

REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of
VALERIE LYNN WHITE)
STIPULATED FINAL ORDER

The Oregon Real Estate Agency (Agency) and Valerie Lynn White (White) do hereby agree and stipulate to the following:

FINDINGS OF FACT
&
CONCLUSIONS OF LAW

1.

1.1 At all times mentioned herein, White was licensed as a property manager doing business under the registered business name of Encompass Management & Consulting, LLC (EMC).

1.2 In July 2016, the Agency received a complaint from Jean McDonald (McDonald) against regarding Encompass Management & Consulting.

1.3 The Agency opened an investigation. Through the investigation of McDonald's complaint, a separate case was opened against White, regarding property owners Gail Ryder and Bill McGee. The violations are separated for the two different cases below.

Facts and Violations relating to Jean McDonald's Complaint/Investigation:

1.4 White and McDonald signed a property management agreement effective December 14, 2014.

1.5 McDonald's rental property was the following: 1519-1529 Salishan Street SE, Keizer, OR, (#1519, #1521, #1523, #1525, #1527, and #1529), and 3275-3277 Randal Court SE, Salem, OR (#3275 and #3277).

1.6 Prior to hiring Encompass Management & Consulting to manage her property

1 McDonald managed her own rental real estate.

2 1.7 According to the property management agreement, White was required collect all
3 refundable deposits attributable to tenants occupying the property. White did not collect any
4 tenant security deposits at the commencement of the property management agreement, and
5 she did not record this change to the terms of the agreement.

6 **(1) Violation:** By failing to collect tenant security deposits at commencement of the
7 property management agreement as required and failing to create an amendment or
8 addendum signed by the property owner regarding a change to the terms for the tenant
9 security deposits White violated ORS 696.890(4)(c) (2013 Edition) and ORS 696.301(3) as it
10 incorporates OAR 863-025-0020(4) (5-15-2014 Edition). ORS 696.890(4)(c) states a real
11 estate property manager owes the property owner the following affirmative duties: (c) to
12 exercise resalable care and diligence. For the violation of ORS 696.890(4)(c) White's conduct
13 is grounds for discipline under ORS 696.301(12). Per OAR 863-025-0020(4) states any
14 amendment or addendum to the property management agreement must be in writing and
15 include the identifying code, the date of the amendment, the signature of the property manager
16 and the signatures of all owners who signed the initial property management agreement.

17 1.8 The property management agreement with McDonald specified that revenue
18 would be deposited into one or more clients' trust accounts, maintained by the manager, and
19 tenant security deposits would be deposited and maintained deposit into a security deposit
20 trust account. White maintained client trust funds and tenant security deposits in a business
21 checking account ending in #6198, which did not qualify as a clients' trust account.

22 **(2a) Violation:** By failing to open and maintain at least one clients' trust account and failing
23 to notify the Agency within 10 days of opening a clients' trust account White violated ORS
24 696.301(3) as it incorporates OAR 863-025-0025(2) (5-15-14 Edition) and ORS 696.241(2)
25 and (4) (2013 and 2015 Edition). OAR 863-025-0025(2) requires a property manager to open
26 and maintain at least one clients' trust account. ORS 696.241(2) requires a property manager
27 to open and maintain in this state one or more separate federally insured bank accounts that
28 are designated clients' trust accounts under ORS 696.245. A property manager shall deposit
29 in a clients' trust account all trust funds received or handled by the property manager. ORS
30 696.241(4) requires a property manager to notify the Agency within in 10 business days after

1 the date a clients' trust account is opened.

2 **(2)(b) Violation:** By failing to open and maintain at least security deposits account to hold
3 tenant security deposit funds White received, White violated ORS 696.301(3) as it incorporates
4 OAR 863-025-0025(4) (5-15-14 Edition). OAR 863-025-0025(4), states as provided in section
5 (7) of this rule, a property manager who receives security deposits on behalf of an owner must
6 open and maintain a security deposits account, as defined in OAR 863-025-0010 that is
7 separate from the property manager's clients' trust account.

8 1.9 A review of McDonald's owner ledger showed debit card charges to Lowe's,
9 Home Depot and Ace Hardware. McDonald's owner ledger dated January 1 - December 23,
10 2015, shows a debit card was used at Home Depot on at least 15 occasions.

11 **(3) Violation:** By making and/or allowing debit card charges against clients' trust funds,
12 White violated ORS 696.301(3) as it incorporates OAR 863-025-0025(19) (5-15-14 Edition),
13 which states a property manager may not utilize any form of debit card issued by financial
14 institution on a clients' trust account or security deposits account.

