

REAL ESTATE AGENCY
BEFORE THE REAL ESTATE COMMISSIONER

In the Matter of the Real Estate License of

DELANA LYNN SMITH

FINAL ORDER BY DEFAULT

PROCEDURAL HISTORY AND PROCEDURAL LAW

1.

1.1 On March 27, 2025, the Real Estate Commissioner issued, by certified mail, a *Notice of Intent to Revoke and to Assess a Civil Penalty* the property manager license of DeLana Smith (Smith). The Oregon Real Estate Agency (Agency) sent the Notice of Intent to Smith's last two known addresses of record with the Agency (283 S Estella St., Glide, OR 97443 and PO Box 553, Glide, OR 97443). The *Notice of Intent* was also mailed to Smith by regular first-class mail to the above addresses in a handwritten envelope. And *The Notice of Intent to Revoke and to Assess a Civil Penalty* was emailed to Smith at her email address of record.

1.2 The email was not returned as undeliverable.

1.3 On April 24, 2025, the Agency received a signed certified return receipt from the mailing to PO Box 553, Glide, OR 97443. The certified mailing to 283 S Estella St., Glide, OR 97443 has not been returned to the Agency. The first-class mailing sent to 283 S Estella St., Glide, OR 97443 was returned to the Agency as Return to Sender, No Mail Receptacle, Unable to Forward. The first-class mailing sent to PO Box 553, Glide, OR 97443 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 to Revoke and to Assess a Civil Penalty*, 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 Smith's last known address of record with the Agency was 283 S Estella St., Glide, OR 97443 and PO Box 553, Glide, OR 97443.

2.3 A certified mailing of the *Notice of Intent* was mailed to Smith at her last known addresses of record on March 27, 2025. On April 24, 2025, the Agency received a signed certified return receipt from the mailing to PO Box 553, Glide, OR 97443. The certified mailing to 283 S Estella St., Glide, OR 97443 has not been returned to the Agency.

2.4 The notice was also mailed regular first-class mail in a handwritten envelope to both of the above possible addresses for Smith. The first-class mailing sent to 283 S Estella St., Glide, OR 97443 was returned to the Agency as Return to Sender, No Mail Receptacle,

Unable to Forward. The first-class mailing sent to PO Box 553, Glide, OR 97443 has 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.

2.5 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 to Assess a Civil Penalty*, 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 Smith 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, Smith was licensed as a property manager with DCPM LLC (DCPM).

3.2 On April 10, 2024, the Agency received a complaint from Kevin Gibby (Gibby) against Smith. The Agency opened an investigation.

3.3 Gibby alleged in his complaint that Smith failed to make rental payments over the course of several months, totaling around \$16,000.00. Gibby wrote that Smith had made some

payments towards the total, and the current amount owed is \$8,440.00. Gibby included in his complaint that he had been told by Smith that she had used the funds for personal projects.

3.4 On April 11, 2024, Gibby emailed the Agency writing that he had been paid in full.

3.5 In her written response to the complaint, Smith wrote that as of April 11, 2024, Gibby had been paid, and the account was settled. Smith provided two deposit receipts in the amount of \$2,800 and \$5,640.

3.6 Investigator Dylan Ray (Ray) interviewed Gibby by phone on May 9, 2024. Gibby explained that Smith managed five properties for him. Gibby told Ray that rental income for the months of November 2023, December 2023, January 2024, and February 2024 were not paid out. Gibby further explained that he only received owner statements on and off and did not receive anything in November 2023.

3.7 Email communication from Gibby to Smith in October 2023, show Gibby writing that he had not seen a statement in a while, and he is not sure who is paying rent. A follow up email sent from Gibby to Smith in December 2023, shows Gibby writing that he has not received October and November statements.

3.8 In an email from March 2024, Smith wrote to Gibby, "...so sorry and embarrassed that things got so far away from me..." Smith also included that she had made repairs to another property without balancing the account. Smith further wrote that she had contracts for three of the properties, but did not have contracts for two properties.

