

REAL ESTATE AGENCY  
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of )  
NICHOLAS MATTHEW COOK ) STIPULATED FINAL ORDER

The Oregon Real Estate Agency (Agency) and Nicholas Matthew Cook (Cook) do hereby agree and stipulate to the following:

FINDINGS OF FACT, STATEMENTS OF LAW  
AND  
CONCLUSIONS OF LAW

1.

In establishing the violations set forth herein, the Agency may rely on one or more of the definitions contained in ORS 696.010.

**First Findings of Fact:**

1.1 At all times mentioned herein, Cook was licensed as a principal broker with Sleep Sound Property Management, Inc. (Sleep Sound PM).

1.2 On November 8, 2021, the Agency received a complaint from John Perry (Perry) against Cook. The Agency opened an investigation.

1.3 Perry was the owner of four separate single- family houses on a single lot located at 8422, 8426, 8430 and 8434 SE Clinton St., Portland (subject property). Between January 2, 2021, and October 31, 2021, the subject property was managed by Sleep Sound PM.

1.4 The property management agreement between Perry and Cook was executed on December 14, 2020, with an effective date of January 2, 2021. The monthly management fees were 10% of the gross monthly rents for the property.

1.5 Prior to Sleep Sound PM and Cook taking over management, the subject property was managed by Gordon Properties, Inc,. Gordon Properties held \$8,585 in security

1 deposits in total for the following tenants: Peter Hurzhuy (Hurzhuy), Andres Tello (Tello), Max  
2 Valdez (Valdez) and Mackenzie Hall (Hall).

3 1.6 Posting of tenant ledgers (as noted below in the Third Findings of Fact), owner  
4 ledgers (as noted here and in the Sixth and Sixth Part A Findings of Fact) and monthly  
5 reconciliations (as noted below in the Ninth, Tenth, Eleventh, Twelfth, Fifteenth, Seventeenth  
6 and Eighteenth Findings of Fact) lacked the requirements sufficient for tracking and  
7 reconciliation.

8 1.7 Multiple owner statements for the subject property were provided for the  
9 investigation. A review of the statements for the months of January 2021 through November  
10 2021 showed the statements were inconsistent with each other, did not match, and showed  
11 changes Cook made to records at a later date.

12 **First Statement of Law:** ORS 696.301(3) authorizes the Commissioner to reprimand a  
13 licensee's real estate license who has disregarded or violated any provision of ORS 659A.421,  
14 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or any rule of the  
15 Real Estate Agency. Implementation of ORS 696.301(3) is made through OAR 863-025-  
16 0035(3)(b) (1/1/2021 Edition), which states (3) if a property manager uses a computerized  
17 system for creating, maintaining and producing required records and reports: (b) posting of  
18 owner ledgers, record of receipts and disbursements, tenant ledgers and manipulation of  
19 information and documents must be maintained in a format that will readily enable tracking and  
20 reconciliation.

21 **First Conclusion of Law:** Posting of tenant ledgers, owner ledgers, and monthly  
22 reconciliations, lacked the requirements sufficient for tracking and reconciliation, including  
23 manipulation and changes Cook made to the records at a later date in violation of ORS  
24 696.301(3) and its implementing rule 863-025-0035(3)(b) (1/1/2021 Edition).

25 **Second Findings of Fact:**

26 1.8 The tenant ledger for Max Valdez (Valdez) showed on January 26, 2021, a  
27 charge with the description, "Security Deposits," in the amount of \$1,585.00 and a \$2.00  
28 "Convenience Fee" leaving a balance of \$1,597.00. The ledger also shows dated February 9,  
29 2021, a "Web Pay CHK" payment received in the amount of \$1,595, which lacks identifying  
30 information for the purpose of the funds. The tenant ledger for Valdez lacks the required

1 identifying information to determine the purpose of the funds and a check number or cash  
2 receipt or series of letters and numbers that establishes an audit trail.

3 **Second Statement of Law:** ORS 696.301(3) authorizes the Commissioner to  
4 reprimand a licensee's real estate license who has disregarded or violated any provision of  
5 ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or  
6 any rule of the Real Estate Agency. Implementation of ORS 696.301(3) is made through OAR  
7 863-025-0050(4)(d)(B)(C) (1/1/21 Edition), which states (4) a tenant's ledger must contain at  
8 least the following information: (d) for each deposit of funds: (B) the purpose of the funds and  
9 identity of the person who tendered the funds; and (C) the check number, cash receipt number  
10 or a unique series of letters and/or numbers that established an audit trail to the receipt of the  
11 funds.

12 **Second Conclusion of Law:** By posting a receipt of a security deposit to the tenant  
13 ledger for Valdez, without establishing an audit trail to the receipt and purpose of the funds,  
14 Cook violated ORS 696.301(3) and its implementing rule OAR 863-025-0050(4)(d)(B)(C)  
15 (1/1/21 Edition).