15 1.10 When McDonald received her owner statement for March 2015, the only date
16 reported was March 31, 2015. The statement showed a beginning balance of -\$102.95,
17 (despite February's ending balance of \$3,832.69). An expense of \$130.00, check #1040,
18 dated March 31, 2015, increased the negative balance to -\$232.95. The receipts and
19 disbursements entries which caused the negative balance for March were not reported on the
20 owner ledger or the owner statement.

21 **(4) Violation:** By failing to report all changes in the owner's ledger, White violated ORS
22 696.301(3) as it incorporates OAR 863-025-0055(4) (5-15-14 Edition) which requires a
23 property manager to report in writing to each owner any change in the owner's ledger. A
24 monthly report, showing all receipts and disbursements for the account of the owner during the
25 prior monthly period is sufficient.

26 1.11 White disbursed funds when there were insufficient funds to do so, resulting in
27 numerous overdraft fees.

28 • On March 24, 2015, the owner ledger balance was \$247.05. On that same day,
29 check #1039 for \$350.00 was disbursed, causing the resulting ledger balance to
30 be -\$102.95.

- 1 • On March 31, 2015, check #1040 for \$130.00 was disbursed, causing the
2 resulting ledger balance to be -\$232.95. The owner ledger balance remained
3 negative until April 1, 2015.
- 4 • On April 13, 2015, check #1048 for \$302.19 was disbursed, causing the resulting
5 owner ledger balance to be -\$150.02. The ledger balance remained negative
6 until August 3, 2015.
- 7 • Additional insufficient balances are shown on McDonald's owner ledger for the
8 following durations: April 13 through August 3, 2015, August 4- September 4,
9 2015, September 5-December 4, 2015, December 5, 2015- January 4, 2016, and
10 January 11- January 21, 2016.

11 1.12 The longest duration of an insufficient balance in the owner ledger is for
12 approximately 91 consecutive days. Despite the insufficient balance, EMC continued to issue
13 disbursements for management fees, payments to their maintenance division and mortgage
14 payments.

15 1.13 The December 31, 2015 year end bank statement showed \$735.00 in year-to-
16 date overdraft fees.

17 **(5) Violation:** By continuing to disburse funds when there were insufficient funds in the
18 ledger to do so, White violated ORS 696.890(4)(a),(b),(c),(d),(e), and (f) (2015 Edition). ORS
19 696.890(4) states a property manager owes the property owner the following affirmative
20 duties: (a) To deal honestly and in good faith; (b) To disclose material facts known by the
21 property manager and not apparent or readily ascertainable to the owner; (c) To exercise
22 reasonable care and diligence; (d) To account in a timely manner for all the funds received
23 form or on behalf of the owner; (e)To act in a fiduciary manner in all matters relating to the
24 trust funds; (f) To be loyal to the owner by not taking action that is adverse or detrimental to
25 the owner's interest. White's conduct is grounds for discipline under ORS 696.301(12).

26 White also violated ORS 696.301(3) as it incorporates OAR 863-025-0025(12) (5-15-14
27 Edition) which states a property manager must not disburse funds from a clients' trust
28 account or security deposits account unless there are sufficient funds as defined in OAR 863-
29 025-0010, in the ledger account against which the disbursement is made. OAR 863-025-
30 0010(17) defines sufficient funds as an amount of funds on an owner's ledger or tenant's

1 ledger that is equal to or greater than the amount of a planned disbursement from a clients'
2 trust account or security deposit account but which most not include any security deposits in a
3 security deposits trust account that are required to be held pending the termination of a rental
4 agreement. Only funds belonging to the owner or tenant on whose behalf the disbursement is
5 planned may be considered in determining if there are sufficient funds or a sufficient credit
6 balance.

7 1.14 Between April 16, 2015, and January 13, 2016, White disbursed management
8 fees on at least 24 different occasions, when there were not sufficient funds to do so.

