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Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES

A Statement of Need and Justification accompanies this form..

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on September 11, 2006 by the
Date prior to or same as filing date

KEA 2-2006 (Temp)

Real Estate Agency		OAR Chapter 863	
Agency and Division		Administrative Rules Chapter Number	
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To become effective	<u>September 15, 2006</u>	through	<u>March 12, 2007</u>
	Date upon filing or later		A maximum of 180 days including the effective date.

RULE CAPTION

Property management recordkeeping; storage of records; production of records.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

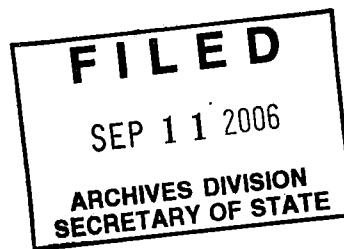
List each rule number separately, 000-000-0000.

ADOPT: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

OAR 863-025-0080

AMEND:

- OAR 863-025-0005
- OAR 863-025-0025
- OAR 863-025-0035
- OAR 863-025-0040
- OAR 863-025-0045



SUSPEND:

None

ORS 183.335 & 696.385

Stat. Auth.

Other Authority

ORS 696.241, 696.280 & 696.631

Stats. Implemented

RULE SUMMARY

This rulemaking minimizes the current significant fiscal impact of printing and storing records; reflects the current use of electronic transactions and recordkeeping; allows for off-site storage of records; eliminates specific methods of recordkeeping; places the burden of producing all required records in a timely manner on the property manager; and provides the Real Estate Agency the ability to perform efficient audits in a timely manner. The property management rules affect approximately 6,750 property management clients' trust accounts.

Scott W. Taylor

September 11, 2006

Authorized Signer

Printed name

Date

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Real Estate Agency
Agency and Division

OAR Chapter 863
Administrative Rules Chapter Number

In the Matter of: Adopting OAR 863-025-0080 and amending OAR 863-025-0005, OAR 863-025-0025, OAR 863-025-0035, OAR 863-025-0040 and OAR 863-025-0045.

Rule Caption: Property management recordkeeping; storage of records; production of records.

Statutory Authority: ORS 183.335 & 696.385

Other Authority:

Stats. Implemented: ORS 696.241, 696.280 & 696.631

Need for the Temporary Rule(s):

This rulemaking minimizes the current significant fiscal impact of printing and storing records at the location of the property manager's place of business by reflecting the current use of electronic transactions and recordkeeping; eliminating specific methods of recordkeeping; allowing for off-site storage; placing the burden of producing all required records in a timely manner on the property manager; and providing the Real Estate Agency the ability to perform efficient audits in a timely manner. These rules reduce the regulatory burden without compromising regulatory standards. The property management rules affect approximately 6,750 property management clients' trust accounts.

Documents Relied Upon, and where they are available:

The following documents relied upon are available for inspection at the Real Estate Agency, 1177 Center St. NE, Salem, OR: Property Management Rules Working Group Agendas and Notes for the meetings dated: April 25, May 9, June 1, June 10, June 19, July 19 and August 10, 2006. Testimony of John DiLorenzo, Jr., on behalf of the Metro Multi-Family Housing Association, before the Joint Real Estate Agency Oversight Task Force on March 23, 2006. Memorandum to the Real Estate Agency Board, dated August 18, 2006. Minutes of the Real Estate Agency Board for August 18, 2006. The following records may be obtained from the records of the Oregon Legislature: Agenda and audio of the proceedings of the Joint Real Estate Agency Oversight Task Force on March 23, 2006. Temporary rules are available from the Agency's Rules Coordinator and are posted on the agency's website at www.rea.state.or.us.

Justification of Temporary Rule(s):

The Real Estate Agency and a group of seven individuals representing a variety of interests (large firms, small firms, commercial and/or residential property managers) of licensed property managers in Oregon formed a collaborative rulemaking Property Management Rules Working Group (the "Working Group") in the spring of 2006. The purpose of the Working Group was to review all property management rules under OAR Chapter 863 and to arrive at consensus in amendments and/or developing new rules. The group met seven times: on April 25, May 9, June 1, June 10, June 19, July 19 and August 10, 2006.

The Property Management Rules Working Group addressed a number of existing rules that required property managers to create and store records in specific places and in specific formats that are extremely costly to property managers. For example, one of the many documents property managers are required to print and store is a tenant ledger for each tenant. The rules require property managers to print out tenant ledgers each month. For a typical 100-unit apartment building, this amounts to approximately 500 pages of documents per month. In addition, the rules require that the property manager store all records at the property manager's place of business for a period of six years. For the 100-unit apartment building, for a six-year period, the property manager would need to store 36,000 pages of tenant ledgers at his or her place of business.