16 **Third Findings of Fact:**

17 1.9 In his response to the complaint, Cook stated they had changed to a new  
18 software program on January 1, 2021, and failed to differentiate funds held in clients' trust  
19 account ending in #6360 from funds held in the security deposits account ending in #6337.  
20 Cook stated Sleep Sound PM had not received security deposits from Gordon Properties by  
21 the time they received rent payments from the tenants. When Sleep Sound PM received the  
22 rent payments from the tenants, the January 2021 rent payments from tenants Tello and  
23 Valdez were applied in error to the outstanding deposits charged instead of the January rent.

24 1.10 The payments from tenants Tello and Valdez were received as "Web Payments"  
25 and the allocation was applied automatically as "Security Deposits" by Sleep Sound PM's  
26 software.

27 1.11 Gordon Properties mailed check #23494 for \$8,585.00 in security deposit funds  
28 to Sleep Sound property management on January 8, 2021. The check was paid on February  
29 11, 2021.

30 1.12 The security deposit funds were erroneously disbursed to Perry along with his

1 first owner's disbursement on February 22, 2021. Cook admitted he did not know the security  
2 deposits had been disbursed until Perry terminated the property management agreement in  
3 October 2021.

4 1.13 A review of the property management agreement states Cook as the property  
5 manager was required to maintain the security deposits.

6 1.14 The security deposit funds were not held in Sleep Sound's security deposit  
7 account ending in #6337.

8 **Third Statement of Law:** ORS 696.301(3) authorizes the Commissioner to reprimand a  
9 licensee's real estate license who has disregarded or violated any provision of ORS 659A.421,  
10 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or any rule of the  
11 Real Estate Agency. Implementation of ORS 696.301(3) is made through OAR 863-025-  
12 0030(1)(b) (1/1/21 Edition), which states (1) Except as provided in section (3) of this rule, all  
13 tenants' security deposit received by a property manager must be deposited and maintained  
14 in a security deposits account until: (b) the property manager disburses the tenant's security  
15 deposit for purposes authorized by the tenant's rental or lease agreement and the property  
16 management agreement.

17 **Third Conclusion of Law:** By disbursing the tenant security deposits not in accordance  
18 with the property management agreement, Cook violated ORS 696.301(3) and its  
19 implementing rule OAR 863-025-0030(1)(b) (1/1/21 Edition).

20 **Third Part A, Third Part B, Third Part C, Fourth, and Fourth Part A Findings of**  
21 **Fact:**

22 1.15 The security deposit funds for the subject property were disbursed to Perry on  
23 February 22, 2021.

24 1.16 A review of Perry's monthly owner statement dated January 21, 2021, to  
25 February 22, 2021, showed security deposits held were \$8,585.00 but lacked any identifying  
26 information for receipt of the funds into clients' trust account #6360. It stated an income of  
27 \$8,465.00 and the net income/loss shown was \$7,511.36. Nothing was posted for February  
28 11, 2021, relating to receipt of the \$8,585.00 security deposits. Under the "Cash  
29 Requirements" section, the total reserve showed \$0.00, and total security deposits held  
30 showed \$8,585.00. The ending bank balance was \$19,298.36. There was no entry posted

1 showing the distribution of the security deposits held.

2 1.17 On February 22, 2021, Sleep Sound PM emailed Perry a second owner  
3 statement. The ending bank balance was the same as the first statement and the "Cash  
4 Requirements" section showed a total reserve of \$0.00 and the security deposits held were  
5 \$8,585.00.

6 1.18 Cook's monthly owner statement dated January 21, 2021, to February 22, 2021,  
7 stated an income of \$6,085.00. The statement failed to identify receipt of security deposits into  
8 clients' trust account #6360 and nothing was posted for February 11, 2021, relating to receipt  
9 of the security deposits. Under "Other Transactions" an entry showed dated February 22,  
10 2021, with a description of "ePay 3020 Owner Distribution KMP Clinton LLC" for amount of -  
11 \$18,798.36. Another entry was posted below for -\$500.00 leaving an ending bank balance of  
12 \$0.00.

13 1.19 Cook's "Final Owner Statement" dated January 1, 2021, to March 4, 2022, for  
14 February 11, 2021, shows an entry of "Internet Transfer," identified in the "Payment" column in  
15 the amount of \$8,585.00. The statement shows an entry on February 22, 2021, in the  
16 "Deposit" column with the description, "Due to January 2021" for a deposit in the amount of  
17 \$8,585.00. It indicates an ending balance on February 22, 2021, of \$500.00. The entries in the  
18 owner ledger do not include identifying information, check number, or a unique series of letters  
19 and/or numbers to establish an audit trail to the receipt of funds.

20 1.20 In review of the February 2021 bank statements for clients trust account ending  
21 in #6360 and security deposit account ending in #6337 and the owner statements claiming a  
22 payment of \$18,798.36 on February 22, 2021, the owner distribution to Perry of \$18,798.36 is  
23 not traceable.

