

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

3-12

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on March 12, 2007 by the
Date prior to or same as filing date

Oregon Real Estate Agency
Agency and Division

863

Administrative Rules Chapter Number

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to become effective March 12, 2007. Rulemaking Notice was published in the October 2007 Oregon Bulletin.**
Date upon filing or later Month and Year

RULE CAPTION

Property management agreements, trust accounts, production and storage of records; written policies.

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)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:

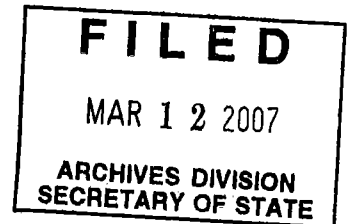
OAR 863-025-0080

AMEND:

OAR 863-025-0005	OAR 863-025-0010	OAR 863-025-0015
OAR 863-025-0020	OAR 863-025-0025	OAR 863-025-0030
OAR 863-025-0035	OAR 863-025-0040	OAR 863-025-0045
OAR 863-025-0050	OAR 863-025-0055	OAR 863-025-0060
OAR 863-025-0065	OAR 863-025-0070	

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; places the responsibilities of property managers in the property management agreements; 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.

Katie Cannon, Acting Commissioner

March 12, 2007

Authorized Signer

Printed name

Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. **The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

REA 1-2001

**Note to Secretary of State:
Index included because the titles of some of the rules have changes.**

**OAR CHAPTER 863
DIVISION 25
PROPERTY MANAGEMENT RULES**

EFFECTIVE MARCH 12, 2007

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863-025-0010 Definitions

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863-025-0080 Audits and Compliance Reviews

**OAR CHAPTER 863
DIVISION 25
PROPERTY MANAGEMENT RULES**

EFFECTIVE MARCH 12, 2007

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 & 696.385

Stats. Implemented: ORS 696.361

Hist.: REA 3-1987, f. 12-3-87, ef. 1-1-88; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0207; REA 2-2006(Temp), f. 9-11-06, cert. ef. 9-15-06 thru 3-12-07

863-025-0010

Definitions

In addition to the definitions used in ORS 696.010 and 863-015-0120, as used in OAR 863-025-0015 to 863-025-0080, unless the context requires otherwise:

(1) "Bank account" means an account in this state established by a property manager for receiving, holding and disbursing trust funds in a bank as defined in ORS 696.010(3).

(2) "Clients' Trust Account" means a bank account labeled as "Clients' Trust Account" on all bank records and checks that is established and maintained by a property manager, acting on behalf of an owner under a property management agreement, for depositing, holding and disbursing funds received by the property manager on behalf of an owner, including application fees and application screening fees.

(3) "Employee" means a non-licensed individual employed by a property manager for wages or a salary.

(4) "Identifying code" means a unique series of letters and/or numbers assigned by a property manager to a property management agreement at the time the agreement is signed by the parties and used on all transactions and records to reference the agreement.

(5) "Owner" means a person or persons who own rental real estate that is managed by a property manager.

(6) "Property manager" means a real estate licensee authorized to engage in management of rental real estate as defined in ORS 696.010(9).

(7) "Records" and "property management records" mean a complete and adequate documentation of the management of rental real estate.

(8) "Security Deposit" means a conditionally refundable payment or deposit of money, however designated, the primary function of which is to secure the performance of a rental agreement or any part of a rental agreement.

(9) "Security Deposits Account" means a clients' trust account labeled as "Clients' Trust Account—Security Deposits" on all bank records and checks that is established and maintained by a property manager, acting in a fiduciary capacity on behalf of an owner under a property management agreement, for depositing, holding and disbursing security deposit funds.

(10) "Sufficient funds" or "sufficient credit balance" means an amount of funds on an owner's ledger or a tenant's ledger that is enough to meet the amount of a planned disbursement from a clients' trust account or a security deposits account but which shall not include any security deposits in a clients' trust account that are required to be held pending a termination of a rental agreement. Only funds belonging to the owner or tenant on whose behalf the disbursement is planned may be considered in determining if there are sufficient funds or a sufficient credit balance.

Stat. Auth.: ORS 183.335 & ORS 696.385

Stats. Implemented: ORS 696.361

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

863-025-0015

Written Policies and Delegation of Authority

(1) Each property manager shall develop, maintain and follow written policies for persons and activities under this rule.

