval told Ziebert to use his security deposit for the remaining rent owed in April. Stoval promised to clean the unit and be out on May 1, 2015.

Sometime in May 2015, Lay entered unit #11 and found that Stoval had left the unit a complete mess. Lay found rotting food, dirty dishes and furniture left behind in the unit. Lay also found that the unit was infested with fleas. Lay took four truckloads of trash out of the unit to the dump.

Lay subsequently filed a complaint with REA alleging, among other things, that Respondent gave Stoval his security deposit back and then charged Lay with a management fee of \$49.50 and a late fee of \$55 for unit #11.

During the investigation, Respondent told Ms. Lewis that Stoval was paid up through April 15, 2015, and that she used his security deposit funds for rent effective April 16, 2015 to May 15, 2015. Respondent also told Lewis that she credited Lay's account with the security deposit on May 13, 2015. Respondent provided Ms. Lewis with a copy of the tenant ledger for unit #11. For the entries ranging from June 2, 2014 through April 6, 2015, the tenant ledger for unit #11 was missing the required details of an identifying code, the identity of the person who tendered the funds, a check number, cash receipt number or unique series of letters or numbers for funds to establish an audit trail, and the date the funds were deposited.

I find that between June 2, 2014 and April 6, 2015, Respondent failed to include the required details on the tenant ledger for unit #11. I also find that Respondent's actions indicate a lack of intellectual ability or an inability of doing properly what is required.

I conclude that by failing to include required details on the tenant ledger for unit #11 between June 2, 2014 through April 6, 2015, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(c), (d)(B), (C), and (D) (2014). This is a basis for discipline under ORS 696.301.

REA contends that Respondent also failed to include the required details on the tenant ledger for unit #11 regarding the disbursement of Stoval's security deposit funds in violation of ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(e)(A), (B), (C), (D), and (E) (2014).

However, Respondent's actions involving Stoval's security deposit funds took place *after April 23, 2015*, which is outside the time frame of "between June 2, 2014 and April 6, 2015" that is alleged in REA's Notice. Notice of Intent to Revoke at 10. Therefore, I do not have jurisdiction to determine if Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(e)(A), (B), (C), (D), and (E) (2014).

*15. Whether, between April 21, 2014 through April 23, 2015, Respondent failed to*

*include required details on the tenant ledger for unit #6, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(c), (d)(B), (C), and (D) (2014).*

REA contends that between April 21, 2014 through April 23, 2015, Respondent failed to include required details on the tenant ledger for unit #6, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(c), (d)(B), (C), and (D) (2014). Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

\* \* \* \* \*

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0050, in effect in 2014, provides, in part:

(1) Except as provided in section (3) of this rule, a property manager must prepare and maintain at least one tenants' ledger for each tenant or individual from whom the property manager has received any funds under a property management agreement, whether or not the tenant has executed a written rental or lease agreement at the time of the payment of funds to the property manager.

\* \* \* \* \*

(4) A tenant's ledger must contain at least the following information:

\* \* \* \* \*

(c) The identifying code;

(d) For each deposit of funds:

\* \* \* \* \*

(B) The purpose of the funds and identity of the person who tendered the funds;

(C) The check number, cash receipt number or a unique series of letters and/or numbers that established an audit trail to the receipt of funds; and

(D) The date the funds were deposited;

As indicated above, a property manager must prepare and maintain at least one tenants' ledger for each tenant or individual from whom the property manager has received any funds under a property management agreement. A tenant's ledger must contain the identifying code. In addition, for each deposit of funds, a tenant's ledger must contain: the purpose of the funds and identity of the person who tendered the funds; the check number, cash receipts number or a unique series of letters and/or numbers that established an audit trail to the receipt of funds; and the date the funds were deposited.

During the relevant period of May 1, 2014 through May 31, 2015, Hoggatt rented unit #6 on the property. The rent for unit #6 was \$430 per month.

On April 23, 2015, PPPM received a check in the amount of \$430 for unit #6 for the rental period of May 1, 2015 to May 30, 2015. In the tenant ledger for unit #6, Respondent indicated that rent had been received in the amount of \$430 by check. Respondent did not indicate the check number, the identity of the person who tendered the check, or the date the check was deposited.

Lay's owner statement dated May 11, 2015 showed that PPPM charged Lay a management fee of \$43 for unit #6 on April 23, 2015. The owner statement did not show that Lay's account had been credited in the amount of \$430 for the rent received from unit #6 on April 23, 2015.