24 **Third Part A Statement of Law:** ORS 696.301(3) authorizes the Commissioner to  
25 reprimand a licensee's real estate license who has disregarded or violated any provision of  
26 ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or  
27 any rule of the Real Estate Agency. Implementation of ORS 696.301(3) is made through OAR  
28 863-025-0027(9) (1/1/21 Edition) which states (9) A property manager must record the transfer  
29 of any funds from a clients' trust account or security deposits account by a check, by written  
30 proof of transmittal or receipt retained in the property manager's records. The property

1 manager must record the transfer of other documents by written proof of transmittal or receipt  
2 retained in the property manager's records. A property manager may transfer funds  
3 electronically via the Internet or Automated Clearing House (ACH) software from a client's trust  
4 account to a bank account maintained by the owner and a property manager may make  
5 payments electronically to a vendor's account for expenses relating to the owner's property. If  
6 the software program used for the transfer does not automatically update the owner's ledger,  
7 the property manager must manually record the transfer in the owner's ledger. At the time the  
8 transfer is made, the property manager must print and preserve a hard copy of the electronic  
9 record of the transfer.

10 **Third Part A Conclusion of Law:** By disbursing the security deposit funds that Cook  
11 was required to hold for property owner Perry, to Perry, on February 22, 2021, and by failing to  
12 make an adequate record of the disbursement, including the final disposition of the security  
13 deposits to Perry, Cook violated ORS 696.301(3) and its implementing rule OAR 863-025-  
14 0027(9) (1/1/2021 Edition).

15 **Third Part B Statement of Law:** ORS 696.301(3) authorizes the Commissioner to  
16 reprimand a licensee's real estate license who has disregarded or violated any provision of  
17 ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or  
18 any rule of the Real Estate Agency. Implementation of ORS 696.301(3) is made through OAR  
19 863-025-0065(8) (1/1/21 Edition) which states, a property manager must maintain a complete  
20 record of all funds or other consideration received in the property manager's property  
21 management activity. This record must show from whom the funds or other consideration was  
22 received, the date of the receipt, the place and date of deposit, and the final disposition of the  
23 funds or other consideration.

24 **Third Part B Conclusion of Law:** By disbursing the security deposit funds that Cook  
25 was required to hold for property owner Perry, to Perry, on February 22, 2021, and by failing to  
26 make an adequate record of the disbursement, including the final disposition of the security  
27 deposits to Perry, Cook violated ORS 696.301(3) and its implementing rule OAR 863-025-  
28 0065(8) (1/1/21 Edition).

29 **Third Part C Statement of Law:** ORS 696.301(3) authorizes the Commissioner to  
30 reprimand a licensee's real estate license who has disregarded or violated any provision of

1 ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or  
2 any rule of the Real Estate Agency. Implementation of ORS 696.301(3) is made through ORS  
3 696.890(4)(a)(c)(e) (2021 Edition) which states, (4) a real estate property manager owes the  
4 property owner the following affirmative duties: (a) to deal honestly and in good faith; (c) to  
5 exercise reasonable care and diligence; (e) to act in a fiduciary manner in all matters relating  
6 to trust funds.

7 **Third Part C Conclusion of Law:** By disbursing the security deposit funds that Cook  
8 was required to hold for property owner Perry, to Perry, on February 22, 2021, and by failing to  
9 make an adequate record of the disbursement, including the final disposition of the security  
10 deposits to Perry, Cook violated ORS 696.301(3) and its implementing statute ORS  
11 696.890(4)(a)(c)(e) (2021 Edition).

12 **Fourth Statement of Law:** ORS 696.301(3) authorizes the Commissioner to reprimand  
13 a licensee's real estate license who has disregarded or violated any provision of ORS  
14 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or any  
15 rule of the Real Estate Agency. Implementation of ORS 696.301(3) is made through OAR 863-  
16 025-0055(3)(b)(B)(C) (1/1/21 Edition), which states (3) all owners ledgers must contain at least  
17 the following information: (b) for each deposit of funds: (B) the purpose of the funds and  
18 identity of the person who tendered the funds; (C) the check number, cash receipt number or a  
19 unique series of letters and/or numbers that established an audit trail to the receipt of funds.

20 **Fourth Conclusion of Law:** Owner ledgers for Perry show the tenant security deposits  
21 received into and disbursed to Perry from clients' trust account ending #6360 were not  
22 identified as required in violation of ORS 696.301(3) and its implementing rule OAR 863-025-  
23 0055(3)(b)(B)(C) (1/1/21 Edition).

24 **Fourth Part A Statement of Law:** ORS 696.301(3) authorizes the Commissioner to  
25 reprimand a licensee's real estate license who has disregarded or violated any provision of  
26 ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or  
27 any rule of the Real Estate Agency. Implementation of ORS 696.301(3) is made through OAR  
28 863-025-0055(4) (1/1/21 Edition) which states in part, a property manager must report in  
29 writing any change in the owner's ledger. A monthly report, showing all receipts and  
30 disbursements for the account of the owner during the prior monthly period, is sufficient under

1 this section.

2 **Fourth Part A Conclusion of Law:** By failing to properly identify the receipt of security  
3 deposits in the owner ledger, Cook violated ORS 696.301(3) and its implementing rule OAR  
4 863-025-0055(4) (1/1/21 Edition).

5 **Fifth Findings of Fact:**

6 1.21 Perry terminated the property management agreement effective October 31,  
7 2021. According to Consultant Peter Bale (Bale), who had been assisting Cook through  
8 Attorney Jack Graham (Graham), told Grimes that three ledgers which were “provisional”  
9 closing statements would have been shared with Perry when he came to the office at the end  
10 of the property management agreement. Two of these three ledgers showed security  
11 deposits/refundable deposits of \$2,012.00.