9 **(6) Violation:** By disbursing management fees, when there were insufficient funds to do so,
10 White violated OAR 863-025-0025(15) (4-1-13, 5-15-14 Editions) which states a property
11 manager must disburse earned management fees from the clients' trust account at least once
12 each month unless a different schedule of disbursements is specified in the property
13 management agreement, and may only disburse such fees if sufficient funds are available.
14 OAR 863-025-0010(16) (4-1-13) and OAR 863-025-0010(17) (5-15-14 Edition) defines
15 sufficient funds as an amount of funds on an owner's ledger or tenant's ledger that is equal to
16 or greater than the amount of a planned disbursement from a clients' trust account or security
17 deposit account but which most not include any security deposits in a security deposits trust
18 account that are required to be held pending the termination of a rental agreement. Only funds
19 belonging to the owner or tenant on whose behalf the disbursement is planned may be
20 considered in determining if there are sufficient funds or a sufficient credit balance.

21 1.15 White failed to timely pay McDonald's line of credit at Bank of America.
22 Payments of \$302.19 were due monthly. McDonald used the line of credit specifically for her
23 property expenses and EMC had agreed to pay the bill on her behalf.

24 1.16 Records show, payments in the amount \$302.19 were made in the months of
25 March through May 2015. In June 2015, a payment was made for \$25.00. In July, no
26 payment was shown, and in August 2015, a payment was shown for \$70.00. An additional
27 payment in August 2015, was shown for \$277.19 with a description referencing June 2015.

28 **(7) Violation:** By failing to timely pay McDonald's line of credit, White violated ORS
29 696.890(4)(a),(b),(c),(d),(e), and (f) (2015 Edition). ORS 696.890(4) states a property manager
30 owes the property owner the following affirmative duties: (a) To deal honestly and in good faith;

1 (b) To disclose material facts known by the property manager and not apparent or readily
2 ascertainable to the owner; (c) To exercise reasonable care and diligence; (d) To account in a
3 timely manner for all the funds received from or on behalf of the owner; (e) To act in a fiduciary
4 manner in all matters relating to the trust funds; (f) To be loyal to the owner by not taking action
5 that is adverse or detrimental to the owner's interest. White's conduct is grounds for discipline
6 under ORS 696.301(12).

7 1.17 White deposited funds from EMC's account ending in #5410 into the account
8 holding McDonald's funds (ending in #6198) on two occasions. On August 19, 2015, in the
9 amount of \$2,000.00 and on March 4, 2016, a deposit of \$4,500.00. White explained the
10 \$2,000 deposit into McDonald's clients' trust account as to help bring McDonald's account
11 sufficient. White said the \$2,000 was a loan from EMC to McDonald.

12 **(8) Violation:** By commingling EMC's funds with funds held on behalf of McDonald, White
13 violated ORS 696.301(3) as it incorporates ORS 696.241(7) (2015 Edition) and OAR 863-025-
14 0025(3)(a) and OAR 863-025-0065(3) (5-15-14 Edition). ORS 696.241(7) states a property
15 manager may not commingle any other funds with the trust funds held in a clients' trust
16 account. OAR 863-025-0025(3)(a) states only funds received by the property manager on
17 behalf of an owner may be held in a clients' trust account. OAR 863-025-0065(3) states a
18 property manager may not deposit any funds received on behalf of an owner in the property
19 manager's personal account or commingle any such funds received with personal funds of the
20 property manager.

21 1.18 McDonald's owner ledger lacked the required identifying information for a \$2,000
22 deposit dated August 21, 2015, referenced as "Temporary refund of Maint. Fees paid," the
23 payee was shown as EMC. No check number, cash receipt number or unique series of letters
24 or numbers to establish an audit trail were displayed. The deposit date of August 21, 2015,
25 was incorrect and did not match the bank statement, which showed the deposit date as August
26 19, 2015.

27 **(9) Violation:** By failing to include the required detailed information on the owner ledger,
28 White violated ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(b)(C), and (D) (5-15-
29 14 Edition) which states (3) all owners ledgers must contain at least the following information:
30 (b) For each deposit of funds: (C) the check number, cash receipt number or a unique series of

1 letters and/or numbers that established an audit trail to the receipt of funds; and (D) the date
2 the funds were deposited.

3 1.19 Records regarding tenant security deposits collected by White were sometimes
4 conflicting and incomplete. During the term of McDonald's property management agreement,
5 five new tenants moved into McDonald's properties. When White received tenant security
6 deposits for McDonald's properties, she deposited them into McDonald's clients' trust account
7 ending in #6198 (which held owner funds and security deposits).

8 1.20 The tenant ledgers, receipts for funds received and bank statement showed
9 White collected and deposited five tenant security deposits for a total of \$4,500.00 between the
10 dates of February 5, 2015 and August 7, 2015.

