

REAL ESTATE AGENCY  
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of

TINA JANELL MITCHELL



FINAL ORDER BY DEFAULT

**PROCEDURAL HISTORY AND PROCEDURAL LAW**

1.

1.1 On December 30, 2022, the Real Estate Commissioner issued, by certified mail, a *Notice of Intent to Revoke* the real estate property manager license of Tina Mitchell (Mitchell). The Oregon Real Estate Agency (Agency) sent the *Notice of Intent* to Mitchell's last known address of record with the Agency (4161 Woods Rd NE, Albany, OR 97321). The *Notice of Intent* was also mailed to Mitchell by regular first-class mail to the above address in a handwritten envelope. And *The Notice of Intent* was emailed to Mitchell at her email address of record.

1.2 The email was not returned as undeliverable.

1.3 On January 9, 2023, the Agency received the certified return receipt from the December 30, 2022, mailing. The receipt confirms it was signed by an individual at Mitchell's address with the surname Mitchell, but the printed name portion and date was left blank by the recipient.

1.4 The first-class mailing has not been returned to the Agency. Over twenty days (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 Mitchell's last known address of record with the Agency was 4161 Woods Rd NE, Albany, OR 97321.

2.3 A certified mailing of the *Notice of Intent* was mailed to Mitchell at her last known address of record on December 30, 2022. The Agency received the certified return receipt which was signed by Rick Mitchell.

2.4 The notice was also mailed regular first-class mail in a handwritten envelope to the above possible addresses for Mitchell. The mailing in the handwritten envelope has not been returned to OREA. 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.

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

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

2.7 As noted in section 9 of the *Notice of Intent to Revoke*, 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 Mitchell 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, Mitchell was licensed as a property manager working under the registered business name All-4-U Property Management (All-4-U). Mitchell is the only licensee associated with Five Star PM.

3.2 On April 21, 2022, the Agency received a complaint from property owner, Tasha Mack (Mack), against Mitchell. The Agency opened an investigation.

3.3 Mitchell had managed Mack's two properties located at 1061 Grove St Lebanon, Oregon (Grove St property) and 802 Wassom St Lebanon, Oregon (Wassom St property). Mack terminated their property management agreements with Mitchell in November 2021.

3.4 Mitchell provided Financial Investigator/Auditor Aaron Grimes (Grimes) an Account Ledger dated August 1, 2020 – December 31, 2021, specific to the Grove property. Mack also provided a copy of this ledger with their complaint as well as a copy of the Account Ledger dated August 1, 2020-December 3, 2021, specific to the Wassom property. The ledgers did not include required information for the deposit and disbursement of funds, specifically for the deposit of funds the ledgers did not contain the following required detail: check number, cash receipt number or a unique series of letters and/or numbers that

established an audit trail to the receipt of funds; and the date the funds were deposited. For the disbursement of funds, the ledgers did not contain the check number or bank-generated electronic tracking number.

3.5 Mack's complaint stated that Mitchell failed to timely provide owners' statements for their two rentals. According to email from Mack, on August 12, 2021, Mack had to request July 2021 owner statements from Mitchell, and Mitchell provided them the following day. And again, on October 22, 2021, Mack had to request the August and September 2021 owner statements from Mitchell.

3.6 On August 8, 2022, Grimes interviewed Mitchell. Mitchell said that she provides owners with monthly owners' statements. When asked for records of what was provided to Mack, Mitchell was not able to find anything in her software system and stated that she did not realize they weren't keeping a record of owner statements until January 2022. She did not have a copy of statements owners were sent. Mitchell also explained that an owner statement is not sent if the tenant doesn't pay the rent.

3.7 Record provided by Mitchell did not readily identify receipts and disbursements to enable the tracing for the \$1530 in rental income for Wasson St. shown received on the property ledger and owner statement, but not disbursed to Mack.