12 1.22 After reviewing the “provisional” closing statements, Perry emailed Cook  
13 regarding his confusion about the security deposits, stating that his first owners statement  
14 noted security deposits held was \$8,585.00.

15 1.23 On the final owner statement on November 5, 2021, rental income is shown and  
16 received and disbursed from unit #8426 in the amount of \$1,607.00, leaving a balance of  
17 \$700.77 on November 9, 2021, which continued to be reduced by \$14.00 per month until a  
18 credit for overcharge was posted for \$252.00 on March 1, 2021. An entry described as a  
19 “Final Disbursement” on March 2, 2022 for \$840.77 left a balance of \$0.00 on the ledger.

20 1.24 Bale told Grimes that Cook had put the final accounting for Perry on hold pending  
21 the outcome of the investigation. On March 2, 2022, Bale emailed Grimes stating Cook had  
22 sent a check for \$840.77 to Perry.

23 **Fifth Statement of Law:** ORS 696.301(3) authorizes the Commissioner to reprimand a  
24 licensee’s real estate license who has disregarded or violated any provision of ORS 659A.421,  
25 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or any rule of the  
26 Real Estate Agency. Implementation of ORS 696.301(3) is made through OAR 863-025-  
27 0070(2)(a)(b)(A)(B)(C) (1/1/21 Edition) which states (2) not later than 60 days after the  
28 effective date of the termination, the property manager must: (a) disburse all obligated funds to  
29 the party or parties entitled to the funds; and (b) provide the owner with the following: (A) a  
30 final accounting of the owner’s ledger account; (B) all funds belonging to the owner as shown



1 on the owner's ledger, unless the owner directs the property manager, in writing, to transfer the  
2 funds to another property manager, escrow agent or person; (C) an accounting of all security  
3 deposits and fees held for tenants.

4 **Fifth Conclusion of Law:** Upon termination of the property management agreement on  
5 October 31, 2021, Cook failed to disburse within 60-days of the effective termination date a  
6 final accounting, all obligated funds and an accounting of the tenant security deposits for  
7 owner Perry until March 2, 2022, a violation of ORS 696.301(3) and its implementing rule OAR  
8 863-025-0070(2)(a)(b)(A)(B)(C) (1/1/21 Edition).

9 **Sixth Findings of Fact:**

10 1.25 The January 2021, February 2021, March 2021, December 2021 and January  
11 2022 reconciliations for clients' trust account ending in #6360 and security deposits account for  
12 ending in #6337 were all prepared by Roberto Cervantes (Cervantes) for Sleep Sound PM on  
13 March 10, 2022, and were reviewed and approved by Cook on the same date.

14 **Sixth Statement of Law:** ORS 696.301(3) authorizes the Commissioner to  
15 reprimand a licensee's real estate license who has disregarded or violated any provision of  
16 ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or  
17 any rule of the Real Estate Agency. Implementation of ORS 696.301(3) is made through OAR  
18 863-025-0028(2)(d)(A)(B)(3)(d)(A)(B) (1/1/21 Edition) which states (2) a property manager  
19 must reconcile each clients' trust account within 30 calendar days of the date of the bank  
20 statement pursuant to the requirements contained in this section. (d) within 30 calendar days  
21 from the date of the bank statement, the property manager must: (A) complete the  
22 reconciliation document; and (B) sign and date the reconciliation document, attesting to the  
23 accuracy and completeness of the reconciliation. (3) a property manager must reconcile each  
24 security deposits account within 30 calendar days of the bank statement date pursuant to the  
25 requirements contained in this section. (d) within 30 calendar days of the date of the bank  
26 statement, the property manager must: (A) complete the reconciliation document; and (B) sign  
27 and date the reconciliation document, attesting to the accuracy and completeness of the  
28 reconciliation.

29 **Sixth Conclusion of Law:** By failing to prepare the following reconciliations for the  
30 months of: January 2021, February 2021, March 2021, December 2021 and January 2022 for

1 clients' trust account ending in #6360 and security deposits account ending in #6337 until  
2 March 10, 2022, Cook violated ORS 696.301(3) and its implementing rule OAR 863-025-  
3 0028(2)(d)(A)(B)(3)(d)(A)(B) (1/1/21 Edition).

4 **Seventh Findings of Fact:**

5 1.26 The January 2021 reconciliation document for security deposit account ending in  
6 #6337 states a balance in Part I of \$513,259.65, Part II of \$507,669.65, and Part III of  
7 \$507,669.65. In the explanation of the difference in Part IV of \$5,590.00 it stated, "Related to  
8 transaction for Leonard Guan on 1/22/2021."

9 **Seventh Statement of Law:** ORS 696.301(3) authorizes the Commissioner to  
10 reprimand a licensee's real estate license who has disregarded or violated any provision of  
11 ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or  
12 any rule of the Real Estate Agency. Implementation of ORS 696.301(3) is made through OAR  
13 863-025-0028(3)(b) (1/1/21 Edition) which states (3) a property manager must reconcile each  
14 security deposits account within 30 calendar days of the bank statement date pursuant to the  
15 requirements contained in this section. (b) the balances of each component in section (3)(a) of  
16 this rule must be equal to and reconciled with each other. If any adjustment is needed, the  
17 adjustment must be clearly identified and explained on the reconciliation document.