During the subsequent investigation, Respondent provided Ms. Lewis with a copy of the tenant ledger for unit #6. For the entries ranging from April 21, 2014 through April 23, 2015, the tenant ledger for unit #6 was missing the required details of an identifying code, the identity of the person who tendered the funds, a check number, cash receipt number or unique series of letters or numbers to establish an audit trail, and the date the funds were deposited.

I find that that between April 21, 2014 and April 23, 2015, Respondent failed to include required details on the tenant ledger for unit #6. I also find that Respondent's actions indicate a lack of intellectual ability or an inability of doing properly what is required.

I conclude that by failing to include the required details on the tenant ledger for unit #6 between April 21, 2014 through April 23, 2015, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(c), (d)(B), (C), and (D) (2014). This is a basis for discipline under ORS 696.301.

*16. Whether, by failing to provide a corrected owner statement to Lay, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0055(4) (2013).*

REA contends that by failing to provide a corrected owner statement to Lay, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0055(4) (2013). Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

\* \* \* \* \*

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0055, in effect in 2013, provides, in part:

(4) A property manager must report in writing to each owner any change in the owner's ledger. A monthly report, showing all receipts and disbursements for the account of the owner during the prior monthly period, is sufficient under this section. A copy of each such report must be preserved and filed in the property manager's records. If an annual report contains information not required to be provided by the property manager under these rules, the property manager must set forth such information separately.

As indicated above, a property manager must report in writing to each owner any change in the owner's ledger. A monthly report, showing all receipts and disbursements for the account of the owner during the prior monthly period, is sufficient under this section.

As stated previously, on April 23, 2015, PPPM received a check in the amount of \$430 for unit #6 for the rental period of May 1, 2015 to May 30, 2015. In the tenant ledger for unit #6, Respondent indicated that rent had been received in the amount of \$430 by check. Respondent did not indicate the check number, the identity of the person who tendered the check, or the date the check was deposited.

Lay's owner statement dated May 11, 2015 showed that PPPM charged Lay a management fee of \$43 for unit #6 on April 23, 2015. The owner statement did not show that Lay's account had been credited in the amount of \$430 for the rent received from unit #6 on April 23, 2015. Lay contacted Respondent requesting that she correct the error and send him an updated owner statement. Lay never received a corrected owner statement from Respondent.

I find that Respondent failed to report in writing to Lay the correction she made to his

owner's ledger. I also find that Respondent's actions indicate a lack of intellectual ability or an inability of doing properly what is required.

I conclude that by failing to provide a corrected owner statement to Lay, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0055(4) (2013). This is a basis for discipline under ORS 696.301.

*17. Whether Respondent failed to include identifying information on Lay's owner ledger for the time period of April 2, 2015 through May 29, 2015, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(a) and (b)(C) (2014).*

REA contends that Respondent failed to include identifying information on Lay's owner ledger for the time period of April 2, 2015 through May 29, 2015, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(a) and (b)(C) (2014). Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

\* \* \* \* \*

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0055, in effect in 2014, provides, in part:

(3) All owner ledgers must contain at least the following information:

- (a) The owner's name and identifying code;
- (b) For each deposit of funds:

\* \* \* \* \*

(C) The check number, cash receipt number or a unique series of letters and/or numbers that established an audit trail to the receipt of funds;

As indicated above, all owner ledgers must contain at least the owner's name and identifying code, and for each deposit of funds: the check number, cash receipt number or a

unique series of letters and/or numbers that establish an audit trail to the receipt of funds.

During the investigation of Lay's complaint, Ms. Lewis requested production of various documents from Respondent. On February 19, 2016, Respondent produced PPPM's detailed owner ledger for Lay for the dates of April 2, 2015 through May 29, 2015. The owner ledger was missing Lay's name. In addition, for the entries ranging from April 21, 2014 through April 23, 2015, the owner ledger contained multiple receipts of funds that were missing a check number, cash receipt number or unique series of letters or numbers to establish an audit trail.

I find that for the time period of April 2, 2015 through May 29, 2015, Respondent failed to include identifying information on Lay's owner ledger. I also find that Respondent's actions indicate a lack of intellectual ability or an inability of doing properly what is required.