3.8 As stated above, Mack terminated their property management agreements with Mitchell in November 2021. Mack's complaint stated that they had not received a deposit for \$1,530.00 made on November 10, 2021. Grimes emailed Mack for clarification regarding funds and documents that were returned to them. In Mack's response, they stated they still had not received the \$1,530.00 and that Mitchell never returned rental agreements for either property.

3.9 In his interview with Mitchell, Grimes asked about the tenant agreements requested by Mack and if Mitchell had fulfilled that request. Mitchell said she would have mailed them. She stated she still has a copy of the agreement. When asked if she had proof of mailing, Mitchell stated there are pictures she takes when she goes to the mailbox and sends out information. She doesn't have record of what was in the envelope but has pictures of the envelope being sent to Wilson Properties.

3.10 Regarding the Grove St property, the owner payment ledger showed 4 payments (one was for \$1,530.00) to Wilson Property Investments during November 2021. Mack

provided a copy of the November 2021 bank statement for Wilson Property Investments with her complaint. The bank statement shows four deposits posted November 16, 2021, from All-4-U, matching the amounts stated on the owner payments ledger for the Grove St property. The bank statement did not show any record of additional deposits from All-4-U.

3.11 On July 18, 2022, Mitchell provided another version of an account ledger for the Wassom St property, showing an owner disbursement posted on November 10, 2021, in the amount of \$1,530.00. When Mitchell was asked about why the payment from the Wassom St property got posted to the ledgers without going to Mack, Mitchell stated that it was not the case, but was unable to provide any documentation to the contrary. Mitchell was unable to provide any record showing the \$1,530.00 the Wassom St property payment coming out of the clients' trust account to Mack.

3.12 On September 14, 2022, Grimes spoke with Mitchell about their monthly reconciliation process. Mitchell stated she had not reconciled the accounts since January 2022.

3.13 In September 2022, Mitchell notified the Agency of the possibility of her trust accounts being frozen. The Agency learned that a Writ of Garnishment had been issued and received by Mitchell's bank and the trust accounts were locked while the potential garnishment was being reviewed.

3.14 On September 14, 2022, Grimes requested Mitchell provide documentation supporting the amount of funds being held in the clients' trust accounts, specifically the owners' ledger totals and totals of the tenants' security deposits. On September 15, 2022, Mitchell emailed Grimes asking for more time to produce records. The records were never provided.

3.15 A representative from Mitchell's bank informed the Agency the funds in the trust accounts were temporarily restricted on September 14, 2022, and the restriction was removed September 16, 2022. All 4 accounts (accounts ending in # 3269, 3244, 3251 and 3236) were closed by Mitchell on September 16, 2022, at a different branch.

3.16 On October 10, 2022, Compliance Coordinator, Hani Ghamrawi (Ghamrawi), emailed Mitchell to update her account with the Agency by removing closed clients' trust accounts and identifying the new opened clients' trust accounts.

3.17 Mitchell responded on October 11, 2022, stating she was not managing any properties and no owner has reached out to her.

3.18 The Agency has taken action against Mitchell's property manager license before and for similar conduct found in the most recent investigation. On February 8, 2022, the Commissioner signed a stipulated final order reprimanding Mitchell's property manager license. The violations included, but were not limited to: failing to reconcile, failing to provide monthly owner statements, and demonstrating incompetence or untrustworthiness in performing an act for which the licensee is required to hold a license.

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

#### 4.

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

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

4.3 ORS 696.301(3) as it incorporates:

a. OAR 863-025-0055(3)(b)(C)(D)(c)(C) (1-1-2021 Edition) which states (3) All owner ledgers must contain at least the following information: (b) For each deposit of funds: (C) The check number, cash receipt number or a unique series of letters and/or numbers that established an audit trail to the receipt of funds; and (D) The date the funds were deposited. (c) For each disbursement of funds: (C) The check number or bank-generated electronic tracking number.

b. OAR 863-025-0055(4) (1-1-2021 Edition) which states (4) A property manager must report in writing to each owner any change in the owner's ledger. A monthly report, showing all receipts and disbursements for the account of the owner during the prior monthly period, is

sufficient under this section. A copy of each such report must be preserved and filed in the property manager's records.