18 **Seventh Conclusion of Law:** In the explanation of the difference stated for Part IV of  
19 \$5,590.00, "Related to transaction for Leonard Guan on 1/22/2021," Cook failed to clearly  
20 identify and explain any adjustment needed on the January 2021 reconciliation document for  
21 security deposits account ending in #6337 in violation of ORS 696.301(3) and its implementing  
22 rule OAR 863-025-0028(3)(b) (1/1/21 Edition).

23 **Eighth Findings of Fact:**

24 1.27 The February 2021 reconciliation of the security deposits account ending in  
25 #6337 states a balance in Part I of \$509,374.99, Part II of \$497,036.94, and Part III of  
26 \$497,036.94. The reconciliation summary explaining the Part IV difference of \$12,338.05  
27 states, "Pending Transfers." These pending transfers were not clearly identified and explained  
28 in the reconciliation document.

29 **Eighth Statement of Law:** ORS 696.301(3) authorizes the Commissioner to reprimand  
30 a licensee's real estate license who has disregarded or violated any provision of ORS

1 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or any  
2 rule of the Real Estate Agency. Implementation of ORS 696.301(3) is made through OAR 863-  
3 025-0028(3)(b)(4) (1/1/21 Edition) which states (3) a property manager must reconcile each  
4 security deposits account within 30 calendar days of the bank statement date pursuant to the  
5 requirements contained in this section. (b) the balances of each component in section (3)(a) of  
6 this rule must be equal to and reconciled with each other. If any adjustment is needed, the  
7 adjustment must be clearly identified and explained on the reconciliation document. (4) a  
8 property manager must take corrective action to resolve all adjustments made in a  
9 reconciliation prior to the next reconciliation or document the good faith efforts the property  
10 manager has taken to resolve the adjustment.

11 **Eighth Conclusion of Law:** In the explanation of the difference stated for Part IV of  
12 \$12,338.05, "Pending Transfers," Cook failed to clearly identify and explain that difference on  
13 the February 2021 reconciliation document for security deposits account ending in #6337 and  
14 he failed to take corrective action to resolve all adjustments made in the reconciliation prior, in  
15 violation of ORS 696.301(3) and its implementing rule OAR 863-025-0028(3)(b)(4) (1/1/21  
16 Edition).

17 **Ninth Findings of Fact:**

18 1.28 The March 2021 reconciliation of the security deposits account ending in #6337  
19 states a balance in Part I of \$446,726.99, Part II of \$440,553.45, and Part III of \$440,553.45.  
20 The reconciliation summary explaining the difference of \$6,173.54 for Part IV states, "Pending  
21 transfers." These pending transfers were not clearly identified and explained in the  
22 reconciliation document.

23 **Ninth Statement of Law:** ORS 696.301(3) authorizes the Commissioner to reprimand a  
24 licensee's real estate license who has disregarded or violated any provision of ORS 659A.421,  
25 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or any rule of the  
26 Real Estate Agency. Implementation of ORS 696.301(3) is made through OAR 863-025-  
27 0028(3)(b)(4) (1/1/21 Edition) which states (3) a property manager must reconcile each  
28 security deposits account within 30 calendar days of the bank statement date pursuant to the  
29 requirements contained in this section. (b) the balances of each component in section (3)(a) of  
30 this rule must be equal to and reconciled with each other. If any adjustment is needed, the

1 adjustment must be clearly identified and explained on the reconciliation document. (4) a  
2 property manager must take corrective action to resolve all adjustments made in a  
3 reconciliation prior to the next reconciliation or document the good faith efforts the property  
4 manager has taken to resolve the adjustment.

5 **Ninth Conclusion of Law:** In the explanation of the difference stated for Part IV of  
6 \$6,173.54, "Pending transfers," Cook failed to clearly identify and explain that difference on the  
7 March 2021 reconciliation document for security deposits account ending in #6337 and he  
8 failed to take corrective action to resolve all adjustments made in the reconciliation prior, in  
9 violation of ORS 696.301(3) and its implementing rule OAR 863-025-0028(3)(b)(4) (1/1/21  
10 Edition).

11 **Tenth Findings of Fact:**

12 1.29 The December 2021 reconciliation of clients trust account ending in #6360 states  
13 a balance in Part I of \$281,666.75, Part II of \$270,681.90, and Part III of \$270,681.90. In the  
14 explanation of the difference in Part IV of \$10,984.85, the following was written "Pending  
15 Transfers." These pending transfers were not clearly identified and explained in the  
16 reconciliation document.

17 **Tenth Statement of Law:** ORS 696.301(3) authorizes the Commissioner to reprimand  
18 a licensee's real estate license who has disregarded or violated any provision of ORS  
19 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or any  
20 rule of the Real Estate Agency. Implementation of ORS 696.301(3) is made through OAR 863-  
21 025-0028(2)(b) (1-1-21 Edition) which states (2) a property manager must reconcile each  
22 clients' trust account within 30 calendar days of the date of the bank statement pursuant to the  
23 requirements contained in this section. (b) the balances of each component in section (2)(a) of  
24 this rule must be equal to and reconciled with each other. If any adjustment is needed, the  
25 adjustment must be clearly identified and explained on the reconciliation document.