I conclude that by failing to include identifying information on Lay's owner ledger for the time period of April 2, 2015 through May 29, 2015, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(a) and (b)(C) (2014). This is a basis for discipline under ORS 696.301.

*18. Whether, by failing to properly account for receipts and disbursements of clients' trust funds on the owners' and tenant ledgers, Respondent violated ORS 696.890(4)(c), (d), and (e) (2013 and 2015).*

REA contends that by failing to properly account for receipts and disbursements of clients' trust funds on the owners' and tenant ledgers, Respondent violated ORS 696.890(4)(c), (d), and (e) (2013 and 2015). Respondent contends to the contrary.

ORS 696.890, in effect 2013, provides, in part:

(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;

As indicated above, the real estate property manager owes the property owner the following affirmative duties: to exercise reasonable care and diligence; to account in a timely manner for all funds received from or on behalf of the owner; and to act in a fiduciary manner in all matters relating to trust funds.

As determined previously, Respondent failed to document required details on Lay's tenant ledgers for units #6 and #11. In addition, Respondent failed to document identifying information and transaction descriptions on Lay's owner ledger.

On the tenant ledger for unit #6, for the rent of \$430 that was received on April 23, 2015, Respondent did not document the check number, the identity of the person who tendered the check, or the date that check was deposited (*i.e.*, disbursed). In addition, for the entries ranging from April 21, 2014 through April 23, 2015, Respondent did not document an identifying code, the identity of the person who tendered the funds, a check number, cash receipt number or unique series of letters or numbers for funds to establish an audit trail, and the date the funds were deposited.

On the tenant ledger for unit #11, for the rent of \$260 that was received on April 6, 2015, Respondent did not document how the rent had been tendered, the identity of the person who tendered the funds, or the date the funds were deposited. In addition, for the entries ranging from June 2, 2014 through April 6, 2015, Respondent did not document an identifying code, the identity of the person who tendered the funds, a check number, cash receipt number or unique series of letters or numbers for funds to establish an audit trail, and the date the funds were deposited.

On Lay's owner ledger, Respondent did not document Lay's name. In addition, for the entries ranging from April 21, 2014 through April 23, 2015, Respondent did not document a check number, cash receipt number or unique series of letters or numbers to establish an audit trail for multiple receipts of funds that PPPM received on behalf of Lay. Moreover, on the owner statement dated May 11, 2015, that was issued to Lay, Respondent did not document the \$430 rent that had been received from unit #6 on April 23, 2015 and then disbursed to Lay's owner account on that same date.

I find that Respondent did not exercise reasonable care and diligence regarding the funds received on behalf of Lay. I find that Respondent did not account in a timely manner for all the funds received on behalf of Lay. I find that Respondent did not act in a fiduciary manner in all matters related to Lay's funds.

I find that Respondent failed to properly account for receipts and disbursements of clients' trust funds on the owners' and tenant ledgers. I also find that Respondent's actions indicate a lack of intellectual ability or an inability of doing properly what is required.

I conclude that by failing to properly account for receipts and disbursements of clients' trust funds on the owners' and tenant ledgers, Respondent violated ORS 696.890(4)(c), (d), and (e) (2013 and 2015). This is a basis for discipline under ORS 696.301.

*19. Whether Respondent failed to timely deliver the tenant agreements requested by Lay in violation of ORS 696.301(3) as it incorporates OAR 863-025-0068(2) (2014).*

REA contends that Respondent failed to timely deliver the tenant agreements requested by Lay in violation of ORS 696.301(3) as it incorporates OAR 863-025-0068(2) (2014).

Respondent contends to the contrary.

ORS 696.301, in effect in 2013, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

\* \* \* \* \*

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

OAR 863-025-0068, in effect in 2014, is titled “Owner Information Request” and provides, in part:

(2) Upon written request from a property owner, a property manager must deliver to the owner copies of the current rental or lease agreement, including all addenda and modifications, within five business days of the date of actually receiving the request for information, unless the owner and the manager agree to a different time period.

As indicated above, upon written request from a property owner, a property manager must deliver to the owner copies of the current rental or lease agreement, including all addenda and modifications, within five business days of the date of actually receiving the request for information, unless the owner and the manager agree to a different time period.

On June 1 and June 4, 2015, Lay emailed Respondent and requested copies of the thirty-day notices from the tenants in rental units #4, #6, #7, and #14. Lay never received the documents that he requested from Respondent.