(1) Violation: By failing to maintain tenant agreements for two properties, Smith violated ORS 696.301(3) and its implementing rule OAR 863-025-0045(1)(a)(b)(c) (d)(e)(3) 1/1/2024 Edition, which states: (1) the property manager must file and maintain legible copies of all tenant rental or lease agreements for the period required under OAR 863-025-0035. Each tenant rental or lease agreement prepared by a property manager for residential real estate must contain, in addition to and not in lieu of any applicable requirements of the Residential Landlord and Tenant Act, the following: (a) the registered business name and business address of the property manager and the name and address of the tenant. If a real estate license executes the rental or lease agreement on behalf of the licensee's principal broker, the name of the real estate licensee acting for the principal broker in executing the agreement; (b)

the mailing address or unit number of property being rented or leased, the amount and payment conditions of the rental or lease, and the rental or lease term; (c) the amount of and the reason for all funds paid by the tenant to the property manager including, but not limited to, funds for rent, conditionally refundable security deposits including whether held by the property manager or the property owner, and any fees or other charges; (d) signatures of the property manager, or person authorized under OAR 863-025-0015, and the tenant; (e) the date of the agreement; and (3) the property manager must file and maintain legible copies of all tenant's rental or lease agreements for the time period required under OAR 863-025-0035. A property manager must review each tenant rental or lease agreement generated by the property manager; however, a property manager may authorize in writing another individual who is licensed to or employed by the property manager to review and approve and accept tenant rental and lease agreements on behalf of the property manager. In each case of such authorization, the property manager remains responsible for each tenant rental and lease agreement approved or accepted by such real estate licensee or employee. The property manager must produce the written authorization at the request of the Commissioner or the Commissioner's authorized representative.

3.9 On May 9, 2024, Ray requested records from Smith, including the owner ledgers for Gibby for the months of November 2023, December 2023, January 2024, and February 2024, along with final accounting.

3.10 Smith provided the final accounting, along with pdfs titled "Separate Property Managed Ledger Nov '23 through Feb '24" for two properties, 946 NE Johnson, Myrtle Creek (Myrtle property) and 41-61 SW Civil Bend, Winston (Winston property).

3.11 A review of the ledger for the Myrtle property shows rental payments for the months of November 2023 through February 2024. The first disbursement to Gibby is shown on February 12, 2024, in the amount of \$1,050, followed by another disbursement to Gibby on March 14, 2024, in the amount of \$3,000. A third disbursement to Gibby is shown on April 11, 2024, in the amount of \$150.00.

3.12 The Myrtle property ledger shows no rental income after February 2024, and property management fees were not shown as disbursed to Smith.

3.13 A review of the Winston property ledger shows rental income from November 2023 through February 2024. Disbursements to Gibby begin on February 12, 2024, in the amount of \$3,135.00, followed by two disbursements in March, in the amounts of \$1,750, and \$4,185.00. A final disbursement to Gibby on April 11, 2024, is shown in the amount of \$5,840.

3.14 Neither ledger shows property management fees as being disbursed to Smith.

(2) Violation: By failing to maintain complete owners' ledgers, Smith violated ORS 696.301(3) and its implementing rule OAR 863-025-0055(3)(a)(D) 1/1/2023, 1/1/2024 Editions, which states: (3) all owner ledgers must contain at least the following information: (a) the owner's name and identifying code; and (D) the date the funds were deposited.

(3) Violation: By failing to disburse property management fees, Smith violated ORS 696.301(3) and its implementing rule OAR 863-025-0027(6) 1/1/2023 Edition, which states: (6) a property manager must disburse earned management fees from the clients' trust account at least once each month unless a different schedule of disbursement is specified in the property management agreement and may only disburse such fees if sufficient funds are available.

3.15 A review of the final accounting provided by Smith shows three separate line items labeled deposit refund, totaling \$2,800.00, with a matching payment to the owner.

3.16 On May 20, 2024, Ray requested additional records from Smith, including bank statements for account ending in -1554 for November 2023 through February 2024, a complete reconciliation for April 2024, and a copy of the property management agreement (PMA).