11 1.21 For one set of the five new tenants, McDonald's owner ledger showed in July
12 2015 White collected a check for prepaid rent/prepaid security deposits of the amount of
13 \$125.00 and on August 3, 2015 White deposited one tenant security deposit on, in the amount
14 of \$875.00. These were the only security deposits shown on the owner ledger from the time
15 period February 5 and August 7, 2015. White could not explain why the other 4 tenant security
16 deposits (from the remaining 4 other tenants) collected were not shown on McDonald's owner
17 ledger.

18 1.22 White used a computer system for creating and maintaining her property
19 management records.

20 **(10) Violation:** By failing to properly record and account for funds received and deposited
21 and failing to and maintain the required records, White violated ORS 696.301(3) as it
22 incorporates ORS 696.280(1) (2015 Edition), which requires a property manager to maintain
23 complete and adequate records of all professional real estate activity conducted by or through
24 the licensee.

25 White also violated ORS 696.301(3) as it incorporates OAR 863-025-0035(3)(b) (5-15-
26 14 Edition). OAR 863-025-0035(3)(b) states if a property manager uses a computerized
27 system for creating, maintaining and producing required records and reports: (b) posting of
28 owner ledgers, record of receipts and disbursements, tenant ledgers and manipulation of
29 information and documents must be maintained in a format that will readily enable tracing and
30 reconciliation.

1 White also violated ORS 696.301(3) as it incorporates OAR 863-025-
2 0055(3)(b)(A),(B),(C),and (D) (5-15-2014 Edition), OAR 863-025-0040(5) (5-15-14 Edition)
3 and OAR 696.890(4)(a),(b),(c),(d),and (e) (2015 Edition). OAR 863-025-0055(3) requires
4 owner ledgers to contain at least the following information: (b) for each deposit of funds: (A)
5 the amount of funds received; (B) the purpose of the funds and identity of the person who
6 tendered the funds; (C) the check number, cash receipt number or a unique series of letters
7 and/or numbers that established an audit trail to the receipt of funds; and (D) the date the
8 funds were deposited. OAR 863-025-0040(5) requires a property manager upon any activity,
9 to record each receipt, deposit or disbursement as required in this rule and record each
10 deposit or disbursement on the corresponding owner's ledger as required in OAR 863-025-
11 0055 and/or tenant's ledger as required in 863-025-0050. ORS 696.890(4) states a property
12 manager owes the property owner the following affirmative duties: (a) To deal honestly and in
13 good faith; (b) To disclose material facts known by the property manager and not apparent or
14 readily ascertainable to the owner; (c) To exercise reasonable care and diligence; (d) To
15 account in a timely manner for all the funds received from or on behalf of the owner; (e)To act
16 in a fiduciary manner in all matters relating to the trust funds; (f) To be loyal to the owner by not
17 taking action that is adverse or detrimental to the owner's interest. White's conduct is grounds
18 for discipline under ORS 696.301(12).

19 1.23 White's tenant lease agreements for Katrina Joynson, Robert Wilson, Hailey
20 Hulsey, and Katelyn Gerlicher, show a charge for tenant security deposits, but none received.
21 According to the corresponding tenant ledgers, the tenant security deposits were received.

22 **(11) Violation:** White's tenant agreements conflicted with the tenants' ledger regarding
23 security deposits paid and received, in violation of ORS 696.301(3) as it incorporates OAR
24 863-025-0045(1)(c) (5-15-14 Edition), which requires (1) the property manager to file and
25 maintain legible copies of all tenant rental or lease agreements for the time period required
26 under OAR 863-025-0035. Each tenant rental or lease agreement prepared by a property
27 manager for residential real estate must contain, in addition to and not in lieu of any applicable
28 requirements of the Residential Landlord and Tenant Act the following: (c) the amount of and
29 the reason for all funds paid by the tenant to the property manager including, but not limited to,
30 funds for rent, conditionally refundable security deposits, and any fees or other charges.

1 1.24 McDonald terminated her property management agreement in a written notice
2 dated December 14, 2015 and requested her rental records and clients' trust funds be
3 transferred to her new property manager. A bank statement dated May 31, 2016, indicates
4 \$573.68 remained in account ending #6198 (account holding McDonald's funds).

5 **(12) Violation:** By failing to timely disburse all funds after termination of the property
6 management agreement White violated ORS 696.301(3) as it incorporates OAR 863-025-
7 0070(2)(a), (b)(B) (5-15-14 Edition), which requires not later than 60 days after the effective
8 date of the termination, the property manager must: (a) Disburse all obligated funds to the
9 party or parties entitled to the funds; and (b) Provide the owner with the following: (B) all funds
10 belonging to the owner as shown on the owner's ledger, unless the owner directs the property
11 manager, in writing, to transfer the funds to another property manager, escrow agent or
12 person.