I find that Respondent failed to respond to Lay’s request within five business days of receiving the request, either by timely producing the requested documentation or by timely providing an explanation for the lack of documentation. I also find that Respondent’s actions indicate a lack of intellectual ability or an inability of doing properly what is required.

I conclude that by failing to timely deliver the tenant agreements requested by Lay, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0068(2) (2014). This is a basis for discipline under ORS 696.301.

Respondent contends that all of the requested documents were provided to Keystone Management. However, the reliable evidence in the record establishes to the contrary. Respondent’s contention is unpersuasive.



20. *Whether, by failing to properly account for the \$455, Respondent demonstrated incompetence in violation of ORS 696.301(12) (2015).*

REA contends that by failing to properly account for the \$455, Respondent demonstrated incompetence in violation of ORS 696.301(12) (2015). Respondent contends to the contrary.

ORS 696.301, in effect in 2015, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any real estate licensee or deny the issuance or renewal of a license to an applicant who has:

\* \* \* \* \*

(12) Demonstrated incompetence or untrustworthiness in performing any act for which the real estate licensee is required to hold a license.

As indicated above, the Real Estate Commissioner may revoke the real estate license of any real estate licensee who has demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

During the investigation into Lay's complaint, Ms. Lewis asked Respondent to show her a report that indicated the final distributions to Lay and his new property management company, Keystone Management.

On February 19, 2016, Respondent produced a report titled "Transactions," that set forth receipts and disbursements for the dates of May 6 through May 29, 2015. The report did not show a balance after each entry. The report contained three different month totals at the bottom of the report, including a month total of <\$9,192> following the May 2015 transactions; a month total of \$0 following a single voided transaction of \$0 on June 12, 2015; and a month total of <\$9,647> following a single transaction of \$455 on July 14, 2015, paid to PPPM by check #4842 for a "Management Fee." The report showed that there was no income received in June or July 2015 for which a management fee could be charged. At Ms. Lewis's request, Respondent produced a detailed owner ledger for Lay for the dates of April 2, 2015 through May 29, 2015, which set forth a balance following each transaction. The owner ledger showed an ending balance of \$455 following the final transaction of May 29, 2015, that was owed to Lay.

On March 21, 2016, Ms. Lewis requested that Respondent and Ziebert provide an explanation for the disbursement on July 14, 2015, by check #4842 in the amount of \$455 to PPPM for management fees. Ms. Lewis also requested that Respondent and Ziebert provide a reconciliation of their clients' trust account ending in #7643 for the months of June 2015 and July 2015.

On March 25, 2016, Ms. Lewis received the requested reconciliations by fax. The reconciliation for June 2015 was prepared by Harris and approved by Ziebert on July 15, 2015. Part one listed a bank statement balance of \$17,122.69 on the bank statement date of June 30, 2015. Part two listed a receipts and disbursement journal balance of \$17,122.69. Parts three and four were left blank. Respondent, through Harris, attached PPPM's bank statement for the account ending in #7643 for June 2015, which supported the amount in part one of the reconciliation. Respondent, through Harris, also attached three different transaction reports, which did not support the balance in part two of the reconciliation. The first transaction report, dated March 25, 2016, showed the disbursement from Lay's account on July 14, 2015, by check #4842 in the amount of \$455 to PPPM for "management fee." On that transaction report, Harris wrote the following note: "This report shows the computer error. There were no monies received to pay another owner payout. This was an internal error." (Exhibit A9 at 18.)

The reconciliation for July 2015 was prepared by Harris and approved by Ziebert on August 17, 2015. Part one listed a bank statement balance of \$23,710.29 on the bank statement date of July 31, 2015. Part two listed a receipts and disbursement journal balance of \$23,710.29. Part three was left blank. Part four had the following statement: "Part III is blank because client security deposits are held in a client deposit trust account. This account is an operating trust account." (Exhibit A9 at 22.) Respondent, through Harris, attached PPPM's bank statement for the account ending in #7643 for July 2015, which supported the amount in part one of the reconciliation. The bank statement also showed that check #4842 in the amount of \$455 was posted on July 16, 2015 with transaction #8950703266. Harris also attached the same transaction report from the June reconciliation that contained her handwritten note asserting that the payout to PPPM was "an internal error." (*Id.* at 28.) The transaction report did not support the amount in part two of the reconciliation.