c. ORS 696.890(4)(c)(d)(e) (2021 Edition) which states (4) a real estate property manager owes the property owner the following affirmative duties: (c) to exercise reasonable care and diligence; (d) to account in a timely manner for all funds received from or on behalf of the owner; (e) to act in a fiduciary manner in all matters relating to trust funds.

d. OAR 863-025-0035(3)(b) (1-1-2021 Edition) which states if a property manager uses a computerized system for creating, maintaining and producing required records and reports: (b) posting of owner ledgers, records of receipts and disbursements, tenant ledgers and manipulation of information and documents must be maintained in a format that will readily enable tracking and reconciliation.

e. OAR 863-025-0070(2)(a)(b)(E) (1-1-2021 Edition) which states (2) Not later than 60 days after the effective date of the termination, the property manager must: (a) Disburse all obligated funds to the party or parties entitled to the funds; and (b) Provide the owner with the following: (E) Copies of all current tenant rental or lease agreements, unless the owner waives such requirement in writing or directs the property manager, in writing, to provide such documents to another property manager, escrow agent or person.

f. OAR 863-025-0070(7) (1-1-2021 Edition) which states (7) The property manager must record the transfer of documents by written proof of transmittal or receipt retained in the property manager's records.

g. OAR 863-025-0028(2)(3) (1-1-2021 Edition) states (2) A property manager must reconcile each clients' trust account within 30 calendar days of the date of the bank statement pursuant to the requirements contained in this section; (3) A property manager must reconcile each security deposits account within 30 calendar days of the bank statement date pursuant to the requirements contained in this section. Per ORS 696.301(3) a licensee's real estate license may be disciplined if they have demonstrated incompetence or untrustworthiness in performing any act for which the real estate licensee is required to hold a license.

h. OAR 863-025-0035(2)(a)(b)(c) (1-1-2021 Edition) states (2) A property manager must produce records required under section (1) of this rule for inspection by the Agency as follows: (a) When the Agency makes a request for production of property management records, the

property manager must provide such records within no less than five banking days; (b) If the Agency has reasonable grounds to believe that funds of an owner or tenant may be missing or misappropriated or that the property manager is engaging in fraudulent activity, any records demanded or requested by the Agency must be produced immediately; and (c) Failure to produce such records within the timelines stated in subsection (a) or (b) of this section is a violation of ORS 696.301.

i. ORS 696.245(3) (2021 Edition) states within 10 business days from the date a clients' trust account is closed or transferred, a licensed real estate property manager or principal real estate broker shall notify the agency that the account has been closed or transferred and shall include in the notice the date on which the account was closed or transferred.

j. OAR 863-025-0025(4) (1-1-2021 Edition) states (4) Within 10 business days from the date a clients' trust account is closed or transferred, the property manager must notify the Agency using an online process established by the Agency.

### **ULTIMATE FINDINGS OF FACT**

#### **5.**

5.1 Mitchell failed to maintain required information on owner ledgers for deposit and disbursement of funds.

5.2 Mitchell failed to provide timely monthly owner statements reporting changes to the owner ledger.

5.3 Mitchell failed to maintain her property management records in a format that will readily enable tracking and reconciliation.

5.4 Mitchell failed to maintain her property management records.

5.5 Mitchell failed to provide property owner Mack with copies of rental agreements and funds of \$1,530.00 within 60 days upon termination of the property management agreement.

5.6 Mitchell failed to keep a record of the transfer of documents by written proof of transmittal or receipt to property owner Mack.

5.7 Mitchell failed to reconcile each clients' trust account within 30 calendar days from the date of the bank statement.



5.8 Mitchell failed to provide the Agency with requested records regarding client trust accounts during the investigation.

5.9 Mitchell failed to notify the Agency within 10 business days of closing clients' trust accounts (ending in #3269, 3244, 3251 and 3236).