13 1.25 A review of White's reconciliations showed that White did not perform the
14 monthly reconciliations using the required single reconciliation document containing the
15 required three components.

16 **(13) Violation:** By failing to properly reconcile and maintain the required reconciliation
17 records White violated ORS 696.301(3) as it incorporates OAR 863-025-
18 0025(20)(a)(A),(B),(C), (d)(A),(B), and (e) (4-1-13, 5-15-14 and 11-15-16 Edition) which
19 requires (20)(a) a property manager to reconcile each clients' trust account within 30 calendar
20 days of the date of the bank statement pursuant to the requirements contained in this section.
21 (a) the reconciliation must have three components that are contained in a single reconciliation
22 document: (A) the bank statement balance, adjusted for outstanding checks and other
23 reconciling bank items; (B) the balance of the record of receipts and disbursements or the
24 check register as of the date of the bank statement; and (C) the sum of all positive owners'
25 ledgers as of the date of the bank statement; (d) within 30 calendar days from the date of the
26 bank statement, the property manager must: (A) complete the reconciliation document and (B)
27 sign and date the reconciliation document, attesting to the accuracy and completeness of the
28 reconciliation; and (e) the property manager must preserve and file in logical sequence the
29 reconciliation document, bank statement, and all supporting documentation including, but not
30 limited to, copies of the record of receipts and disbursement or check register and a listing of

1 each owner's ledger balances as of the date of the bank statement.

2 White also violated ORS 696.301(3) as it incorporates OAR 863-025-0035(1)(j) (4-1-13,
3 5-15-14, 11-15-16 Edition), which states the property manager's records are complete and
4 adequate as required under ORS 696.290, if the records contain at least: (j) records of the
5 reconciliation of each client trust account and security deposit account, including the
6 reconciliation document.

7 1.26 White's March 2017 reconciliation of clients' trust account ending #8173 showed
8 the following: Part 1, the reconciled bank balance was \$1,100.00, Part 2, the check register
9 balance was \$996.78, Part 3 was blank, and Part 4, the amount of difference was \$103.22.
10 Written in the explanation of the difference for Part 4 was, "No Difference, We Balance, See
11 Attached."

12 1.27 Agency Financial Investigator/Auditor Meghan Lewis (Lewis) emailed White
13 regarding the difference and seeking explanation. As of July 31, 2017, Lewis still had not
14 received an updated March 2017 reconciliation with an explanation of the difference between
15 Parts 1 and 2. White failed to identify and reconcile the difference of \$103.22 within 30 days.
16 **(14) Violation:** White failed to take corrective action to resolve the \$103.22 difference, in
17 violation of ORS 696.301(3) as it incorporates OAR 863-025-0025(22) (11-15-16 Edition)
18 which requires a property manager to take corrective action to resolve all adjustments made in
19 a reconciliations prior to the next reconciliation or document the good faith efforts taken to
20 resolve the adjustment.

21 1.28 According to Agency records, Nicole Sherrod's (Sherrod) property manager
22 license was associated with EMC on February 1, 2016. Sherrod's duties included negotiating
23 and signing property management agreements, reviewing and approving reconciliations, and
24 reviewing and approving leases. White did not have a signed, dated delegation of authority in
25 place for Sherrod prior to April 6, 2017.

26 **(15) Violation:** By failing to have a written delegation of authority for Nicole Sherrod, White
27 violated ORS 696.301(3) as it incorporates OAR 863-025-0015(6)(a),(b), and (c) (5-15-14 and
28 11-15-16 Editions) which requires the following delegations of the property manager's authority
29 to be in writing and be dated and signed by the property manager and kept with the written
30 policies: (a) negotiate and sign property management agreements under OAR 863-025-

1 0020(6); (b) review and approve reconciliations and receive and disburse funds under OAR
2 863-025-0025(23); and (c) review, approve and accept tenant rental and lease agreements
3 under OAR 863-025-0045(2).

4 1.29 Reviews of the Agency's licensing database of EMC conducted on August 23,
5 2016, February 21 and March 20, 2017, showed two clients' trust accounts registered to EMC,
6 accounts ending in #5990 and #6998.