(2) Each policy shall state the effective date of the policy.

(3) Policies must specify the duties, responsibilities, supervision and authority, including any authority to handle funds in a clients' trust account or security deposits account, for the following persons:

(a) A licensed property manager employed by the property manager, including any authority to negotiate tenant rental and lease agreements;

(b) An active real estate licensee engaged in the management of rental real estate under the supervision and control of a principal broker, including any authority to sign property management agreements under OAR 863-025-0020(6) and tenant rental and lease agreements under OAR 863-025-0045(2); and

(c) An employee of the property manager, including any authority to:

(A) Negotiate tenant rental or lease agreements under OAR 863-025-0045(2);

(B) Check applicant or tenant references, including credit references;

(C) Physically maintain the real estate of an owner;

(D) Conduct tenant relations;

(E) Collect rent and other payments;

(F) Supervise premise managers; or

(G) Discuss financial matters relating to management of the real estate with the owner; and

(d) Contractors.

(4) Policies must include provisions that ensure the protection and confidentiality of the owner's financial information, except as required under subpoena or court order or by applicable law, and except as permitted by the owner, even after the termination of the property management agreement.

(5) Policies must include provisions that specify the production and maintenance of all reports, records and documents required under this division.

(6) The following delegations of the property manager's authority must be in writing, dated and signed by the property manager, and kept with written policies:

(a) Negotiate and sign property manager agreements under OAR 863-025-0020(6);

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- (b) Review and approve reconciliations and receive and disburse funds under OAR 863-025-0025(21); and
- (c) Review, approve and accept tenant rental and lease agreements under OAR 863-025-0045(2).

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.361

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-025-0020

Property Management Agreements

- (1) A property manager shall not engage in the management of rental real estate without a written property management agreement between the owner and the property manager.
- (2) A property management agreement shall include, but not be limited to:
 - (a) The address or legal description of the owner's rental real estate;
 - (b) The duties and responsibilities of the property manager and the owner;
 - (c) The authority and powers given by the owner to the property manager;
 - (d) The term of the agreement and the method for termination;
 - (e) The terms and conditions of the agreement;
 - (f) The management fees, application fees, screening fees, rebates, discounts, overrides and any other form of compensation to be received by the property manager for management of rental real estate including when such compensation shall be earned and when it shall be paid;
 - (g) A description of the monthly statements of accounting the property manager shall provide to the owner;
 - (h) The disposition of the records of the management of the owner's rental real estate after termination of the agreement;
 - (i) Disclosures of the use of any employees or a business in which the property manager has a pecuniary interest, that will perform work on the property;
 - (j) A statement that the property manager shall disclose to the owner in writing and in a timely manner, any use of employees or a business in which the property manager has a pecuniary interest, to perform work on the property;
 - (k) An identifying code;
 - (L) Signatures of the property manager or other person authorized in section (5) of this rule and the owner; and
 - (m) The date of the agreement.
- (3) If the property manager and owner agree to any of the following terms, such provisions must be included in the property management agreement:
 - (a) Payment of a referral fee, rent credit or other compensation to a tenant as allowed under ORS 696.290(2);
 - (b) Placement of trust funds received by a property manager in a federally insured interest-bearing clients' trust account or security deposits account as allowed under ORS 696.241(5), including provisions specifying to whom the interest earnings inure; and
 - (A) If the interest earnings inure to the benefit of the owner, when such interest earnings will be disbursed; and
 - (B) If the interest earnings inure to the benefit of the property manager, that such interest shall be disbursed to the property manager within three banking days from the date earned as provided in OAR 863-0025-0025(7).
- (4) Any amendment or addendum to the property management agreement must be in writing and include the identifying code, the date of the amendment, the signature of the property manager and the signatures of all owners who signed the initial property manager agreement.
- (5) Only a principal real estate broker or real estate broker may enter into an agreement, which must be separate from the property management agreement, authorizing the real estate broker to

represent an owner in the purchase, sale, lease-option or exchange of the rental real estate that shall include:

- (a) The scope of the professional real estate activity;
 - (b) The term of the agreement;
 - (c) The compensation to be paid by the owner to the broker;
 - (d) Signatures of the real estate broker and the owner; and
 - (e) The date of the separate agreement.
- (6) A property manager must negotiate and sign a property management agreement, except that a principal real estate broker engaging in the management of rental real estate may delegate such authority under OAR 863-025-0015(6) to a real estate licensee under the supervision and control of the principal real estate broker.
- (7) The property manager shall promptly deliver a legible copy of the fully executed property management agreement, and any addenda or amendments, to the owner.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.361 & 696.280