On April 4, 2016, Ms. Lewis notified Respondent and Ziebert that she had concerns regarding their explanation for check #4842, and their incomplete reconciliations. Ms. Lewis gave Respondent and Ziebert an opportunity to respond and provide corrected reconciliations. On April 7, 2016, Respondent, through Harris, provided a response, reiterating that Lay was not owed any money, and that the \$455 issued to PPPM by check #4842 was the result of "an internal error."

Ms. Lewis subsequently prepared her own monthly ledger for Lay, documenting all of the rents received by PPPM, as well as all of the property management fees paid to PPPM. Ms. Lewis determined that after PPPM was paid all of its allowable fees, there was a balance owing to Lay of \$455.

I find that Respondent failed to properly account for the \$455 that was owed to Lay. I also find that Respondent's actions indicate a lack of intellectual ability or an inability of doing properly what is required.

I conclude that by failing to properly account for the \$455, Respondent demonstrated incompetence in violation of ORS 696.301(12) (2015). This is a basis for discipline under ORS 696.301.

Respondent contends that the \$455 was delivered to Keystone Management. However, the reliable evidence in the record establishes to the contrary. Respondent's contention is unpersuasive.

*21. Whether Respondent demonstrated incompetence in performing any act for which Respondent is required to hold a license, in violation of ORS 696.301(12) (2011, 2013, and 2015).*

REA contends that in violation numbers 3 through 19, set out and discussed in detail above, Respondent demonstrated incompetence in performing any act for which Respondent is required to hold a license, in violation of ORS 696.301(12) (2011, 2013, and 2015). Respondent contends to the contrary.

ORS 696.301, in effect in 2011, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

\* \* \* \* \*

(12) Demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

As previously determined, in violation numbers 3 through 19, Respondent engaged in actions that indicate a lack of intellectual ability or an inability of doing properly what is required. As such, in violation numbers 3 through 19, Respondent demonstrated incompetence in performing any act for which the licensee is required to hold a license in violation of ORS 696.301(12) (2011, 2013, and 2015). This is a basis for discipline under ORS 696.301.

***The sanction***

*22. Whether Respondent's property manager license should be revoked. ORS 696.301(12) (2011, 2013, and 2015).*

REA contends that Respondent's property manager license should be revoked. Respondent contends to the contrary.

ORS 696.301, in effect in 2011, provides, in part:

Subject to ORS 696.396, the Real Estate Commissioner may suspend or revoke the real estate license of any real estate licensee, reprimand any licensee or deny the issuance or renewal of a license to an applicant who has done any of the following:

\* \* \* \* \*

(3) Disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency.

\* \* \* \* \*

(12) Demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

Pursuant to the authority cited above, the Real Estate Commissioner may revoke the real estate license of any real estate licensee who has disregarded or violated any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785 and 696.800 to 696.870 or any rule of the Real Estate Agency; or who has demonstrated incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

As detailed in this order, Respondent engaged in 21 violations of REA’s statutes and rules, all of which involved Respondent demonstrating incompetence or untrustworthiness in performing an act for which Respondent was required to hold a license, in violation of ORS 696.301(12) (2011, 2013, and 2015). Accordingly, the Real Estate Commissioner may revoke Respondent’s real estate license.

Respondent contends that revocation is not appropriate. Respondent contends that she has learned from her mistakes. Respondent contends that she is willing to make the changes required by REA. Respondent contends that she wants a chance to prove herself.

However, as pointed out by REA, Respondent has had five years to prove herself and make the changes required by REA, but has failed to do so. Although I sympathize with Respondent, I find that her argument is unpersuasive.

I conclude that revocation of Respondent’s real estate license is appropriate in this matter.