26 **Tenth Conclusion of Law:** In the explanation of the difference stated for Part IV of  
27 \$10,984.85, "Pending Transfers," Cook failed to clearly identify and explain that difference on  
28 the December 2021 reconciliation document for clients' trust account ending in #6360 in  
29 violation of ORS 696.301(3) and its implementing rule OAR 863-025-0028(2)(b) (1/1/21  
30 Edition).

1 **Eleventh Findings of Fact:**

2 1.30 The December 2021 clients’ trust account reconciliation documentation for  
3 account ending in #6360 showed a balance of -\$8,392.46 for Equitable Holdings LLC. The  
4 Oregon Secretary of State shows Cook as the member for Equitable Holdings, LLC.

5 1.31 On December 15, 2021, records showed a disbursement entry to Cook described  
6 as an owner draw for \$1,267.31.

7 1.32 Clients’ trust account ending in in #6360 contained funds held on behalf of  
8 multiple owners.

9 **Eleventh Statement of Law:** ORS 696.301(3) authorizes the Commissioner to  
10 reprimand a licensee’s real estate license who has disregarded or violated any provision of  
11 ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or  
12 any rule of the Real Estate Agency. Implementation of ORS 696.301(3) is made through ORS  
13 696.241(5)(a)(b) (2021 Edition) which states (5) a principal real estate broker or licensed real  
14 estate property manager may not commingle any other funds with the trust funds held in a  
15 clients’ trust account except for: (a) earned interest on a clients’ rust account as provided in  
16 subsections (7) and (8) of this section; and (b) earned compensation as provided in subsection  
17 (9) of this section.

18 **Eleventh Conclusion of Law:** By comingling his own funds with the funds of others as  
19 identified in clients’ trust account #6360, Cook violated ORS 696.301(3) and its implementing  
20 statute ORS 696.241(5)(a)(b) (2021 Edition).

21 **Twelfth Findings of Fact:**

22 1.33 The December 2021 clients’ trust account reconciliation documentation for  
23 account ending in #6360 showed the following negative owner ledger balances found in the  
24 “Bank Trust Account report.”

- |    |                            |             |
|----|----------------------------|-------------|
| 25 | • Ronald and Nicole Runyan | -\$270.61   |
| 26 | • Christine Tandy          | -\$332.57   |
| 27 | • Westlake Holdings LL     | -\$360.00   |
| 28 | • Duke K Won Marital Trust | -\$544.80   |
| 29 | • Lindsay Blue-Smith       | -\$119.00   |
| 30 | • Amy Downs                | -\$1,400.30 |

- 1 • Nichelle Newell -\$1,995.00
- 2 • Equitable Holdings LLC -\$8,392.46

3 **Twelfth Statement of Law:** ORS 696.301(3) authorizes the Commissioner to  
4 reprimand a licensee's real estate license who has disregarded or violated any provision of  
5 ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or  
6 any rule of the Real Estate Agency. Implementation of ORS 696.301(3) is made through OAR  
7 863-025-0027(3) (1/1/21 Edition) which states a property manager must not disburse funds  
8 from a clients' trust account or security deposits account unless there are sufficient funds, as  
9 defined in OAR 863-025-0010, in the ledger account against which the disbursement is made.  
10 Per OAR 863-025-0010(21) Sufficient funds means an amount of funds on an owner's ledger  
11 or a tenant's ledger that is equal to or greater than the amount of a planned disbursement from  
12 a clients' trust account or a security deposits account but which must not include any security  
13 deposits in a security deposits trust account that are required to be held pending the  
14 termination of a rental agreement. Only funds belonging to the owner or tenant on whose  
15 behalf the disbursement is planned may be considered in determining if there are sufficient  
16 funds or a sufficient credit balance.

17 **Twelfth Conclusion of Law:** Records show negative owners' ledger balances for the  
18 funds of others maintained in the clients' trust account ending in #6360, as identified in the  
19 December 2021 reconciliation documentation in violation of ORS 696.301(3) and its  
20 implementing rule OAR 863-025-0027(3) (1/1/21 Edition).

21 **Thirteenth Findings of Fact:**

22 1.34 The January 2022 reconciliation of the clients' trust account ending in #6360  
23 states a balance in Part I of \$256,557.65, Part II of \$245,691.06, and Part III of \$245,691.06. In  
24 the explanation of the difference in Part IV of \$10,866.59, was written "Pending Transfers."  
25 These pending transfers were not clearly identified and explained in the reconciliation  
26 document.