7 1.30 A review of the Agency's licensing database of EMC conducted on April 13,
8 2017, indicated after March 20, 2017, White registered 81 clients' trust accounts with the
9 Agency, with the "Date Opened," ranging from July 29, 2015 to February 8, 2017.

10 **(16) Violation:** By failing to timely notify the Agency of her clients' trust accounts, White
11 violated ORS 696.301(3) as it incorporates ORS 696.241(4) (2015 Edition) which requires a
12 property manager to notify the Agency within 10 business days after the date a clients' trust
13 account is opened.

14 **Facts and Violations Related to Gail Ryder and Bill McGee's Complaint Investigation:**

15 1.31 Gail Ryder and Bill McGee signed several property management agreements to
16 have EMC manage their different properties. Ryder and McGee requested a separate
17 property management agreement for each of their four properties (455-457-482-488 18th Street
18 NE Salem, 4990-4992 Nadine Dr SE Salem, 952-958 Gaines Street NE, Salem and 13728 SW
19 Mistletoe Drive, Tigard).

20 1.32 The agreements were signed September 29, 2014, and became effective
21 October 15, 2014. Ryder and McGee discovered later that they never signed and dated a
22 property management agreement for their property located at 13782 SW Mistletoe, Tigard
23 Oregon (Mistletoe). Ryder told Agency Financial Investigator/Auditor that she had requested a
24 copy of the agreement several times from EMC but never received one.

25 1.33 White was unable to produce a signed and dated copy of the property
26 management agreement for the Mistletoe property.

27 1.34 White received management fees from Mistletoe beginning January 2, 2015,
28 through November 6, 2015.

29 **(17) Violation:** By failing to obtain property owner signatures on the property management
30 agreement the Mistletoe property White violated ORS 696.301(3) as it incorporates OAR 863-

1 025-0020(1), (2)(l), and (m) (5-15-14 Edition) which states (1) a property manager must not
2 engage in the management of rental real estate without a written, unexpired property
3 management agreement between the owner and the property manager; (2) a property
4 management agreement must include, but is not limited to: (l) signatures of the property
5 manager or a person authorized in section (6) of this rule, and the owner, and (m) the date of
6 the agreement.

7 White also violated ORS 696.890(3) (2013 Edition) which states a property manager
8 may engage in the management of rental real estate for an owner of rental real estate only
9 pursuant to a property management agreement. White's conduct is grounds for discipline
10 under ORS 696.301(12).

11 1.35 To manage their rental real estate White opened two business checking
12 accounts at Bank of the Cascades for Ryder and McGee. The first one ending in #3681, the
13 second, ending in #3703 was for security deposits. As of August 24, 2017, White had not
14 registered either of these accounts with the Agency.

15 **(18) Violation:** By failing to open at least one clients' trust account for property owners
16 Ryder and McGee and failing to timely notify the Agency of the clients' trust accounts, White
17 violated ORS 696.301(3) as it incorporates ORS 696.241(4) (2015 Edition) which requires: (4)
18 a property manager to notify the Agency within 10 business days after the date a clients' trust
19 account is opened.

20 1.36 The name on the checks for account ending in #3681 was, "EMC Ryder-McGee
21 Properties," and for account ending in #3703 was "EMC- Ryder McGee Properties CT."

22 **(19) Violation:** By failing to include the required language for the name of the accounts on
23 the checks, White violated ORS 696.301(3) as it incorporates OAR 863-025-0025(11)(c), and
24 (d) (5-15-14 Edition) which requires a property manager to maintain and account for all checks
25 used for a clients' trust account or security deposits account. All such checks must:(c) If the
26 account is a clients' trust account, include the words, "clients' trust account," but may include
27 additional identifying language; and (d) If the account is a security deposits account, include
28 the words clients' trust account –security deposits," but may include additional identifying
29 language.

30 1.37 A review of the February 2015 EMC Reconciliation Report for account

1 ending in #3681 and account ending in #3703 shows EMC did not use a single reconciliation
2 document showing the required three components of the reconciliation.