3.17 Smith submitted the requested bank statements, as well as an additional response to the original complaint. Smith wrote that she took a job out of state that requires a lot of travel, and she expected it to have more flexibility to do both jobs. Smith wrote that it was more difficult than she expected, and she hired someone to help. Smith included that she "trusted that things were being care of [sic]" and she "thought Mr. Gibby had been paid and should have followed through."

3.18 On May 27, 2024, Smith informed Ray that she did not have a PMA with Gibby, because he was an existing client with DCPM when she took over. Ray followed up with Smith if there was a PMA either between her or the prior owner of DCPM. Smith confirmed there was no PMA.

3.19 In an interview with Ray on July 10, 2024, Smith explained that she did have a PMA with Gibby from the prior owner, but it was destroyed in an August 2020 house fire. Smith also confirmed that she does not have a PMA for another one of her clients.

3.20 A review of the November 2023 bank statement for CTA #1554, shows a fee charged in the amount of \$42.48, titled "Maintenance Fee Analysis Activity for 10/23"

3.21 A review of the December 2023 bank statement shows the same Maintenance Fee Analysis charged in the amount of \$49.90.

3.22 review of the January 2024 bank statement shows the same Maintenance Fee Analysis charged in the amount of \$43.90.

3.23 A review of the February 2024 bank statement shows a Maintenance Fee Analysis charged in the amount of \$46.46.

3.24 During the interview with Ray, Smith explained that the monthly fee was a charge her bank started, as they no longer offered an account with zero fees for property management.

3.25 Smith told Ray that she does not charge the owners but reduces her management fees by the difference.

(4) Violation: By performing property management without a property management agreement for multiple properties, Smith violated ORS 696.301(3) as it incorporates ORS 696.890(3) 2019, 2021, and 2023 Editions, which states: (3) a real estate property manager may engage in the management of rental real estate for an owner of rental real estate only pursuant to a property management agreement.

In addition, Smith violated ORS 696.301(3) and its implementing rule OAR 863-025-0020(1) 1/1/2024 Edition, which states: (1) a property manager must not engage in the management of rental real estate without a written, unexpired property management agreement between the owner and the property manager.

In addition, Smith violated ORS 696.301(3) as it incorporates ORS 696.890(4)(a)(c)(e)(f) 2023 Edition, which states: (4) a real estate property manager owes the property owner the following affirmative duties; (a) to deal honestly and in good faith; (c) to exercise reasonable care and diligence; (e) to act in a fiduciary manner in all matters relating

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

3.26 A review of the April 2024 single reconciliation document shows the following totals:

- Part I total is \$-99.23
- Part II total is \$-17.83
- Part III total is \$0.00
- Part IV shows a difference of \$81.40, with a note stating that assessed bank fees caused the difference, and a deposit had been made to pay the fees.

(5) Violation: By commingling funds in a clients' trust account, Smith violated ORS 696.301(3) as it incorporates ORS 696.241(5)(a)(b) 2023 Edition, which states: (5) a principal real estate broker or licensed real estate property manager may not commingle any other funds with the trust funds held in a clients' trust account, except for (a) earned interest on a clients' trust account as provided in subsections (7) and (8) of this section; and (b) earned compensation as provided in subsection (9) of this section.

3.27 A review of the April 2024 bank statement shows a beginning balance of \$-1,348.83, and an ending balance of \$-1,399.23. An overdraft fee was charged in the amount of \$35.00.

3.28 A review of the check register for April 2024, shows a beginning 'balance forward' in the amount of \$-1,348.83, which becomes positive on April 3, 2024, after rental deposits were made.

3.29 On April 29, 2024, a check to Lau Estella in the amount of \$1,332.00 was issued, leaving a negative ledger balance of \$-17.83.

(6) Violation: By disbursing funds from a clients' trust account when the account carried a negative balance and allowing the account to sustain a negative balance for more than one day, Smith violated ORS 696.301(3) and its implementing rule OAR 863-025-0040(7) 1/1/2024 Edition, which states: (7) a record of receipts and disbursements or check register for a clients' trust account may show a negative balance during the course of a day only if the record of receipts and disbursements or check register shows a positive balance at the close of the day.