The Working Group (that included the Real Estate Agency) decided that the significant fiscal impact of recordkeeping and of complying with the complexity of the existing rules placed a significant financial burden on property managers. The property management rules affect approximately 6,750 property management clients' trust accounts. The Working Group determined that the Real Estate Agency's failure to act promptly and adopt temporary rules would result in serious prejudice to the interests of the parties concerned. The agency adopts these rules under the provisions of ORS 183.335(5) because its failure to act promptly will result in serious prejudice to the interest of the parties concerned because of the current and unnecessary significant financial burden on property managers.

Authorized Signer

Scott W. Taylor
Printed name

September 11, 2006
Date

OAR 863-025-0005 Application and Purpose

(1) OAR 863-025-0010 to 863-025-0080 apply to the activities of a real estate property manager in the management of rental real estate.

(2) The purposes of OAR 863-025-0010 to 863-025-0080 are:

(a) To specify requirements for the management of rental real estate as defined in ORS 696.010(9);

(b) To protect owners and tenants of rental real estate; and

(c) To make the real estate property manager responsible for establishing a system of recordkeeping that

(A) Provides the Agency with access to the records of the real estate property manager, and

(B) Complies with OAR 863-025-0010 to 863-025-0080 and ORS Chapter 696.

(3) The goal of the Agency is to encourage real estate property managers to comply with the applicable statutes and rules through education and, if necessary, through the use of progressive discipline as defined in OAR 863-015-0230.

(4) Section (3) of this rule does not limit the Agency's authority to reprimand, suspend or revoke a real estate property manager license under ORS 696.301.

Stat. Auth.: ORS 183.335 & ORS 696.385

Stats. Implemented: ORS 696.361

OAR 863-025-0025 Property Management Client Trust Account Requirements

(1) A property manager shall open and maintain at least one clients' trust account under ORS 696.241 for the deposit of funds received on behalf of owners of property managed under property management agreements. This account shall be labeled "Clients' Trust Account." A property manager, at his or her discretion, may include additional identifying language. All funds accepted by any property manager by or on behalf of tenants under a property management agreement shall be placed in a clients' trust account. A property manager shall be an authorized signer on each client's trust account utilized in the manager's licensed activity and shall control the receipts and disbursements on each account. Preprinted checks used to disburse funds from a clients' trust account shall be pre-numbered and bear the words "Clients' Trust Account" upon the face of the checks. Checks generated or filled in by a computer in use by the property manager shall be printed on prenumbered check blanks or shall be numbered consecutively as they are generated or filled in by the computer. A property manager shall account for all checks, including but not limited to voided checks, as part of the records maintained by the property manager.

(2) A property manager accepting security deposits on behalf of an owner shall establish a separate clients' trust account labeled "Clients' Trust Account -- Security Deposits." A property manager, at its discretion, may include additional identifying language. When the Property Management Agreement and the applicable lease or rental agreement provide that the security deposit shall be transferred to the owner, the funds may be deposited in the Clients' Trust Account for the property (instead of the Clients' Trust Account - Security Deposits), and then disbursed to the owner in the accounting period in which they are received upon availability of funds.

(3) Financial dealings by a property manager under a property management agreement shall comply with the following:

(a) A property manager shall not execute or issue a check from the clients' trust account prior to the existence of a sufficient credit balance to cover the check in the owner's ledger or tenant's ledger account against which the check is executed or issued.

(b) When the computer fills in or generates checks and check copies, all check stock and check copies must be consecutively pre-numbered or, if unnumbered check stock is used, the computer must continually and consecutively number the checks as generated. The account number shall appear in the magnetic coding on the check face to identify the account number for reading by the bank's computerized accounting system.