3 **(20) Violation:** By failing to properly reconcile the clients' trust account and security deposits
4 account and maintain the required reconciliation records White violated ORS 696.301(3) as it
5 incorporates OAR 863-025-0025(20)(a)(A),(B),(C), (d)(A),(B), and (e) (5-15-14 Edition) which
6 requires (20)(a) a property manager to reconcile each clients' trust account within 30 calendar
7 days of the date of the bank statement pursuant to the requirements contained in this section.
8 (a) the reconciliation document must have three components that are contained in a single
9 reconciliation document(A) the bank statement balance, adjusted for outstanding checks and
10 other reconciling bank items; (B) the balance of the record of receipts and disbursements or
11 the check register as of the date of the bank statement; and (C) the sum of all positive owners'
12 ledgers as of the date of the bank statement; (d) within 30 calendar days from the date of the
13 bank statement, the property manager must: (A) complete the reconciliation document and (B)
14 sign and date the reconciliation document, attesting to the accuracy and completeness of the
15 reconciliation; and (e) the property manager must preserve and file in logical sequence the
16 reconciliation document, bank statement, and all supporting documentation including, but not
17 limited to, copies of the record of receipts and disbursement or check register and a listing of
18 each owner's ledger balances as of the date of the bank statement.

19 White also violated ORS 696.301(3) as it incorporates OAR 863-025-
20 0025(21)(a)(A),(B),(C),(d)(A),(B), (e) (5-15-14 Edition), which requires (21)(a) a property
21 manager to reconcile each security deposits account within 30 calendar days of the date of the
22 bank statement pursuant to the requirements contained in this section. (a) the reconciliation
23 must have three components that are contained in a single reconciliation document: (A) the
24 bank statement balance, adjusted for outstanding checks and other reconciling bank items; (B)
25 the balance of the record of receipts and disbursements or the check register as of the date of
26 the bank statement; and (C) the sum of all positive balances of individual security deposits and
27 fees held in the security deposits account; (d) within 30 calendar days from the date of the
28 bank statement, the property manager must: (A) complete the reconciliation document and (B)
29 sign and date the reconciliation document, attesting to the accuracy and completeness of the
30 reconciliation; and (e) the property manager must preserve and file in logical sequence the

1 reconciliation document, bank statement, and all supporting documentation including, but not
2 limited to, copies of the record of receipts and disbursement or check register and a listing of
3 all balances of individual security deposits and fees as of the date of the bank statement.

4 White also violated ORS 696.301(3) as it incorporates OAR 863-025-0035(1)(j) (5-15-
5 14, 11-15-16 Edition), which states the property manager's records are complete and
6 adequate as required under ORS 696.290, if the records contain at least: (j) records of the
7 reconciliation of each client trust account and security deposit account, including the
8 reconciliation document.

9 1.38 Owner ledger for the Mistletoe property shows for January 1, 2015 through
10 January 31, 2015, a beginning balance of \$0.00. On January 2, 2015, EMC's management
11 fee of \$50.00 caused a resulting balance in the amount of -\$50.00. Additional charges for
12 EMC maintenance and labor and management fees increased the insufficient balance in the
13 owner ledger to -1,759.45. On May 5, 2015, a rent payment in the amount of \$2,645 brought
14 the ledger balance to \$888.88.

15 1.39 Owner ledger for property located at 4990-4992 Nadine Dr SE, Salem (Nadine),
16 showed the balance became -\$371.69 on December 18, 2014. An additional non-sufficient
17 funds fee of \$8.00 and an EMC maintenance charge for \$17.50 caused the resulting balance
18 to be -\$397.19. The balance remained insufficient until a check deposit brought the balance
19 positive on January 2, 2015.

20 **(21) Violation:** By making disbursements when there were insufficient funds in the owner
21 ledger, White violated ORS 696.301(3) as it incorporates OAR 863-025-0025(12) (5-15-14
22 Edition) which states a property manager must not disburse funds from a clients' trust account
23 or security deposits account unless there are sufficient funds as defined in OAR 863-025-0010,
24 in the ledger account against which the disbursement is made. OAR 863-025-0010(17)
25 defines sufficient funds as an amount of funds on an owner's ledger or tenant's ledger that is
26 equal to or greater than the amount of a planned disbursement from a clients' trust account or
27 security deposit account but which most not include any security deposits in a security
28 deposits trust account that are required to be held pending the termination of a rental
29 agreement. Only funds belonging to the owner or tenant on whose behalf the disbursement is
30 planned may be considered in determining if there are sufficient funds or a sufficient credit

1 balance.

2 White also violated ORS 696.301(3) as it incorporates OAR 863-025-0025(15) (5-15-14
3 Edition), which states a property manager must disburse earned management fees from the
4 clients' trust account at least once each month unless a different schedule of disbursement is
5 specified in the property management agreement, and may only disburse such fees if sufficient
6 funds are available.