3.30 In the interview with Ray, Smith explained that the negative balance on the April 2024 bank statement was due to Smith writing a check to an owner before rental income had cleared. Ray asked about the negative beginning balance that was carried over from March. Smith explained that she must have done the same thing then.

(7) Violation: By disbursing funds before verifying a payment was deposited by a tenant, resulting in a negative balance on the account, Smith violated ORS 696.301(3) and its implementing rule OAR 863-025-0027(7) 1/1/2024 Edition, which states: (7) a property manager may not disburse funds from a clients' trust account or security deposits account based upon a wire or electronic funds transfer deposited into the account, until the deposit has been verified by the property manager. The property manager must arrange with the account depository and other entities for written verification of when funds are received or disbursed by wire or electronic transfer.

3.31 Smith explained to Ray that she hired a new employee to help her out around May 2023, and let the employee go in December 2023. Ray asked Smith if she was relying on that employee to reconcile monthly, and Smith responded, "yes and no."

3.32 Smith explained that the employee kept track of rent payments and that she wrote checks to Gibby that were supposed to be deposited by the employee.

3.33 Smith told Ray that she had not been reconciling her account, but that she is now reconciling.

3.34 Smith explained that because reconciling was not happening, the funds that were for Gibby got "mixed up and used towards the renovation." of another property she managed.

(8) Violation: By failing to reconcile clients' trust accounts, Smith violated ORS 696.301(3) and its implementing rule OAR 863-025-0028(2) 1/1/2023 Edition, which 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.

In addition, Smith violated ORS 696.301(3) as it incorporates ORS 696.890(4)(a)(c)(e)(f) 2023 Edition, which states: (4) a real estate property manager owes the property owner the following affirmative duties; (a) to deal honestly and in good faith; (c) to exercise reasonable care and diligence; (e) to act in a fiduciary manner in all matters relating

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

3.35 On July 24, 2024, Ray sent a records request to Smith, requesting the name of the employee she hired, the delegation of authority, proof of the repairs to other owners using the funds due to Gibby, and documentation showing that the security deposits funds came out of the security deposit account. Ray gave Smith a deadline to provide the records of July 31, 2024.

3.36 Ray followed up on the records request with Smith via email on July 31, 2024, and a phone call on August 1, 2024.

3.37 Smith sent Ray an email response on August 1, 2024, asking what records were requested. In response, Ray forwarded Smith the original email request that same day.

3.38 No further response or communication from Smith was received.

(9) Violation: By failing to provide property management records upon request by the Agency, Smith violated ORS 696.301(3) and its implementing rule OAR 863-025-0035(2)(a)(b)(c) 1/1/2024 Edition. Smith is subject to civil penalty under ORS 696.990(60(a)(b) 2023 Edition. OAR 863-025-0035(2)(a)(b)(c) 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; and (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. ORS 696.990(6)(a)(b) states: (6)(a) except as provided in paragraph (b) of this subsection, a real estate licensee who is a real estate property manager or principal real estate broker and who is engaging in or who has engaged in the management of rental real estate may be required to forfeit and pay to the General Fund of the State Treasury a civil penalty of up to \$1,000 per day of violation, or a lesser penalty in an amount determined by the commissioner, if the licensee fails to comply with rules that require the licensee to produce for inspection records related to the management of rental real estate that are maintained by the

licensee as provided by ORS 696.280; (b) a civil penalty imposed under this subsection may not exceed \$10,000.

In addition, Smith violated ORS 696.301(3) as it incorporates ORS 696.280(3) 2023 Edition, which states: (3) records maintained under this section must at all times be open for inspection by the Real Estate Commissioner or the commissioner's authorized representative.

3.39 All of the above demonstrates the licensee engaged in conduct that is below the standard of care for the practice of professional real estate activity in Oregon as established by the community of individuals engaged in the practice of professional real estate activity in Oregon.