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-025-0025

Clients' Trust Account and Security Deposits Account Requirements

- (1) A property manager shall open and maintain at least one clients' trust account as defined in OAR 863-025-0010.
- (2) Only the following funds may be held in a clients' trust account:
 - (a) Funds received by the property manager on behalf of an owner; and
 - (b) Interest earned, but only if the account is a federally insured interest-bearing account and the property management agreement complies with OAR 863-025-0020(3)(b).
- (3) Except as provided in section (6) of this rule, a property manager who receives security deposits on behalf of an owner shall open and maintain a security deposits account as defined in OAR 863-025-0010, that is separate from the property manager's clients' trust account.
- (4) Except as provided in section (6) of this rule and OAR 863-025-0030, a property manager who receives a security deposit on behalf of an owner shall deposit the security deposit into the property manager's security deposits account within five banking days after receipt.
- (5) Only the following funds may be held in a security deposits account:
 - (a) Security deposits as defined in OAR 863-0025-0010; and
 - (b) Interest earned, but only if the account is a federally insured interest-bearing account and the property management agreement complies with OAR 863-025-0020(3)(b).
- (6) When a property management agreement and a corresponding lease or rental agreement provide that the security deposit shall be transferred to and held by the owner, the security deposit funds shall be deposited in the clients' trust account and disbursed to the owner in the month in which they are received.
- (7) If interest earned in a clients' trust account under section (2)(b) of this rule or in a security deposits account under section (5)(b) of this rule inures to the benefit of the property manager, such interest must be disbursed to the property manager within three banking days of the date the interest is earned.
- (8) Funds in a clients' trust account or security deposit account may not be deposited, held or disbursed by an owner.
- (9) A property manager shall be an authorized signer on each client's trust account and any security deposits account and is solely responsible for the receipts and disbursements on each bank account.

(10) A property manager shall maintain and account for all checks used for a clients' trust account or security deposits account, including but not limited to voided checks. All such checks shall:

- (a) Include the account number;
- (b) Be pre-numbered or, if checks are computer-generated, must be numbered consecutively;
- (c) If the account is a clients' trust account, include the words "clients' trust account," but may include additional identifying language; and
- (d) If the account is a security deposits account, include the words "clients' trust account—security deposits," but may include additional identifying language.

(11) A property manager shall not disburse funds from a clients' trust account or security deposits account unless there are sufficient funds, as defined in OAR 863-025-0010, in the ledger account against which the disbursement is made.

(12) A property manager may only transfer funds from an owners' ledger account to one or more different owners' ledger accounts if:

- (a) Each of the affected owners authorizing the transfer have signed and dated an agreement authorizing such transfer that is separate from any property management agreements;
- (b) At the time of the transfer, the property manager enters 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 or destination of the transferred funds, as appropriate; and
- (c) The property manager gives each owner a separate monthly accounting on the transfer or includes the accounting of the transfer activity in the regular monthly report to the owner.

(13) A property manager may only transfer funds between two or more owner's ledger accounts maintained for the same owner if:

- (a) The owner has given the property manager prior written approval in the property management agreement or in an addendum to the agreement; and
- (b) At the time of the transfer, the property manager enters the transfer information in each of the owner's affected ledger accounts including, but not limited to, the amount of the transfer, date of the transfer and the source or destination of the transferred funds, as appropriate.

(14) A property manager shall disburse earned management fees from the client's trust account at least once each month, unless a different schedule of disbursement is specified in the property management agreement and only if sufficient funds are available.

(15) The monthly cycle for a clients' trust account or security deposits account may begin and end on a stipulated date every month, if the date is consistent from month to month.

(16) A property manager shall 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 shall arrange with the account depository and other entities for written verification of when funds are received or disbursed by wire or electronic transfer.

(17) Upon request by the commissioner or an authorized representative of the commissioner, a property manager shall demonstrate that a sufficient credit balance, as defined in OAR 863-025-0010, existed in a ledger account at the time of a disbursement is made from a clients' trust account or security deposits account by producing financial records showing that such disbursement did not involve the use of any other owner's or tenant's trust funds.

