

REAL ESTATE AGENCY  
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Unlicensed Professional  
Real Estate Activity of  
  
MICHAEL WAYNE REYNOLDS

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FINAL ORDER BY DEFAULT AND ORDER  
TO CEASE AND DESIST

**PROCEDURAL HISTORY AND PROCEDURAL LAW**

1.

1.1 On November 2, 2021, the Real Estate Commissioner issued, by certified mail, a *Notice of Intent to Assess a Civil Penalty and Order to Cease and Desist*. The Oregon Real Estate Agency (Agency) sent the *Notice of Intent* to Michael Wayne Reynolds' (Reynolds) last known address of record with the Agency (13529 Gaffney Ln., Oregon City, OR 97045). The *Notice of Intent* was also mailed to Reynolds by regular first class mail to the above address.

1.2 The certified mailing of the *Notice of Intent* was returned to the Agency, received on November 29, 2021. Stamped on the envelope was, "Return to Sender Not Deliverable as Addressed Unable to Forward." Handwritten on the envelope was "LN 11/4."

1.3 The first class mailing of the *Notice of Intent* from the November 2, 2021 mailing has not been returned to the Agency.

1.4 On December 7, 2021, the Real Estate Commissioner re-issued, by certified mail, the *Notice of Intent to Assess a Civil Penalty and Order to Cease and Desist*. The Agency sent the *Notice of Intent* to Reynolds' last known address of record with the Agency (13529 Gaffney Ln., Oregon City, OR 97045) and another possible address for Reynolds (570 E. Exeter Street, Gladstone, OR 97207). The *Notice of Intent* was also mailed to Reynolds by regular first class mail to both of the above addresses on December 7, 2021.

1.5 The December 7, 2021, certified mailing of the Notice to Reynolds addressed to 570 E. Exeter Street, Gladstone, OR 97207 was returned to the Agency on January 10, 2022 marked, "Return to Sender Unclaimed Unable to Forward." The other December 7, 2021

certified mailing of the *Notice of Intent* to Reynolds addressed to 13529 Gaffney Ln., Oregon City, OR 97045 was returned to the Agency on January 14, 2022, marked "Return to Sender Unclaimed Unable to Forward." The first class mailings of the *Notice of Intent* from the December 7, 2021 mailing have not been returned to the Agency.

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

2.

Based upon the foregoing, and upon the Agency's investigation reports, documents and files that, pursuant to Section 9 of the *Notice of Intent*, automatically become part of the evidentiary record of this disciplinary action upon default (for the purpose of proving a prima facie case (ORS 183.417(4)), the Real Estate Commissioner finds:

2.1 A notice of intent is properly served when deposited in the United States mail, registered or certified mail, and addressed to the real estate licensee at the licensee's last known address of record with OREA. (ORS 183.415(2); OAR 137-003-0505; OAR 863-001-0006. If correctly addressed, such a notice is effective even though it is not received by the person to be notified. *Stroh v. SAIF*, 261 OR 117, 492 P2d 472 (1972) (footnote 3 in this case misquotes the cited treatise and contradicts the text of the opinion; treatise and cited case law support the proposition stated in the text.) Also, notice is effective even though the addressee fails or refuses to respond to a postal service "mail arrival notice" that indicates that certified or registered mail is being held at the post office. See *State v. DeMello*, 300 Or App 590, 716 P2d 732 (1986) (discussing use of certified mail to effectuate notice of driver's license suspension under ORS 482.570). See also *El Rio Nilo, LLC v. OLCC*, 240 Or App 362, 246 P3d 508 (2011) (Notice by certified mail effective even though addressee did not pick up in time to file request for hearing timely).(Oregon Attorney General's Administrative Law Manual and Uniform Model Rules Of Procedure Under the Administrative Procedures 2019 Edition at pages 97-98).

2.2 Reynolds' last known address of record with the Agency was 13529 Gaffney Ln., Oregon City, OR 97045.

2.3 A certified mailing of the *Notice of Intent* was mailed to Reynolds at his last known address of record on November 2, 2021. The certified mailing of the Notice was returned to the Agency, received on November 29, 2021. Stamped on the envelope was, "Return to Sender Not Deliverable as Addressed Unable to Forward." Handwritten on the envelope was "LN 11/4."