(10) Violation: Based on the foregoing, Licensee is subject to discipline under ORS 696.301(12)(15) 2023 Edition, which states a licensee's real estate license may be disciplined who has: (12) demonstrated incompetence or untrustworthiness in performing any act for which the real estate licensee is required to hold a license; and (15) engaged in any conduct that is below the standard of care for the practice of professional real estate activity in Oregon as established by the community of individuals engaged in the practice of professional real estate activity in Oregon.

(11) Violation: Based on the foregoing, Licensee is subject to discipline under ORS 696.301(3) as it incorporates ORS 696.890(4)(a)(b)(c)(d)(e)(f)(g) 2023 Edition. ORS 696.890(4)(a)(b)(c)(d)(e)(f)(g) states: (4) a real estate property manager owes the property owner the following affirmative duties: (a) to deal honestly and in good faith; (b) to disclose material facts known by the property manager and not apparent or readily ascertainable to the owner; (c) to exercise reasonable care and diligence; (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; (f) to be loyal to the owner by not taking action that is adverse or detrimental to the owner's interest; and (g) to disclose in a timely manner to the owner any existing or contemplated conflict of interest.

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STATEMENT OF LAW APPLICABLE TO FINDINGS OF FACT

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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(15) states a licensee's real estate license can be disciplined if they have engaged in any conduct that is below the standard of care for the practice of professional real estate activity in Oregon.

4.4 ORS 696.396(2)(c)(B) states that the Real Estate Commissioner may revoke a real estate license if 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.

4.5 OAR 863-027-0020(1) defines the goal of progressive discipline and OAR 863-027-0020(2) sets out all factors the Real Estate Commissioner will consider when determining the level of discipline for licensees.

4.6 ORS 696.990(6)(a) states a real state licensee who is a real estate property manager or principal real estate broker and who is engaging in or who has engaged in the management of rental real estate may be required to forfeit and pay to the General Fund of the State Treasury a civil penalty of up to \$1,000.00 per day of violation, or a lesser penalty in an amount determined by the commissioner if the licensee fails to comply with rules that require the licensee to produce for inspection records related to the management of rental real estate that are maintained by the licensee as provided by ORS 696.280. ORS 696.990(6)(b) states a civil penalty imposed under this subsection may not exceed \$10,000.00.

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

4.8 In accordance with 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.

ULTIMATE FINDINGS OF FACT

5.

- 5.1 Smith failed to maintain tenant agreements for two properties.
- 5.2 Smith failed to maintain complete owners' ledgers.
- 5.3 Smith failed to disburse property management fees.
- 5.4 Smith performed property management without a property management agreement for multiple properties.
- 5.5 Smith commingled funds in a clients' trust account.
- 5.6 Smith disbursed funds from a CTA when the account carried a negative balance.
- 5.7 Smith failed to reconcile clients' trust account.
- 5.8 Smith demonstrated incompetence or untrustworthiness in performing any act for which the real estate licensee is required to have.
- 5.9 Smith failed in duties to the owner.
- 5.10 Smith's failure to timely produce, or complete failure to produce, the records constitutes grounds to impose a civil penalty as per ORS 696.990(6)(a) and (b).
- 5.11 In summary, the facts above establish grounds to revoke Smith's property manager license and assess a \$10,000.00 civil penalty.

CONCLUSIONS OF LAW

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- 6.1 Pursuant to ORS 183.417(4) and OAR 137-003-0670 Smith 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 And to Assess a Civil Penalty* ORS 696.396(1),(2)(c)(B).

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

6.4 Specifically, Smith is subject to discipline pursuant to ORS 696.301(3), (12) and (15) 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; and (15) engaging in any conduct that is below the standard of care for the practice of professional real estate activity in Oregon as established by the community of individuals engaged in the practice of professional real estate activity in Oregon.

6.5 A revocation of Smith's property manager license is appropriate for violations of ORS 696.301(3), (12) and (15).

6.6 A revocation of Smith's property manager license is appropriate under ORS 696.396(2)(c)(B). 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.