(18) A property manager shall not utilize any form of debit card issued by financial institutions on a client trust account or security deposits account.

(19) A property manager shall reconcile each clients' trust account at least once a month and property managers with more than one clients' trust account may reconcile these accounts on different dates if the reconciliations maintain an adequate audit trail; and

- (a) The property manager shall preserve and file the bank statements and monthly reconciliations in monthly sequence;
- (b) The reconciliation shall demonstrate that the following balances are equal, and if not equal, the reconciliation shall contain full and complete explanations for any discrepancies:
 - (A) The reconciled bank balance of the clients' trust account;

- (B) The balance in the check register or the record of receipts and disbursements;
 - (C) The total of all positive owners' ledgers; and
 - (c) The property manager shall date and sign the completed reconciliation.
- (20) A property manager shall reconcile each security deposits account at least once a month and property managers with more than one security deposits account may reconcile these accounts on different dates if the reconciliations maintain an adequate audit trail; and
- (a) The property manager shall preserve and file the bank statements and monthly reconciliations in monthly sequence;
 - (b) The reconciliation shall demonstrate that the following balances are equal, and if not equal, the reconciliation shall contain full and complete explanations for any discrepancies:
 - (A) The reconciled bank balance of the security deposits account;
 - (B) The balance in the check register or the record of receipts and disbursements;
 - (C) The total of all positive tenants' ledgers; and
 - (c) The property manager shall date and sign the completed reconciliation.
- (21) A property manager may delegate the property manager's authority to review and approve reconciliations and to receive and disburse funds for a clients' trust account or security deposits account to another person if the property manager complies with the provisions of OAR 863-025-0015; however, the property manager remains solely responsible for all funds and transactions.
- (22) Security deposits received by a property manager may be placed in a federally insured interest-bearing security deposits account only if:
- (a) The property management agreement includes a provision for such an account under OAR 863-025-0020(3)(b);
 - (b) The tenant or tenants whose security deposits are deposited into such account have provided written approval for such an account; and
 - (c) The provisions in subsections (a) and (b) of this rule specify to whom and under what circumstances the interest earnings shall accrue and be disbursed.
- (23) The property manager's interest in or disbursement to the property manager of interest earnings from a clients' trust account or security deposits account is not a commingling of trust funds with a licensee's personal funds.
- (24) A property manager shall record the transfer of any funds from a clients' trust account or security deposits account by a check, 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. 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.
- (25) 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 clients' trust account by following the written instructions of the property manager only if the lockbox process is authorized in a property management agreement and:
- (a) 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;
 - (b) For the purposes of this rule, the bank is considered an agent of the property manager; and
 - (c) 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

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2006(Temp), f. 9-11-06, cert. ef. 9-15-06 thru 3-12-07

863-025-0030

Tenant Security Deposits

(1) Except as provided in OAR 863-025-0025, all tenants' security deposits received by a property manager shall be deposited and maintained in a security deposits account as defined in OAR 863-025-0010. All tenants' security deposits shall be maintained until:

- (a) The forwarding of the tenant's security deposit by the property manager to the owner of the property according to the terms of the tenant's rental or lease agreement and the property management agreement;
- (b) The expenditure of the tenant's security deposit for purposes authorized by the tenant's rental or lease agreement and the applicable property management agreement;
- (c) The refund of any deposit to the tenant according to the terms of the tenant's rental or lease agreement or the property management agreement; or
- (d) The transfer of the tenant's deposit to the owner, another property manager or to an escrow agent upon the termination of the property management agreement, based upon the prior written instructions by the owner to the terminating property manager authorizing the transfer.

(2) If a security deposit is received as part of a larger check containing funds other than security deposits, the property manager may deposit the check into a clients' trust account of the property manager. However, the portion of the funds constituting security deposits shall be deposited into the security deposits account within three (3) banking days after deposit of the check containing the security deposit.