(c) A property manager may transfer funds between the owners' ledger account of two or more different owners only with a prior written and dated agreement signed by the affected owners who are authorizing the transfer. The agreement shall be separate from the property management agreements of the owners and include the terms of repayment and collection and any interest to be paid by the borrowing owner. The property manager

shall have a separate agreement for each transfer between owners. The transfer shall be accomplished by the writing of billings and receipts as evidence of the charging and crediting of the appropriate owners' ledger accounts. The property manager shall give to each owner a separate monthly accounting on the transfer or include the accounting in the regular monthly report to the owner. At the time of the transfer the property manager must enter the transfer information on each affected owners' ledger account, including but not limited to the amount of the transfer, date of the transfer and the source of the transferred funds;

(d) A property manager may only transfer funds between two or more ledger accounts maintained for the same owner with the prior written approval of the owner. The owner's prior approval may be granted as a part of the property management agreement. At the time of the transfer the property manager shall enter the transfer information in each affected owners' ledger account, including but not limited to the amount of the transfer, date of the transfer and the source of the transferred funds;

(e) A property manager shall not withdraw, pay or transfer funds for payment of generally authorized expenses from an owners' ledger account in excess of the actual credit balance of the account. This credit balance shall not include the amount of the tenant's conditionally refundable deposits being held at the time of the withdrawal, payment or transfer of funds.

(f) If sufficient funds are available, a property manager shall withdraw earned management fees from the appropriate client's trust account at least once each month, unless otherwise provided in the owner's property management agreement. The records journal or register and ledger entries for payment of fees from the client trust account shall include the date, the amount of the management fees withdrawn, the check number, the owner's ledger account number or identifying owner code. Property management fees are considered earned and may be withdrawn when the monthly or other periodic cycle represented by the fees being withdrawn has been completed. The monthly cycle can begin and end on a stipulated date every month, as long as the date is consistent from month to month.

(g) No disbursement from a clients' trust account shall be made by a property manager based upon a wire or electronic transfer deposited into the clients' trust account, until the deposit has been verified by the property manager. The property manager shall arrange with the account depository and other entities for written verification of when funds are received or disbursed by wire or electronic transfer. A property manager shall post receipt and disbursement of funds by wire or electronic transfer in the same manner as other receipts and disbursements;

(h) Upon request by the Commissioner or an authorized representative of the Commissioner, a property manager shall demonstrate that a sufficient credit balance existed in an owner's ledger account at the time of executing or issuing a check on behalf of the owner by producing financial records showing that the disbursement of these funds did not involve the use of any other client's trust funds deposited into a clients' trust account and credited to any other owner's ledger account.

(i) A property manager shall not utilize any form of debit card issued by financial institutions on Client Trust Accounts.

(4) If a property manager maintains a separate clients' trust account for a property management agreement involving one owner only, the property manager may maintain either a receipts and disbursement journal or an owner's ledger, rather than both such journal and ledger.

(5) Reconciliation -- Property Management. A property manager shall prepare and reconcile all property management clients' trust accounts at least once each month. Property Managers with more than one property management Client Trust Account may reconcile property management Client Trust Accounts on different days if the reconciliations maintain an adequate audit trail. The property manager shall preserve the bank statements and monthly reconciliations and file the bank statements and monthly reconciliations in monthly sequence. The total of the balances of the individual owners' ledgers shall equal the balance as shown in the check register or record of receipts and disbursements and shall also equal the reconciled bank balance of the property management client trust account. The property manager must date and sign the reconciliation upon its completion.

(6) Reconciliation -- Security Deposits. A property manager shall reconcile all tenant security deposit client trust accounts at least once each month. Property Managers with more than one tenant security deposit Client Trust Account shall reconcile all of the tenant security deposit Client Trust Accounts as of the same day. The property manager shall preserve the bank statements and monthly reconciliations and file the bank statements and monthly reconciliations in monthly sequence. The total of the balances of the individual tenant security deposit liabilities shall equal the balance as shown in the check register or record of receipts and disbursements and shall also equal the reconciled bank balance of the security deposit client trust account. The property manager must date and sign the reconciliation upon its' completion.

(7) Reconciliation -- Authority. A property manager or principal real estate broker may authorize, in writing, another person to review and approve the reconciliation of the Clients' Trust Account and to sign checks authorizing disbursements from the Clients' Trust Account. In case of such authorization, the property manager or principal real estate broker remains responsible for the Clients' Trust Account. The property manager or principal real estate broker shall produce the written authorization at the request of the Commissioner or the Commissioner's authorized representative.

(8) Interest Bearing Accounts. Funds received by a property manager may be placed by the property manager in a federally insured interest-bearing client trust bank account, designated as a Client Trust Account, but only with the prior written approval of all parties having an interest in the trust funds. The earnings of such interest-bearing account shall not inure to the benefit of the property manager, unless expressly approved in writing by all parties having an interest in the trust funds before deposit of the trust funds. The written approval necessary to establish an interest-bearing account shall specify to whom and under what circumstances the interest earnings from the account will accrue

and be paid. The property manager's interest in or receipt of any of the interest earnings is not a commingling of trust funds with a licensee's personal funds under ORS 696.301(10). Use of interest-bearing Clients' Trust Accounts for the deposit of funds received under a property management agreement is subject to ORS 696.241(5).