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

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

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

6.10 The specific violations are repeated here below:

(1) Violation: By failing to maintain tenant agreements for two properties, Smith violated ORS 696.301(3) and its implementing rule OAR 863-025-0045(1)(a)(b)(c) (d)(e)(3) 1/1/2024 Edition, which states: (1) the property manager must file and maintain legible copies of all tenant rental or lease agreements for the period required under OAR 863-025-0035. Each tenant rental or lease agreement prepared by a property manager for residential real estate must contain, in

addition to and not in lieu of any applicable requirements of the Residential Landlord and Tenant Act, the following: (a) the registered business name and business address of the property manager and the name and address of the tenant. If a real estate license executes the rental or lease agreement on behalf of the licensee's principal broker, the name of the real estate licensee acting for the principal broker in executing the agreement; (b) the mailing address or unit number of property being rented or leased, the amount and payment conditions of the rental or lease, and the rental or lease term; (c) the amount of and the reason for all funds paid by the tenant to the property manager including, but not limited to, funds for rent, conditionally refundable security deposits including whether held by the property manager or the property owner, and any fees or other charges; (d) signatures of the property manager, or person authorized under OAR 863-025-0015, and the tenant; (e) the date of the agreement; and (3) the property manager must file and maintain legible copies of all tenant's rental or lease agreements for the time period required under OAR 863-025-0035. A property manager must review each tenant rental or lease agreement generated by the property manager; however, a property manager may authorize in writing another individual who is licensed to or employed by the property manager to review and approve and accept tenant rental and lease agreements on behalf of the property manager. In each case of such authorization, the property manager remains responsible for each tenant rental and lease agreement approved or accepted by such real estate licensee or employee. The property manager must produce the written authorization at the request of the Commissioner or the Commissioner's authorized representative.

(2) Violation: By failing to maintain complete owners' ledgers, Smith violated ORS 696.301(3) and its implementing rule OAR 863-025-0055(3)(a)(D) 1/1/2023, 1/1/2024 Editions, which states: (3) all owner ledgers must contain at least the following information: (a) the owner's name and identifying code; and (D) the date the funds were deposited.

(3) Violation: By failing to disburse property management fees, Smith violated ORS 696.301(3) and its implementing rule OAR 863-025-0027(6) 1/1/2023 Edition, which states: (6) a property manager must disburse earned management fees from the clients' trust account at least once each month unless a different schedule of disbursement is specified in the property management agreement and may only disburse such fees if sufficient funds are available.

(4) Violation: By performing property management without a property management agreement for multiple properties, Smith violated ORS 696.301(3) as it incorporates ORS 696.890(3) 2019, 2021, and 2023 Editions, which states: (3) a real estate property manager may engage in the management of rental real estate for an owner of rental real estate only pursuant to a property management agreement.

In addition, Smith violated ORS 696.301(3) and its implementing rule OAR 863-025-0020(1) 1/1/2024 Edition, which states: (1) a property manager must not engage in the management of rental real estate without a written, unexpired property management agreement between the owner and the property manager.

In addition, Smith violated ORS 696.301(3) as it incorporates ORS 696.890(4)(a)(c)(e)(f) 2023 Edition, which states: (4) a real estate property manager owes the property owner the following affirmative duties; (a) to deal honestly and in good faith; (c) to exercise reasonable care and diligence; (e) to act in a fiduciary manner in all matters relating to trust funds; (f) to be loyal to the owner by not taking action that is adverse or detrimental to the owner's interest.

(5) Violation: By commingling funds in a clients' trust account, Smith violated ORS 696.301(3) as it incorporates ORS 696.241(5)(a)(b) 2023 Edition, which states: (5) a principal real estate broker or licensed real estate property manager may not commingle any other funds with the trust funds held in a clients' trust account, except for (a) earned interest on a clients' trust account as provided in subsections (7) and (8) of this section; and (b) earned compensation as provided in subsection (9) of this section.

(6) Violation: By disbursing funds from a clients' trust account when the account carried a negative balance and allowing the account to sustain a negative balance for more than one day, Smith violated ORS 696.301(3) and its implementing rule OAR 863-025-0040(7) 1/1/2024 Edition, which states: (7) a record of receipts and disbursements or check register for a clients' trust account may show a negative balance during the course of a day only if the record of receipts and disbursements or check register shows a positive balance at the close of the day.