(3) When a clients' trust account is established for a single property and 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 and then disbursed to the owner in the month in which they are received and upon availability of the funds.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.241, 696.280 & 696.361

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-025-0035

Records; Required Records; Maintenance; Production

(1) The property manager's records of the management of rental real estate will be considered complete and adequate if they contain, at least, the following:

- (a) A legible copy of each executed property management agreement, and legible copies of any executed amendments to that agreement;
- (b) Client trust account and security deposit account records;
- (c) An owner's ledger maintained for each property management agreement;
- (d) A record of receipts and disbursements maintained for each property management agreement;
- (e) A legible copy of each tenant agreement;
- (f) A tenant's ledger maintained for each tenant;
- (g) A record of all cash receipts;
- (h) Records of the reconciliation of each clients' trust account and security deposits account;

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- (i) A property manager shall maintain all cancelled checks with the bank statements to which the checks pertain; and
- (j) A record of all deposits for each clients' trust account and security deposits account.
- (2) If a property manager uses a computerized system for creating, maintaining and producing required records and reports:
 - (a) The property manager shall back up any data that is stored in the computerized system at least once every month; 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 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 the management of rental real estate.
- (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 which includes the name and telephone number of any necessary contact person and the means of gaining access to the records.
- (5) A property manager shall 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 shall provide such records within no less than five business 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 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

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2006(Temp), f. 9-11-06, cert. ef. 9-15-06 thru 3-12-07

863-025-0040

Record of Receipts and Disbursements

- (1) A property manager shall prepare and maintain, at least monthly, a chronological 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

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2006(Temp), f. 9-11-06, cert. ef. 9-15-06 thru 3-12-07

863-025-0045

Tenant Agreements

- (1) Residential. The property manager shall file and maintain legible copies of all tenant 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 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 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.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.280 & 696.361

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2006(Temp), f. 9-11-06, cert. ef. 9-15-06 thru 3-12-07

863-025-0050

Tenant Ledgers

(1) Except as provided in section (3) of this rule, a property manager shall prepare and maintain at least one tenant's ledger for each tenant or individual from whom the property manager has received any funds under a property management agreement, whether or not the tenant has executed a written rental or lease agreement at the time of the payment of funds to the property manager. A tenant's ledger shall be identified by tenant and the property including, but not limited to, the mailing address of the rental unit or the applicable unit number or designation.

(2) The balances of tenant security deposits in individual tenant's ledgers shall be used in the monthly reconciliation of the security deposits account as described in OAR 863-025-0025.

(3) To record the receipt of funds from prospective tenants who are not tenants at the time of paying the funds to the property manager, who do not pay the funds for a particular rental unit and who do not become tenants after such payment, a property manager shall prepare and maintain a separate tenants' ledger.

(4) The property manager shall post a tenant's ledger with an entry for each receipt of the funds from the tenant and for each disbursement of funds. Each entry shall contain the amount of the funds received, the amount and designation of any tenant's security deposits received, the date of receipt of the funds and the number of the receipt prepared for cash funds received. Each entry for a disbursement shall contain the date of disbursement, the payee of the check, the check number and the amount of the disbursement;

(5) If a property manager receives a check from a tenant or prospective tenant for rent, tenant's security deposits or fees and the tenancy fails for any reason within three banking days following receipt of the check, the property manager may return the check to the tenant or prospective tenant without first depositing and processing the check through the property manager's client trust account. The property manager shall retain a photocopy of the check and a dated receipt for the check in the required records of property management activity. The property manager shall note the amount of the check, the dates of receipt and return of the check.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.280 & 696.361

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-025-0055

Owner Ledgers

- (1) A property manager shall prepare and maintain at least one separate owner's ledger for each property management agreement, for all monies received and disbursed.
- (2) All owner ledgers shall be identified with the identifying code assigned by the property manager to the corresponding property management agreement and each entry shall set forth the following information:
 - (a) Date of receipt and disbursement of any funds made in accordance with the property management agreement.
 - (b) Date of deposit;
 - (c) Amount of deposit and identify from whom the deposit was received;
 - (d) Date of each related disbursement;
 - (e) Check number of each related disbursement;
 - (f) Amount and identify of payee for each related disbursement;
 - (g) If applicable, the dates and amounts of interest earned and credited to the account; and
 - (h) A balance after posting each entry.
- (3) A record of the running daily balance shall be made available to the Commissioner or to the Commissioner's authorized representatives on demand.
- (4) A property manager shall 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 shall be preserved and filed in the property manager's records. If an annual report contains information not required to be provided by the property manager under these rules, the property manager shall set forth such information separately.
- (5) A property manager shall retain all paid bills and receipts explaining the amount of and purpose for the receipt or disbursement entered in the owner's ledger.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.280 & 696.361

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-025-0060

Cash Receipts

- (1) A property manager shall prepare a legible written receipt for any cash funds received under a property management agreement.
- (2) Cash receipts prepared shall be consecutively pre-numbered, be printed in at least duplicate form and shall contain:
 - (a) The date of receipt of the cash funds;
 - (b) The amount of the funds;
 - (c) The reason for payment of the funds received;
 - (d) The identifying code of the owner on whose behalf the cash funds were received;
 - (e) The tenant's name; and
 - (f) The name of the individual who actually received the cash and prepared the receipt.
- (3) A copy of the receipt shall be maintained in the property manager's records.