(9) Checks used to disburse funds from a Clients' Trust Account shall comply with OAR 863-025-0025(3)(b) and bear the words "Clients' Trust Account " upon the face thereof. A property manager shall account for all checks, including voided checks, as a part of the records maintained by the property manager.

(10) A property manager shall record the transfer of any funds from a clients trust account by a Clients' Trust Account check or by written proof of transmittal or receipt retained in the property manager's records. The property manager shall record the transfer of other documents by written proof of transmittal or receipt retained in the property manager's records. With the written consent of an owner, a property manager may transfer funds electronically via the Internet or Automated Clearing House (ACH) software from a client's trust account to a bank account maintained by the owner and a property manager may make payments electronically to a vendor's account for expenses relating to the owner's property. If the software program used for the transfer does not automatically update the owner's ledger, the property manager shall manually record the transfer in the owner's ledger. At the time the transfer is made, the property manager shall print and preserve a hard copy of the electronic record of the transfer.

(11) With the written consent of an owner, a property manager may use a bank lockbox process in which the bank collects payments from tenants, creates an electronic record of the transaction and deposits the payments into the appropriate account following the instructions of the property manager. The property manager is responsible for determining that the lockbox process and lockbox software program provide controls adequate to ensure the security of the funds and to provide an accurate accounting for them. For the purposes of this section, the bank will be considered an agent of the property manager. The software program for the lockbox process must permit monthly reconciliations of the accounts into which the deposits are made and printing of daily deposit records for the period of time required for retention of other records.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.241, 696.280 & 696.361

OAR 863-025-0035 Records; Required Records; Maintenance; Production

(1) Records of property management activity will be considered complete and adequate if they contain, at least, the following:

(a) A legible copy of the executed property management agreement, and legible copies of all subsequently executed documents pertaining to that agreement, for each owner that complies with all provisions of OAR 863-025-0020.

(b) Client Trust Account records maintained for all funds handled by a property manager on behalf of an owner or owners that complies with ORS 696.241, OAR 863-025-0010, 863-025-0025 and 863-025-0030.

(c) An owner's ledger maintained for each property management agreement that complies with OAR 863-025-0055.

(d) A record of receipts and disbursements maintained for each property management agreement that complies with OAR 863-025-0040.

(e) A legible copy of tenant agreements maintained for each property management agreement that complies with OAR 863-025-0045.

(f) A tenant's ledger maintained for each tenant of real property managed by the property manager that complies with all provisions of OAR 863-025-0050.

(g) A record of cash receipts that complies with OAR 863-025-0060.

(h) Records of the reconciliation of each client's trust account that complies with OAR 863-025-0025. A property manager shall maintain cancelled checks with the bank statements to which the checks pertain.

(i) A record of deposits that complies with OAR 863-025-0065.

(2) When a property manager uses a computerized system for the production and maintenance of records and reports required in the property manager's licensed activity:

(a) At least once each month, the property manager shall back up any data that is stored in the computerized system; and

(b) Posting of owner ledgers, record of receipts and disbursements, tenant ledgers and manipulation of information and documents shall be maintained in a format that will readily enable tracing and reconciliation.

(3) A property manager shall maintain all records of property management activity required under section (1) of this rule for a period of six years following the date on which such agreement or document is superseded, terminated, has expired or otherwise ceased to be used in property management activities.

(4) A property manager may maintain all records under section (1) of this rule within this state at a location other than the property manager's licensed business location, if the property manager first:

(a) Notifies the Commissioner in writing of the intended removal of such records from the property manager's licensed business location and states the address of the location and the date the records will be relocated; and

(b) Provides written authorization to the Commissioner to inspect such records at the new location that includes the name and telephone number of any necessary contact person and the means of gaining access to the records.

(5) A property manager may maintain records required under section (1) of this rule outside this state if the property manager first executes an agreement, in a form approved by the Commissioner:

- (a) Affirming that the Agency retains jurisdiction over the records;
- (b) Stating that the property manager intends to remove such records from the property manager's licensed business location to a location outside this state;
- (c) States the address of the new location and the date the records will be relocated; and
- (d) Authorizes the Commissioner to inspect such records at the location and states the name and telephone number of any necessary contact person and the means of gaining access to the records.