5.10 In summary, the facts above establish grounds to Revoke Mitchell's property manager license.

### **CONCLUSIONS OF LAW**

#### 6.

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

6.2 The material facts establish a violation of a ground for discipline, by preponderance of the evidence, under ORS 696.301 as set forth in the *Notice of Intent to Revoke*. ORS 696.396(1),(2)(c)(B) and (D).

6.3 Based on these violations, the Agency may revoke Mitchell's property manager license.

6.4 Specifically, Mitchell is subject to discipline pursuant to ORS 696.301(3) and (12) for (3) disregarding or violating any provision of ORS 659A.421, 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870 and 696.890 or any rule of the Real Estate Agency; (12) demonstrating incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

6.5 A revocation of Mitchell's property manager license is appropriate for violations of ORS 696.301(3) and (12).

6.6 A revocation of Mitchell's property manager license is appropriate under ORS 696.396(2)(c)(B) and (D). According to ORS 696.396(2)(c)(B) the Agency may suspend a real estate license if the material facts establish a violation of a ground of discipline under ORS 696.301 that (B) exhibits incompetence in the performance of professional real estate activity; (D) Repeats conduct or an act that is substantially similar to conduct or an act for which the real estate licensee was disciplined previously.

6.7 Based on the evidence in the record, the preponderance of the evidence supports the revocation of Mitchell's property manager license.

6.8 The Agency may therefore, revoke Mitchell's property manager license.

6.9 Pursuant to ORS 696.775 the inactive status of Mitchell's license does not prohibit the Commissioner from proceeding with this, or further action.

6.10 The specific violations are repeated here below:

(1): By failing to maintain required information on owner ledgers for deposit and disbursement of funds, Mitchell violated ORS 696.301(3) as it incorporates OAR 863-025-0055(3)(b)(C)(D)(c)(C) (2021 Edition) which states (3) All owner ledgers must contain at least the following information: (b) For each deposit of funds: (C) The check number, cash receipt number or a unique series of letters and/or numbers that established an audit trail to the receipt of funds; and (D) The date the funds were deposited. (c) For each disbursement of funds: (C) The check number or bank-generated electronic tracking number.

(2): By failing to provide timely monthly owner statements to Mack reporting changes to their owner ledger, Mitchell violated ORS 696.301(12) and ORS 696.301(3) as it incorporates ORS 696.890(4)(c)(d)(e) (2021 Edition) and OAR 863-025-0055(4) (1-1-2021 Edition). OAR 863-025-0055(4) states (4) A property manager must report in writing to each owner any change in the owner's ledger. A monthly report, showing all receipts and disbursements for the account of the owner during the prior monthly period, is sufficient under this section. A copy of each such report must be preserved and filed in the property manager's records. ORS 696.890(4)(c)(d)(e) states (4) a real estate property manager owes the property owner the following affirmative duties: (c) to exercise reasonable care and diligence; (d) to account in a timely manner for all funds received from or on behalf of the owner; (e) to act in a fiduciary manner in all matters relating to trust funds. ORS 696.301(12) states licensee's real estate license may be disciplined if they have demonstrated incompetence or untrustworthiness in performing any act for which the real estate licensee is required to hold a license.

(3): By failing to maintain her property management records in a format that will readily enable tracking and reconciliation, Mitchell violated ORS 696.301(3) as it incorporates OAR 863-025-0035(3)(b) (1-1-2021 Edition) which states if a property manager uses a computerized system for creating, maintaining and producing required records and reports: (b) posting of owner ledgers, records of receipts and disbursements, tenant ledgers and manipulation of information and documents must be maintained in a format that will readily enable tracking and reconciliation.