2.4 The notice was also mailed regular first class mail to the above address for Reynolds. The first class mailing has not been returned to the Agency.

2.5 On December 7, 2021, the Real Estate Commissioner re-issued, by certified mail, the *Notice of Intent to Assess a Civil Penalty and Order to Cease and Desist*. The Agency sent the *Notice of Intent* to Reynolds' last known address of record with the Agency (13529 Gaffney Ln., Oregon City, OR 97045) and another possible address for Reynolds (570 E. Exeter Street, Gladstone, OR 97207). The *Notice of Intent* was also mailed to Reynolds by regular first class mail to both of the above addresses on December 7, 2021.

2.6 The December 7, 2021, certified mailing of the Notice to Reynolds addressed to 570 E. Exeter Street, Gladstone, OR 97207 was returned to the Agency on January 10, 2022, marked, "Return to Sender Unclaimed Unable to Forward." The other December 7, 2021, certified mailing of the *Notice of Intent* to Reynolds addressed to 13529 Gaffney Ln., Oregon City, OR 97045 was returned to the Agency on January 14, 2022, marked "Return to Sender Unclaimed Unable to Forward."

2.7 The first class mailings of the *Notice of Intent* from the December 7, 2021 mailing have not been returned to the Agency. The OAH Rules contain a rebuttable presumption that documents sent by regular mail are received by the addressee. ORS 137-003-0520(10). If the regularly mailed notice is actually received, it is effective on the date received, rather than the date of mailing.

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

2.9 As noted in paragraph 9 of the *Notice of Intent to Assess a Civil Penalty and Order to Cease and Desist* and section 2 above, the Agency's entire investigation file was designated as the record for purposes of presenting a prima facie case upon default, including

submissions from Reynolds and all information in the administrative file relating to the mailing of notices and any responses received.

### **FINDINGS OF FACT**

#### 3.

3.1 At all times mentioned herein, Reynolds was not licensed to engage in the management of rental real estate or conduct professional real estate activity in Oregon.

3.2 In August 2021 the Agency opened an investigation against Reynolds.

3.3 Court records showed Reynolds named as Landlord/Agent for multiple Residential Eviction complaints and Forcible Entry Detainers, filed in Clackamas County, for properties all owned by Joseph Winter (Winter).

3.4 On March 2, 2018, Reynolds filed a Residential Eviction Complaint in Clackamas County Court against tenant Cassandra Goen residing at 4800 SE Boardman Ave, Unit #2, Milwaukie, OR. Reynolds was listed as the plaintiff along with Winter Properties in the caption of the document. Below the caption, Reynolds was listed as the Plaintiff- Landlord and signed the document as Landlord or Agent.

3.5 On March 24, 2017, Reynolds filed a Complaint Residential Eviction in Clackamas County Court against tenant "Genevive Boham," residing at 4800 SE Boardman Ave, Unit #1, Milwaukie, OR. Reynolds was listed as the plaintiff along with Winter Properties in the caption. Reynolds signed the document as the Landlord or Agent.

3.6 On December 13, 2016, Reynolds filed a Complaint Residential Eviction in Clackamas County Court against tenant "Genevive Bohem," residing in 4800 SE Boardman Ave, Apt #1, Milwaukie, OR. Reynolds was listed as the plaintiff along with Winter Properties in the caption. Reynolds signed the document as the Landlord or Agent.

3.7 On December 13, 2016, Reynolds filed a Complaint Residential Eviction in Clackamas County Court against tenant Christy Oldham residing in 4800 SE Boardman Ave Apt #3, Milwaukie, OR,. Reynolds was listed as the plaintiff along with Winter Properties in the caption. Reynolds signed the document as the Landlord or Agent.