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## ORDER

I propose the Real Estate Agency issue the following order:

Respondent's property manager license is revoked for the following violations:

1. By allowing multiple tenants' security funds to be used to repair Barker's rental property, Respondent violated ORS 696.301(12) (2011) and ORS 696.301(3) as it incorporates OAR 863-025-0030(1)(a), (b), (c), and (d) (2011).
2. By disbursing tenants' security deposit funds to a single owner, Respondent violated ORS 696.301(12) (2011) and ORS 696.890(3)(a), (b), (c), (e), and (f) (2011).
3. By failing to use the required identifying language in the account name for security deposits account ending in #2415, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(4) (2014).
4. By failing to timely produce and provide the requested records for clients' trust account ending in #7643 and security deposits account ending in #2415, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0035(2)(a) (2014).
5. By failing to use the required identifying language in the account name for clients' trust account ending in #7643, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(2) (2014).
6. By failing to have the required transaction descriptions and identifying codes for all entries in the receipts and disbursements journal, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0040(2)(a)(C), and (c) (2014).
7. By failing to have the required transaction dates or descriptions on the owners' ledger, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(b)(B), (D), (c)(A), and (E) (2014).
8. By failing to balance all three clients' trust account reconciliations for account ending in #7643 for the months of February, March and April 2015, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0025(20)(b) (2014).
9. Respondent failed to resolve the difference of \$2,889.06 on the February 2015 reconciliation in a timely manner by the March 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014).
10. Respondent failed to completely resolve the deficiency from the February 2015 reconciliation in a timely manner by the April 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014).

11. Respondent failed to completely resolve the deficiency from the February 2015 reconciliation in a timely manner by the May 2015 reconciliation, and failed to provide detail of any attempted corrective measures, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (2014).

12. By failing to maintain the registered business name with the Oregon Secretary of State, Respondent violated ORS 696.301(3) as it incorporates OAR 863-024-0095(1) (2013 and 2014).

13. Respondent failed to assign an identifying code to the property management agreement signed with Lay, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0020(2)(k) (2013).

14. Between June 2, 2014 through April 6, 2015, Respondent failed to include the required detail on tenant ledger for unit #11, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(c), (d)(B), (C), and (D) (2014).

15. Between April 21, 2014 through April 23, 2015, Respondent failed to include required details on the tenant ledger for unit #6, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0050(4)(c), (d)(B), (C), and (D) (2014).

16. By failing to provide a corrected owner statement to Lay, Respondent violated ORS 696.301(3) as it incorporates OAR 863-025-0055(4) (2013).

17. Respondent failed to include identifying information on Lay's owner ledger for time period of April 2, 2015 through May 29, 2015, in violation of ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(a), and (b)(C) (2014).

18. By failing to properly account for receipts and disbursements of clients' trust funds on the owners' and tenant ledgers, Respondent violated ORS 696.890(4)(c), (d), and (e) (2013 and 2015).

19. Respondent failed to timely deliver the tenant agreements requested by Lay in violation of ORS 696.301(3) as it incorporates OAR 863-025-0068(2) (2014).

20. By failing to properly account for the \$455, Respondent demonstrated incompetence in violation of ORS 696.301(12) (2015).

21. Respondent demonstrated incompetence in performing any act for which Respondent is required to hold a license, in violation of ORS 696.301(12) (2011, 2013, and 2015).

Dove L. Gutman

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Senior Administrative Law Judge  
Office of Administrative Hearings

## NOTICE

This is the Administrative Law Judge's Proposed Order. If the Proposed Order is adverse to you, you have the right to file written exceptions and argument to be considered by the Real Estate Commissioner in issuing the Final Order. Your exceptions and argument must be received by the 20th day from the date of service. Send them to:

Janae Weston  
Oregon Real Estate Agency  
530 Center Street NE Ste 100  
Salem, OR 97301-2505

The Real Estate Commissioner will issue a Final Order, which will explain your appeal rights.

**CERTIFICATE OF MAILING**

On April 1, 2020, I mailed the foregoing Proposed Order issued on this date in OAH Case No. 2018-ABC-02279.

By: First Class Mail

Cynthia Webber  
PO Box 72025  
Springfield OR 97475

By: Electronic Mail

Liz Hayes, Agency Representative  
Real Estate Agency  
530 Center St. NE Ste. 100  
Salem OR 97301

Selina Barnes, Agency Representative  
Real Estate Agency  
530 Center St NE Ste 100  
Salem OR 97301

Catriona McCracken, Assistant Attorney General  
Department of Justice  
1162 Court St NE  
Salem OR 97301

Lucy M Garcia  
Hearing Coordinator



## Certificate of Mailing

On June 9, 2020, I mailed the foregoing Final Order issued on this date in OAH Case No. 2018-ABC-02279 and the Agency Case No. 2014-714 and 2015-286

By: First Class Mail

CYNTHIA ZIEBERT WEBBER  
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By: Email:  
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Rick Marsland  
Licensing Specialist