(4): By failing to provide Mack with copies of rental agreements and funds of \$1,530.00 within 60 days upon termination of the property management agreement Mitchell violated ORS 696.301(3) as it incorporates OAR 863-025-0070(2)(a)(b)(E) (1-1-2021 Edition) and ORS 696.890(4)(c)(d)(e) (2021 Edition). OAR 863-025-0070(2)(a)(b)(E) (1-1-2021 Edition) states: (2) Not later than 60 days after the effective date of the termination, the property manager must: (a) Disburse all obligated funds to the party or parties entitled to the funds; and (b) Provide the owner with the following: (E) Copies of all current tenant rental or lease agreements, unless the owner waives such requirement in writing or directs the property manager, in writing, to provide such documents to another property manager, escrow agent or person. ORS 696.890(4)(c)(d)(e) (2021 Edition) states (4) a real estate property manager owes the property owner the following affirmative duties: (c) to exercise reasonable care and

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

(5): By failing to keep record of the transfer of documents by written proof of transmittal or receipt to Mack, Mitchell violated ORS 696.301(3) as it incorporates OAR 863-025-0070(7) (1-1-2021 Edition) states (7) The property manager must record the transfer of documents by written proof of transmittal or receipt retained in the property manager's records.

(6): By failing to reconcile each clients' trust account within 30 calendar days from the date of the bank statement, Mitchell violated ORS 696.301(12) and (3) as it incorporates OAR 863-025-0028(2)(3) (1-1-2021 Edition). OAR 863-025-0028(2)(3) (1-1-2021 Edition) states (2) A property manager must reconcile each clients' trust account within 30 calendar days of the date of the bank statement pursuant to the requirements contained in this section; (3) A property manager must reconcile each security deposits account within 30 calendar days of the bank statement date pursuant to the requirements contained in this section. Per ORS 696.301(3) a licensee's real estate license may be disciplined if they have demonstrated incompetence or untrustworthiness in performing any act for which the real estate licensee is required to hold a license.

(7): By failing to provide the Agency with requested records regarding client trust accounts during the investigation, Mitchell violated ORS 696.301(3) as it incorporates OAR 863-025-0035(2)(a)(b)(c) (1-1-2021 Edition) states (2) A property manager must produce records required under section (1) of this rule for inspection by the Agency as follows: (a) When the Agency makes a request for production of property management records, the property manager must provide such records within no less than five banking days; (b) If the Agency has reasonable grounds to believe that funds of an owner or tenant may be missing or misappropriated or that the property manager is engaging in fraudulent activity, any records demanded or requested by the Agency must be produced immediately; and (c) Failure to produce such records within the timelines stated in subsection (a) or (b) of this section is a violation of ORS 696.301.

(8): By failing to notify the Agency within 10 business days of closing clients' trust accounts (ending in #3269, 3244, 3251 and 3236), Mitchell violated ORS 696.301(3) as it incorporates OAR 863-025-0025(4) (1-1-2021 Edition) and ORS 696.245(3) (2021 Edition). ORS 696.245(3) (2021 Edition) states within 10 business days from the date a clients' trust account is closed or transferred, a licensed real estate property manager or principal real estate broker shall notify the agency that the account has been closed or transferred and shall include in the notice the date on which the account was closed or transferred. OAR 863-025-0025(4) (1-1-2021 Edition) states (4) Within 10 business days from the date a clients' trust account is closed or transferred, the property manager must notify the Agency using an online process established by the Agency.

(10): In all of the above, Mitchell demonstrated incompetence or untrustworthiness in performing any act for which Mitchell is required to hold a license in violation of ORS 696.301(12) (2021 Edition).

Each of the above demonstrates incompetence or untrustworthiness in violation of ORS 696.301(12) (2021 Edition). Revocation of Mitchell's property manager license is license is appropriate under ORS 696.396(2)(c)(B) and (D).

ORDER

IT IS HEREBY ORDERED that Tina Janell Mitchell's property manager license is revoked.

Dated this 3rd day of February, 2023.

OREGON REAL ESTATE AGENCY

DocuSigned by:  
*Steven Strobe*  
E2C2D0097AD8471...



Steven Strobe  
Real Estate Commissioner

---

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.