27 **Thirteenth Statement of Law:** ORS 696.301(3) authorizes the Commissioner to  
28 reprimand a licensee's real estate license who has disregarded or violated any provision of  
29 ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or  
30 any rule of the Real Estate Agency. Implementation of ORS 696.301(3) is made through OAR

1 863-025-0028(2)(b)(4) (1/1/21 Edition) which states (2) a property manager must reconcile  
 2 each clients' trust account within 30 calendar days of the date of the bank statement pursuant  
 3 to the requirements contained in this section. (b) the balances of each component in section  
 4 (2)(a) of this rule must be equal to and reconciled with each other. If any adjustment is  
 5 needed, the adjustment must be clearly identified and explained on the reconciliation  
 6 document. (4) a property manager must take corrective action to resolve all adjustments made  
 7 in a reconciliation prior to the next reconciliation or document the good faith efforts the property  
 8 manager has taken to resolve the adjustment.

9 **Thirteenth Conclusion of Law:** In the explanation of the difference stated for Part IV  
 10 of \$10,866.59, "Pending Transfers," Cook failed to clearly identify and explain that difference  
 11 on the January 2022 reconciliation document for clients' trust account ending in #6360 and he  
 12 failed to take corrective action to resolve all adjustments made in the reconciliation prior, in  
 13 violation of ORS 696.301(3) and its implementing rule OAR 863-025-0028(2)(b)(4) (1/1/21  
 14 Edition).

15 **Fourteenth Findings of Fact:**

16 1.35 The January 2022 clients' trust account reconciliation documentation for account  
 17 ending in #6360 showed the following negative owner ledger balances found in the "Bank  
 18 Trust Account report."

- |    |                            |              |
|----|----------------------------|--------------|
| 19 | • Christine Tandy          | -\$332.57    |
| 20 | • Westlake Holdings LLC    | -\$360.00    |
| 21 | • Duke K Won Marital Trust | -\$544.80    |
| 22 | • Lindsay Blue-Smith       | -\$119.00    |
| 23 | • Nichelle Newell          | -\$1,995.00  |
| 24 | • Equitable Holdings LLC   | -\$31,582.46 |

25 **Fourteenth Statement of Law:** ORS 696.301(3) authorizes the Commissioner to  
 26 reprimand a licensee's real estate license who has disregarded or violated any provision of  
 27 ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or  
 28 any rule of the Real Estate Agency. Implementation of ORS 696.301(3) is made through OAR  
 29 863-025-0027(3) (1/1/21 Edition) which states a property manager must not disburse funds  
 30 from a clients' trust account or security deposits account unless there are sufficient funds, as

1 defined in OAR 863-025-0010, in the ledger account against which the disbursement is made.  
2 Per OAR 863-025-0010(21) Sufficient funds means an amount of funds on an owner's ledger  
3 or a tenant's ledger that is equal to or greater than the amount of a planned disbursement from  
4 a clients' trust account or a security deposits account but which must not include any security  
5 deposits in a security deposits trust account that are required to be held pending the  
6 termination of a rental agreement. Only funds belonging to the owner or tenant on whose  
7 behalf the disbursement is planned may be considered in determining if there are sufficient  
8 funds or a sufficient credit balance.

9 **Fourteenth Conclusion of Law:** Records received by Cook show negative owner  
10 ledger balances in the clients' trust account ending in #6360, as exhibited in the January 2022  
11 reconciliation documentation, in violation of ORS 696.301(3) and its implementing rule OAR  
12 863-025-0027(3) (1/1/21 Edition).

13 **Fifteenth Findings of Fact:**

14 1.36 The December 2021 reconciliation of the security deposit account ending #6337  
15 states a balance in Part I of \$363,163.94, Part II of \$348,122.69, and Part III of \$348,122.69.  
16 Written in the explanation of the difference in Part IV of \$15,041.25, was "Pending Transfers."  
17 These pending transfers were not clearly identified and explained in the reconciliation  
18 document.

19 **Fifteenth Statement of Law:** ORS 696.301(3) authorizes the Commissioner to  
20 reprimand a licensee's real estate license who has disregarded or violated any provision of  
21 ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or  
22 any rule of the Real Estate Agency. Implementation of ORS 696.301(3) is made through OAR  
23 863-025-0028(3)(b) (1/1/21 Edition) which states (3) a property manager must reconcile each  
24 security deposits account within 30 calendar days of the bank statement pursuant to the  
25 requirements contained in this section. (b) the balances of each component in section (3)(a) of  
26 this rule must be equal to and reconciled with each other. If any adjustment is needed, the  
27 adjustment must be clearly identified and explained on the reconciliation document.

28 **Fifteenth Conclusion of Law:** In the explanation of the difference stated for Part IV of  
29 \$15,041.25, "Pending Transfers," Cook failed to clearly identify and explain that difference on  
30 the December 2021 reconciliation document for security deposits account ending in #6337 in



1 violation of ORS 696.301(3) and its implementing rule OAR 863-025-0028(3)(b) (1/1/21  
2 Edition).

3 **Sixteenth Findings of Fact:**

4 1.37 The January 2022 reconciliation for security deposits account ending in #6337  
5 states a balance in Part I of \$345,583.53, Part II of \$356,600.38, and Part III of \$356,600.38. In  
6 the explanation of the difference in Part IV of \$11,016.85, was written, "Pending Transfers."  
7 These pending transfers were not clearly identified and explained in the reconciliation  
8 document.