(7) Violation: By disbursing funds before verifying a payment was deposited by a tenant, resulting in a negative balance on the account, Smith violated ORS 696.301(3) and its implementing rule OAR 863-025-0027(7) 1/1/2024 Edition, which states: (7) a property

manager may not disburse funds from a clients' trust account or security deposits account based upon a wire or electronic funds transfer deposited into the account, until the deposit has been verified by the property manager. The property manager must arrange with the account depository and other entities for written verification of when funds are received or disbursed by wire or electronic transfer.

(8) Violation: By failing to reconcile clients' trust accounts, Smith violated ORS 696.301(3) and its implementing rule OAR 863-025-0028(2) 1/1/2023 Edition, which 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.

In addition, Smith violated ORS 696.301(3) as it incorporates ORS 696.890(4)(a)(c)(e)(f) 2023 Edition, which states: (4) a real estate property manager owes the property owner the following affirmative duties; (a) to deal honestly and in good faith; (c) to exercise reasonable care and diligence; (e) to act in a fiduciary manner in all matters relating to trust funds; (f) to be loyal to the owner by not taking action that is adverse or detrimental to the owner's interest.

(9) Violation: By failing to provide property management records upon request by the Agency, Smith violated ORS 696.301(3) and its implementing rule OAR 863-025-0035(2)(a)(b)(c) 1/1/2024 Edition. Smith is subject to civil penalty under ORS 696.990(6)(a)(b) 2023 Edition. OAR 863-025-0035(2)(a)(b)(c) 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; and (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. ORS 696.990(6)(a)(b) states: (6)(a) except as provided in paragraph (b) of this subsection, a real estate licensee who is a real estate property manager or principal real estate broker and who is engaging in or who has engaged in the management of rental real estate may be required to forfeit and pay to the General Fund of the State Treasury a civil

penalty of up to \$1,000 per day of violation, or a lesser penalty in an amount determined by the commissioner, if the licensee fails to comply with rules that require the licensee to produce for inspection records related to the management of rental real estate that are maintained by the licensee as provided by ORS 696.280; (b) a civil penalty imposed under this subsection may not exceed \$10,000.

In addition, Smith violated ORS 696.301(3) as it incorporates ORS 696.280(3) 2023 Edition, which states: (3) records maintained under this section must at all times be open for inspection by the Real Estate Commissioner or the commissioner's authorized representative.

(10) Violation: Based on the foregoing, Licensee is subject to discipline under ORS 696.301(12)(15) 2023 Edition, which states a licensee's real estate license may be disciplined who has: (12) demonstrated incompetence or untrustworthiness in performing any act for which the real estate licensee is required to hold a license; and (15) engaged in any conduct that is below the standard of care for the practice of professional real estate activity in Oregon as established by the community of individuals engaged in the practice of professional real estate activity in Oregon.

(11) Violation: Based on the foregoing, Licensee is subject to discipline under ORS 696.301(3) as it incorporates ORS 696.890(4)(a)(b)(c)(d)(e)(f)(g) 2023 Edition. ORS 696.890(4)(a)(b)(c)(d)(e)(f)(g) states: (4) a real estate property manager owes the property owner the following affirmative duties: (a) to deal honestly and in good faith; (b) to disclose material facts known by the property manager and not apparent or readily ascertainable to the owner; (c) to exercise reasonable care and diligence; (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; (f) to be loyal to the owner by not taking action that is adverse or detrimental to the owner's interest; and (g) to disclose in a timely manner to the owner any existing or contemplated conflict of interest.

6.11 Revocation of Smith's property manager license is license is appropriate under ORS 696.396(2)(c)(B).

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ORDER

IT IS HEREBY ORDERED that Smith's property manager license is revoked.

IT IS FURTHER ORDERED that, pursuant to ORS 696.990(6)(a)(b) and based upon the violation set forth above, Smith pay a civil penalty of \$10,000.00, said penalty to be paid to the General Fund of the State Treasury by paying the same to OREA.

Dated this 1st day of May, 2025.

OREGON REAL ESTATE AGENCY

Signed by:

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Steven Strode
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.