7 1.40 For property owners Ryder and McGee, White held owner funds in a single
8 owner account ending in #3681. White maintained separate owner ledgers for each property.
9 When the owner ledger balances for Mistletoe and Nadine became insufficient, White
10 transferred funds from other owner ledger accounts (relating to other properties owned by
11 Ryder and McGee) with positive balances to cover the insufficiencies for Mistletoe and Nadine.

12 1.41 White did not have written approval from property owners Ryder and McGee to
13 transfer funds from one owner ledger to another. McGee stated they had specifically asked
14 White for a separate property management agreement for each property so they could keep
15 funds and accounting separate.

16 **(22) Violation:** By transferring funds from one owner's ledger to another without written
17 permission of the owner, White violated ORS 696.301(3) as it incorporates OAR 863-025-
18 0025(14)(a) (5-15-14 Edition) which states a property manager may only transfer funds
19 between two or more owner's ledger accounts maintained for the same owner, if (a) the owner
20 has given the property manager prior written approval in the property management agreement
21 or in an addendum to the agreement.

22 1.42 Beginning and ending balances did not correlate on some of the monthly owner
23 ledger statements. For Nadine the ending balance dated April 14, 2015, is shown as
24 \$2,016.69, but the beginning balance dated May 1, 2015, is shown as \$2,017.78, a difference
25 of \$1.09.

26 1.43 For Mistletoe, the ending balance dated May 7, 2015, is shown as -\$1,279.60,
27 but the beginning balance, dated June 1, 2015, is shown as -\$2,309.44, a difference of
28 \$1,029.84.

29 1.44 For 952-958 Gaines Street NE Salem, the ending balance dated August 11,
30 2015, is shown as \$1,958.99, but the beginning balance dated September 1, 2015, is shown

1 as \$2,478.99, a difference of \$520.00.

2 **(23) Violation:** By having conflicting beginning balances and ending balances on the owner
3 ledger statements White violated ORS 696.301(3) as it incorporates OAR 863-025-0055(4) (4-
4 1-13, 5-15-14 Edition) which requires a property manager to report in writing to each owner
5 any change in the owner's ledger. A monthly report, showing all receipts and disbursements
6 for the account of the owner during the prior monthly period, is sufficient under this section.

7 White also violated ORS 696.890(4)(c),(d),(e) (2013 and 2015 Editions) which states a
8 property manager owes the property owner the following affirmative duties: (c) to exercise
9 reasonable care and diligence; (d) to account in a timely manner for all funds received from or
10 on behalf of the owner; (e) to act in a fiduciary manner in all matters relating to trust funds.

11 White's conduct is grounds for discipline under ORS 696.301(12).

12 1.45 All of the above demonstrates incompetence in performing acts for which White
13 is required to hold a license.

14 **(24) Violation.** ORS 696.301(12) (2013, 2015, and 2017 Editions) which states a licensee's
15 real estate license can be disciplined if the licensee demonstrated incompetence or
16 untrustworthiness in performing any act for which the licensee is required to hold a license.

17 1.46 White has, in response to the violations taken corrective action and is now in
18 compliances with the law and rule requirements regarding each of the issues.

19 1.47 White's property manager license was previously reprimanded in August 2016.

20

21

2.

22 2.1 The foregoing violations are grounds for discipline pursuant to ORS 696.301.
23 Based on these violations a reprimand is appropriate for violations of ORS 696.301(3) and
24 (12).

25 2.2 The Agency reserves the right to investigate and pursue additional complaints
26 that may be received in the future regarding this licensee.

27 2.3 In establishing the violations alleged above, OREA may rely on one or more of
28 the definitions contained in ORS 696.010.

29 2.4 According to ORS 696.775, the lapsing, expiration, revocation or suspension of a
30 real estate license, whether by operation of law, order of the Real Estate Commissioner or

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

7
8 **STIPULATION & WAIVER**

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

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

24 I agree once the Commissioner executes this stipulated order, I will accept service of
25 the final order by email, and hereby waive the right to challenge the validity of service.

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ORDER

IT IS HEREBY ORDERED that Valerie Lynn White's property manager license be, and hereby is reprimanded

IT IS SO STIPULATED:

IT IS SO ORDERED:



DocuSigned by:
Valerie White
B3BFF07AAB0F4ED...
VALERIE LYNN WHITE

DocuSigned by:
Steven Strode
D141D267DDE14A0...
STEVEN STRODE

Real Estate Commissioner

Date 2/5/2021 | 5:21 PM PST

Date 2/8/2021 | 8:25 AM PST

Date of Service: 02/08/2021