9 **Sixteenth Statement of Law:** ORS 696.301(3) authorizes the Commissioner to  
10 reprimand a licensee's real estate license who has disregarded or violated any provision of  
11 ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or  
12 any rule of the Real Estate Agency. Implementation of ORS 696.301(3) is made through OAR  
13 863-025-0028(3)(b) (1/1/21 Edition) which states (3) a property manager must reconcile each  
14 security deposits account within 30 calendar days of the bank statement pursuant to the  
15 requirements contained in this section. (b) the balances of each component in section (3)(a) of  
16 this rule must be equal to and reconciled with each other. If any adjustment is needed, the  
17 adjustment must be clearly identified and explained on the reconciliation document.

18 **Sixteenth Conclusion of Law:** In the explanation of the difference stated for Part IV of  
19 \$11,016.85, "Pending Transfers," Cook failed to clearly identify and explain that difference on  
20 the January 2022 reconciliation document for security deposits account ending in #6337 in  
21 violation of ORS 696.301(3) and its implementing rule OAR 863-025-0028(3)(b) (1/1/21 Edition).

22 **Seventeenth Finding of Fact:**

23 1.38 The above violations indicate Cook failed to control and supervise the  
24 professional real estate activity at a main or branch office registered to Cook.

25 **Seventeenth Statement of Law:** ORS 696.301(3) authorizes the Commissioner to  
26 reprimand a licensee's real estate license who has disregarded or violated any provision of  
27 ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or  
28 any rule of the Real Estate Agency. Implementation of ORS 696.301(3) is made through OAR  
29 863-015-0140(3) (1/1/2021 Edition) which states a principal broker must supervise and control  
30 the professional real estate activity at any main or branch office registered by the principal

1 broker.

2 **Seventeenth Conclusion of Law:** The above violations indicate Cook failed to control  
3 and supervise the professional activity at any main or branch office registered to the principal  
4 broker in violation of ORS 696.301(3) and its implementing rule OAR 863-015-0140(3)  
5 (1/1/2021 Edition).

6 **Eighteenth Findings of Fact:**

7 1.39 All of the above violations demonstrate incompetence in performing acts for  
8 which Cook is required to hold a license.

9 **Eighteenth Statement of Law:** ORS 696.301(12) authorizes the Commissioner to  
10 reprimand a licensee's real estate license who has demonstrated incompetence or  
11 untrustworthiness in performing any act for which the real estate licensee is required to hold a  
12 license.

13 **Eighteenth Conclusion of Law:** The above violations demonstrate incompetence in  
14 performing acts for which Cook is required to hold a license in violation of ORS 696.301(12).

15  
16 **Nineteenth Conclusion of Law:** The forgoing violations are grounds for discipline  
17 pursuant to ORS 696.301(3) and (12). Based on these violations a reprimand is appropriate for  
18 violations of ORS 696.301(3) and (12). As previously noted, the Agency has set forth the  
19 grounds of discipline as ORS 696.301(3) and (12).

20 2.

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

29 3.

30 The Agency reserves the right to investigate and pursue additional complaints that may

1 be received in the future regarding this licensee.

2 4.

3 STIPULATION AND WAIVER

4 I, Nicholas Matthew Cook, have read and reviewed this Stipulated Final Order and its  
5 Findings of Fact, Statements of Law and Conclusions of Law. I understand that the Findings  
6 of Fact, Conclusions of Law and this Stipulation and Waiver of Hearing rights embody the full  
7 and complete agreement and stipulation between the Agency and me. I further understand  
8 that if I do not agree with this stipulation I have the right to request a Hearing on this matter  
9 and to be represented by legal counsel at such a Hearing. I also understand that any Hearing  
10 would be conducted in accordance with the procedures set forth in ORS Chapter 183 and in  
11 accordance with the Rules of Practice and Procedure adopted by the Attorney General of the  
12 State of Oregon. By signing this Stipulated Final Order I freely and voluntarily waive my rights  
13 to a Hearing, to representation by legal counsel at such a Hearing, and to judicial review of this  
14 matter.

15 I hereby agree and stipulate to the above Findings of Fact and Conclusions of Law and  
16 understand that the Order which follows hereafter, which I have also read and understand,  
17 may be completed and signed by the Real Estate Commissioner or may be rejected by the  
18 Real Estate Commissioner. I further understand that, in accordance with the provisions of  
19 ORS 696.445(3), notice of this Order shall be published in the Oregon Real Estate News  
20 Journal.

21 In addition to all of the above, I agree that once the Commissioner executes this  
22 Stipulated Final Order, I will accept service of the Stipulated Final Order by email, and hereby  
23 waive the right to challenge the validity of service.

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ORDER

IT IS HEREBY ORDERED that Nicholas Matthew Cook’s principal broker license be,  
and hereby is reprimanded.

IT IS SO STIPULATED:

IT IS SO ORDERED:

DocuSigned by:  
*Nicholas Cook*  
D9CCD291B54E43E...

DocuSigned by:  
*Steven Strode*  
E2C2D0097AD8471...



NICHOLAS MATTHEW COOK

STEVEN STRODE

Real Estate Commissioner

Date 11/17/2022 | 11:51 AM PST

Date 11/18/2022 | 8:58 AM PST

Date of Service: 11/18/2022