3.8 On April 20, 2016, Reynolds filed a Complaint Residential Eviction against tenant "Genievive Boeham" residing in 4800 SE Boardman Ave, Unit 1, Milwaulkie, OR, in Clackamas

County Court. Reynolds was listed as the Plaintiff along with Winter Properties in the caption. Reynolds signed the document as the Landlord or Agent.

3.9 On August 12, 2015, Reynolds filed a Forcible Entry Detainer with Clackamas County Court against tenants Dennis Hargrave and Margaret Hillman residing in 4800 SE Boardman Ave #1, Milwaukie, OR. Reynolds and Winter Properties were listed as the plaintiffs.

3.10 On September 25, 2013, Reynolds filed a Forcible Entry Detainer with Clackamas County Court against tenant Karry Imel residing in 4800 SE Boardman Ave #6, Milwaukie, OR. Reynolds and Winter Properties were listed as the plaintiffs.

3.11 4800 SE Boardman Ave, Milwaukie, OR was owned by Winter.

3.12 On May 23, 2016, Reynolds filed a Complaint Residential Eviction in Clackamas County Court against tenant Thad Ouimette residing in 412 Pearl St, Apt #3, Oregon City, OR. This property was owned by Winter. Reynolds and Winter Properties were listed as the plaintiffs. The complaint was signed by Reynolds as the Landlord or Agent.

3.13 On May 23, 2016, Reynolds filed a Complaint Residential Eviction in Clackamas County Court against tenant Rick Kautz, residing in 13207 SE Oatfield Rd. Milwaukie, OR. This property was owned by Winter. Reynolds and Winter Properties were listed as the plaintiffs. The complaint was signed by Reynolds as the Landlord or Agent.

3.14 On January 19, 2010, Reynolds filed a Forcible Entry Detainer in Clackamas County Court against tenant Courtney Cox residing in 13215 Oatfield Rd., Milwaukie, OR. This property was owned by Winter. Reynolds and Winter Properties were listed as the plaintiffs.

3.15 On January 7, 2010, Reynolds filed a Forcible Entry Detainer in Clackamas County Court against tenant Ryan Thorng residing in 13269 Clairmont Way, Oregon City, OR. This property was owned by Winter. Reynolds and Winter Properties were listed as the plaintiffs.

3.16 Winter stated he had known Reynolds for approximately 20 years. Winter said that Reynolds and Autumn Reynolds (Reynold's wife) would collect rent. Per Winter, Reynolds was hired as a handyman. According to Winter, Reynolds and Autumn Reynolds approached him about signing an agreement to sell them the property they were residing in (13529 Gaffney

Ln. Oregon City, OR). The terms were for zero percent interest, and the monthly payment of \$1,500 per month would be paid as, “work performed.” Per Winter, both Autumn Reynolds and Reynolds have been residing in this property for free.

3.17 When asked about the Residential Eviction and Forcible Entry Detainers that Reynolds filed, Winter said Reynolds might have filed the documents with the court, but Reynolds never managed his properties.

3.18 Per Autumn Reynolds, she and her husband quit working for Winter in January 25, 2021.

#### **STATEMENT OF LAW APPLICABLE TO FINDINGS OF FACT**

#### 4.

4.1 ORS 696.020(2) (2009, 2013- 2017 Editions) states an individual may not engage in, carry on, advertise or purport to engage in or carry on professional real estate activity, or act in the capacity of a real estate licensee, within this state unless the individual holds an active license as provided for in this chapter.

4.2 According to ORS 696.990(4)(a) and (b) (2009, 2013-2017 Editions) any person that violates ORS 696.020(2) may be required by the Real Estate Commissioner to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the commissioner of: (a) not less than \$100 nor more than \$500 for the first offense of unlicensed professional real estate activity; and (b) not less than \$500 nor more than \$1,000 for the second and subsequent offenses of unlicensed professional real estate activity.

4.3 ORS 696.010(12)(a)(L) (2009 Edition) and ORS 696.010(11)(a)(L) (2013-2015 Editions) defines “Management of rental real estate” as: (a) representing the owner of real estate in the rental or lease of the real estate and includes but is not limited to: (L) providing copies of records of acts performed on behalf of the owner of the real estate.