(6) A property manager shall produce required records of property management activity for inspection by the Agency as follows:

- (a) When the Agency makes a request for production of property management records, the property manager shall provide such records within no less than five business days; and
- (b) If the Agency has reasonable ground 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 provided to the Agency immediately; and
- (c) Failure to produce such records within the timelines stated in subsection (a) or (b) of this rule is a violation of ORS 696.301.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.280 & 696.361

OAR 863-025-0040 Record of Receipts and Disbursements

(1) A property manager shall prepare and maintain, at least monthly, a record of receipts and disbursements or a check register for each client's trust account in which the manager must record each receipt of funds and each disbursement of client trust account funds made by the manager under a property management agreement. If a property manager maintains a separate client's trust account for a property management agreement involving only one owner, the property manager may maintain either a Record of Receipts and Disbursements or an Owner's Ledger.

(2) When there is more than one property in a client trust account, each entry for a receipt or a disbursement shall be identified with the applicable owner's identifying code assigned by the property manager to the corresponding property management agreement with the owner and shall set forth the following information:

- (a) Date of deposit;
- (b) Amount of deposit and identify from whom deposit received;
- (c) Date of each related disbursement;
- (d) Check number of each related disbursement;
- (e) Amount and identity of payee for each related disbursement;
- (f) If applicable, the dates and amounts of interest earned and credited to the account; and
- (g) A record of the daily balance shall be made available to the Commissioner or to the Commissioner's authorized representatives.

(3) Upon any activity, the property manager shall post the record of receipts and disbursements or the check register and each owner's ledger account showing all receipts and disbursements made by the property manager in accordance with the property management agreement for an owner since the last posting of the record, register or account.

(4) In maintaining a balance for each record of receipts and disbursements, the property manager may aggregate receipts and disbursements affecting the balance of the record on a daily basis. The property manager may adjust the balance in the record reflecting the change in the balance from the aggregated individual receipts and disbursements. If the property manager posts the record using an aggregated total of receipts and disbursements, the property manager shall maintain account detail in another report showing the nature and amount of each receipt and disbursement as otherwise required, and make such detail available to the Commissioner or the Commissioner's authorized representatives upon request. The property manager shall preserve the record detail as required records of the property manager's licensed activity.

(5) Notwithstanding OAR 863-025-0025, a negative balance in a Client Trust Account may occur during the course of the day if, except in the case of a check returned for insufficient funds, the account is not negative at the close of the day.

(6) A property manager shall retain all paid bills and receipts explaining the amount of and purpose for the receipt or disbursement entered in the record of receipts and disbursements.

(7) A property manager may engage in electronic banking transactions, including the use of the Internet or by telephone, if a record of the transaction, sufficient to establish an audit trail, is created and maintained by:

(a) Printing a copy of the Internet transaction that includes the date, time, and nature of the transaction; or

(b) Making a written notation of the telephone transaction including the date, time, and nature of the transaction; or

(c) Creating an electronic document that readily relates to the transaction containing the information in (a) or (b) of this section.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.280 & 696.361

OAR 863-025-0045 Tenant Agreements

(1) Residential. The property manager shall file and maintain legible copies of all tenant's rental or lease agreements for the time period required by these rules. Each tenant rental or lease agreement prepared by a property manager for residential real estate shall contain, in addition to and not in lieu of, any applicable requirements of the Residential Landlord and Tenant Act the following:

- (a) The licensed name and business address of the property manager and the name and address of the tenant. If a real estate licensee executes the rental or lease agreement on behalf of the licensee's principal real estate broker, the name of the real estate licensee acting for the principal real estate 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; and
- (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, and any fees or other charges.

(2) Residential and Non-Residential. The property manager shall file and maintain legible copies of all tenant's rental or lease agreements for the time period required by these rules. A property manager shall review each tenant's 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 tenants' rental and lease agreements on behalf of the property manager. In case of such authorization, the property manager remains responsible for each tenant's 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.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.280 & 696.361

OAR 863-025-0080 Audits and Compliance Reviews

(1) Unless the Agency has reasonable grounds to believe that the funds of an owner or tenant are missing or have been misappropriated, the Agency shall provide a property manager with at least five business days' written notice before the agency conducts a compliance review and audit of the property manager.

(2) After a compliance review and audit of a property manager under section (1) of this rule, if the Agency determines that a property manager is not in compliance with ORS 696.010 to 696.495, ORS 696.600 to 696.785, ORS 696.800 to 696.870, or OAR Chapter 863, the Agency shall allow the property manager at least 30 days to cure the noncompliance without sanction unless the Agency has reasonable grounds to believe that the funds of an owner or tenant are missing or have been misappropriated.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.280 & 696.361