Stat. Auth.: ORS 183.335 & ORS 696.385
Stats. Implemented: ORS 696.280 & ORS 696.361
Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02

863-025-0065

Deposits

- (1) All funds, whether in the form of money, checks, or money orders belonging to others and accepted by any property manager while engaged in property management activity, shall be deposited prior to the close of business of the fifth banking day following the date of the receipt of the funds into a clients' trust account or security deposits account as defined in OAR 863-025-0010 and established by the property manager under ORS 696.241. The property manager shall account for all funds received.
- (2) Any person employed by the property manager shall promptly transmit to the property manager any money, checks, money orders, or other consideration and any documents received while engaged in property management activity.
- (3) A property manager shall not deposit any funds received on behalf of an owner from others in the property manager's personal account or commingle the funds received from others with personal funds of the property manager.
- (4) Except for funds received pursuant to OAR 863-025-0050(3) and 863-025-0025(16), every deposit made under ORS 696.241, shall be made with deposit slips identifying each entry by a written notation of the owner's identifying code assigned to the property management agreement.
- (5) A property manager shall maintain a complete record of all funds or other consideration received in the property manager's property management activity. This record shall show from whom the funds or other consideration was received, the date of the receipt, the place and date of deposit, and, the final disposition of the funds or other consideration.

Stat. Auth.: ORS 183.335 & ORS 696.385
Stats. Implemented: ORS 696.280 & ORS 696.361
Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03

863-025-0070

Termination, Transfer of Property Management

If a property management agreement is terminated for any reason, the property manager shall:

- (1) Terminate the property management activity conducted pursuant to the agreement in the manner provided by the terms of the agreement;
- (2) Notify the owner and any tenants of the property of the termination;
- (3) Not later than 60 days after the effective date of the termination, provide the owner with any unobligated funds due to the owner under the agreement;
- (4) Not later than 90 days after the effective date of the termination, provide the owner with:
 - (a) A final accounting of the owner's ledger account;
 - (b) The amount of any obligated funds held in the property manager's clients' trust account under the property management agreement;
 - (c) A statement of why the obligated funds are being held by the property manager; and
 - (d) A statement of when and to whom the obligated funds will be disbursed by the property manager;
- (5) Only disburse any unobligated funds to the owner or, with the prior written authorization of the owner, to another property manager designated in writing by the owner;
- (6) Immediately notify each such tenant for whom the property manager holds a security deposit that:

- (a) The security deposit will be transferred to the owner or to a new property manager; and
- (b) The name and address of the owner or the name and address of the new property manager to whom these deposits will be transferred;
- (7) Not expend any tenant security deposits for payment of any expenses or fees not otherwise allowed by the tenant's rental or lease agreement; and
- (8) Complete any final accounting, inspection or other procedures required by the tenant rental or lease agreement, by the Residential Landlord Tenant Act, or by the property management agreement, unless the owner otherwise directs in writing, if a tenant's termination of tenancy occurs simultaneously with or prior to termination of the management of the rented or leased premises.
- (9) As part of the final accounting sent to the owner under this rule, include a notice that the required records of the property management performed by the property manager for the owner may be destroyed after six years; and
- (10) Transfer and assign by agreement the interest of the property manager in rental or lease agreements, if any, to the owner or to a new property manager.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.280 & 696.361

Hist.: REA 3-1987, f. 12-3-87, ef. 1-1-88; REA 3-1989, f. 12-13-89, cert. ef. 2-1-90; REA 2-1991, f. 11-5-91, cert. ef. 1-1-92; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0225; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

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, 696.600 to 696.785, 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

Hist.: REA 2-2006(Temp), f. 9-11-06, cert. ef. 9-15-06 thru 3-12-07