4.4 ORS 696.010(14)(a)(L) (2017 Edition) defines “Management of rental real estate” as: (a) representing the owner of real estate under a property management agreement in the rental or lease of the real estate and includes but is not limited to: (L) providing copies of the records of acts performed on behalf of the owner of the real estate.

4.5 ORS 696.010(15)(h) (2009 Edition) and ORS 696.010(14)(h) (2013-2015 Editions), ORS 696.010(17)(h) (2017 Edition) defines “Professional real estate activity” as: any of the following actions, when engaged in for another and for compensation or with the intention or in the expectation or upon the promise of receiving or collecting compensation, by any person who: (h) engages in management of rental real estate.

4.6 ORS 696.010(6) (2009 Edition), ORS 696.010(4) (2013 and 2015 Editions) defines “compensation” as: any fee, commission, salary, money or valuable consideration for services rendered or to be rendered as well as the promise thereof and whether contingent or otherwise.

4.7 ORS 696.010(6) (2017 Edition) defines “compensation as: valuable consideration for services rendered or to be rendered, whether contingent or otherwise.

4.8 ORS 696.010(16) (2009, 2013, 2015 Editions) and ORS 696.010(19) (2017 Edition) defines “real estate” as: includes leaseholds and licenses to use including, but not limited to, timeshare estates and timeshare licenses as defined in ORS 94.803, as well as any and every interest or estate in real property, whether corporeal or incorporeal, whether freehold or nonfreehold, whether held separately or in common with others and whether the real property is situated in this state or elsewhere.

4.9 In establishing the violations alleged above, the Agency may rely on one or more definitions contained in ORS 696.010.

4.10 ORS 696.040 (2009, 2013-2017 Editions) states one act or transaction of professional real estate activity is sufficient to constitute engaging in professional real estate activity, within the meaning of this chapter.

4.11 ORS 696.397 (2013-2019 Editions) states if the Agency has reason to believe that a person has engaged, is engaging or is about to engage in a violation of ORS 696.020(2) the Agency may, issue an order directing a person to cease and desist from the violation or threatened violation.

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## **ULTIMATE FINDINGS OF FACT**

### 5.

5.1 Reynolds filed the Residential Eviction Complaints and Forcible Entry Detainer listed above relating to tenants residing at 4800 Boardman Ave, and by doing so Reynolds engaged in unlicensed professional real estate activity.

5.2 Reynolds filed the Residential Eviction Complaint listed above relating to the tenant residing at 412 Pearl St., Apt #2 and by doing so Reynolds engaged in unlicensed professional real estate activity.

5.3 Reynolds filed the Residential Eviction Complaint and Forcible Entry Detainer listed above relating to tenants residing at 13207 and 13215 Oatfield Rd. and by doing so Reynolds engaged in unlicensed professional real estate activity.

5.4 Reynolds filed the Forcible Entry Detainer listed above relating to the tenant residing at 13269 Clairmont Way and by doing so Reynolds engaged in unlicensed professional real estate activity.

5.5 Reynolds' actions constitute grounds to impose a civil penalty per ORS 696.990(4)(a) and (b), as well as entry of an order to cease and desist from engaging in any professional real estate activity under ORS 696.397.

## **CONCLUSIONS OF LAW**

### 6.

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

6.2 The material facts establish grounds to impose a civil penalty, by preponderance of the evidence, under ORS 696.990(4)(a) and (b), as well as entry of an order to cease and desist from engaging in any professional real estate activity under ORS 696.397, as set forth in the *Notice of Intent To Assess a Civil Penalty and Order to Cease and Desist*.

6.3 Based on the violations of ORS 696.020(2), the Agency may assess a civil penalty against Reynolds and as well as an entry of an order to cease and desist from engaging in any professional real estate activity.



6.4 Based on the evidence in the record, the preponderance of the evidence weighs in favor of the civil penalty against Reynolds and an entry of an order to cease and desist from engaging in any professional real estate activity.

6.5 The Agency may therefore assess a civil penalty against Reynolds and enter an order to cease and desist from engaging in any professional real estate activity.

### **OPINION**

#### 7.

The Agency takes its consumer protection role very seriously. In Oregon, an individual must be licensed to engage in professional real estate activity (ORS 696.020(2)). A license is issued to individuals who pass a criminal background check, complete the pre-license educational course, and pass the state and national examinations, as required by ORS 696.022. Reynolds did not have an Oregon real estate license, yet he engaged in several acts constituting professional real estate activity, specifically engaging in the management of rental real estate.

The specific violations are repeated here below:

- (1) By filing the Residential Eviction Complaints and Forcible Entry Detainer listed above relating to tenants residing at 4800 Boardman Ave, Reynolds engaged in unlicensed professional real estate activity (ORS 696.010(11)(a)(L) (2013-2015 Editions), ORS 696.010(14)(a)(L) (2017 Edition), ORS 696.010(14)(h) (2013-2015 Editions) and ORS 696.010(17)(h) (2017 Edition)), in violation of ORS 696.020(2) (2013-2017 Editions) which states an individual may not engage in, carry on, advertise or purport to engage in or carry on professional real estate activity, or act in the capacity of a real estate licensee, within this state unless the individual holds an active license.
- (2) By filing the Residential Eviction Complaint listed above relating to the tenant residing at 412 Pearl St., Apt #2, Reynolds engaged in unlicensed professional real estate activity (ORS 696.010(11)(a)(L) (2015 Edition), ORS 696.010(14)(h) (2015 Edition)) in violation of ORS 696.020(2) (2015 Edition) which states an individual may not engage in, carry on, advertise or purport to engage in or carry on professional real estate activity, or act in the capacity of a real estate licensee, within this state unless the individual holds an active license.

(3) By filing the Residential Eviction Complaint and Forcible Entry Detainer listed above relating to tenants residing at 13207 and 13215 Oatfield Rd. Reynolds engaged in unlicensed professional real estate activity (ORS 696.010(12)(a)(L) (2009 Edition), ORS 696.010(11)(a)(L) (2015 Edition), ORS 696.010(15)(h) (2009 Edition) ORS 696.010(14)(h) (2015 Edition)), in violation of ORS 696.020(2) (2009 and 2015 Editions) which states an individual may not engage in, carry on, advertise or purport to engage in or carry on professional real estate activity, or act in the capacity of a real estate licensee, within this state unless the individual holds an active license.

(4) By filing the Forcible Entry Detainer listed above relating to the tenant residing at 13269 Clairmont Way, Reynolds engaged in unlicensed professional real estate activity (ORS 696.010(12)(a)(L) (2009), ORS 696.010(15)(h) (2009 Edition)), in violation of ORS 696.020(2) (2009 Edition) which states an individual may not engage in, carry on, advertise or purport to engage in or carry on professional real estate activity, or act in the capacity of a real estate licensee, within this state unless the individual holds an active license.

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ORDER

IT IS HEREBY ORDERED that pursuant to ORS 696.397, Reynolds immediately cease and desist from engaging in any professional real estate activity as defined in ORS 696.010(17)(a)-(n) (2019 Edition) unless Reynolds first obtains a real estate license from the Agency. The Commissioner's authority for this order is under ORS 696.397.

IT IS FURTHER ORDERED, pursuant to ORS 696.990 and based upon the violation set forth above, Reynolds pay a civil penalty in the sum of \$3,500.00, said penalty to be paid to the General Fund of the State Treasury by paying the same to the Agency.

Dated this 8th day of February, 2022.

OREGON REAL ESTATE AGENCY

DocuSigned by:  
*Steven Strode*  
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Steven Strode  
Real Estate Commissioner

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

# Certificate of Mailing

On February 8, 2022, I mailed the foregoing Final Order by Default issued on this date in Agency Case No. 2021-545.

By: First Class Mail

Michael Wayne Reynolds  
13529 Gaffney Ln.  
Oregon city, OR 97045

Michael Wayne Reynolds  
570 E. Exeter Street  
Gladstone OR 97027

Rick Marsland  
Licensing Specialist