

## Real Estate Agency Administration Rules Update

### 863-025-005 – Application and Purpose

- **No change from temporary to permanent rules**

Purpose – Provide a mission statement in the rules stating the focus of the rules is placing the responsibility on the property manager to provide information to the Agency rather than the Agency dictating the methodology for recordkeeping and the conduct of a property manager's business. Information needed to perform an audit is more important than the format of the information. However, the burden of producing records with adequate information in a timely manner is on the licensee.

### 863-025-0010 – Definitions

- **Substantial additions and changes from the temporary rules**

Purpose – Define terms and establish consistency in the rules.

- (1) “Bank Account” – new category
- (2) “Clients’ Trust Account” – change in definition
- (3) “Employee: - new category
- (4) “Identifying Code” – change in definition
- (5) “Owner” – new category
- (6) “Property Manager” – change in definition
- (7) “Records” and “property management records” – slight change in definition
- (8) “Security Deposits” – new category
- (9) “Security Deposits Account” – new category
- (10) “Sufficient Funds: - new category

### 863-025-0015 – Written Policies and Delegation of Authority

- **Specific provisions for written policies and specific requirements for the delegation of property manager authority**

Purpose – Eliminate the concept of “agency relationship” and placed all requirements for property manager duties to owners in property management agreements. Specify provisions for written policies. Specify requirements for written delegations of property manager authority.

(3) Is much more specific about what has to be in your written procedures – **Please review your procedures to insure compliance**

(6) Allows for delegation of the property management responsibilities but makes clear what the property manager must have in their procedures in order to do this delegation. – **Please review your procedures to insure compliance.**

### 863-025-0020 – Property Management Agreements

- **New categories and definitions**

Purpose – Incorporates all required responsibilities of the property manager that were in other rules into the property management agreement. Eliminate concept of “agency relationship” and placed all requirements for property manager duties in property management agreements.

(2) (a-m) – New categories and changes in definitions – **Please review your procedures to insure understanding.**

(5) Only a principal 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- **In the past it could be part of the agreement; but now it must be a separate document – please review your procedures to insure compliance.**

### **863-025-0025 – Property Management Client Trust Account Requirements**

**Significant changes in reorganization from the temporary rules filed September 11, 2006-this section goes from 11 sections to 25 sections – please review your procedures to insure compliance.**

Purpose – Significantly reorganize and simplify requirements. Rename “Clients’ Trust Account--Security Deposits” to “security deposits account.” Clarify that owners may not have access to funds in a clients’ trust account. Clarify that property managers may not place their own funds in a clients’ trust account. Clarify that property managers may not place their own funds in a clients’ trust account. Interest must be disbursed to a property manager within three banking days. Funds must be placed in a clients’ trust account or security deposits account within five banking days from receipt.

(8) Funds in a clients’ trust account or security account may not be deposited, held or disbursed by owner. (I believe commercial still has some issues for this category)

### **863-025-0030 – Tenant Security Deposits**

- Shall was left as May

(2) – Shall changed to May

### **863-025-0035 – Records: Required Records; Maintenance; Production**

#### **Changes made since filing of temporary rules**

Purpose – Provide a mission statement in the rules stating the focus of the rules is placing the responsibility on the property manager to provide information to the Agency rather than the Agency dictating the methodology for recordkeeping and the conduct of a property manager’s business. Information needed to perform an audit is more important than the format of the information. However, the burden of producing records with adequate information in a timely manner is on the licensee. A property manager’s failure to produce within the timelines is a violation of ORS 696.301. Property managers may store all reports electronically. Storage of records is allowed offsite in Oregon; however, each property manager has the responsibility of providing the Agency access to the records within specific time periods. Property managers are no longer required to keep cancelled checks in chronological order; all checks must now be kept

with the corresponding bank statements, cannot store records out of state. **Senate Bill 167 will allow this to be acceptable.**

#### **863-025-0040 – Records of Receipts and Disbursements**

##### **Changes made since filing of temporary rules**

Purpose – Allow negative running balances during the course of a day for client’s trust accounts, provided the balances are positive at the end of day except in the case of a check returned for insufficient funds. Specifically authorizes internet banking and specifies requirements.

(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.

#### **863-025-0045 – Tenant Agreements**

##### **No change from temporary rule filed September 11, 2006**

Purpose – The property manager remains responsible for rental agreements; however the requirement that the property manager must initial rental agreements after they are signed by the resident manager is eliminated.

#### **863-025-0050 – Tenant Ledgers**

#### **863-025-0055 – Owners Ledgers**

#### **863-025-0060 – Cash Receipts**

#### **863-025-0065 – Deposits**

#### **863-025-0070 – Termination, Transfer of Property Management**

Purpose of amendments to these five rules – Housekeeping for definitional changes and reformatting for readability. **Initial review of the housekeeping changes does not indicate any onerous changes but please take time to review.**

#### **863-025-0080 – Audits and Compliance Reviews**

##### **No change from temporary rule filed September 11, 2006**

Purpose – The Real Estate Agency will provide licensees reasonable opportunities to cure any compliance exceptions identified in a compliance audit with no sanctions except in audits involving missing money or misappropriation of funds. The Agency will provide for reasonable notice for audits: Five business days for compliance audits; however, no advance notice where the Agency suspects theft, fraudulent activity or misappropriation of funds.

**Federal** – MMHA is a member of the National Apartment Association who secured a significant victory when the U.S. House of Representatives passed a bill to reform the Section 8 voucher program (H.R. 1851) on July 12. The bill not only makes much-needed changes to the often cumbersome housing voucher program but also contains a favorable amendment related to HUD’s recently released –and-onerous-Guidance

regarding Limited English Proficiency (LEP). The LEP Guidance, which went into effect on Marcy 7, required federally funded apartment owners to translate a broad array of documents into multiple languages and to provide verbal translations for those who do not read in their native language. H. R. 1851 includes an amendment requiring HUD to translate both its official vital documents and selected non-HUD property documents into any language the Department identifies as necessary, and to provide a HUD-funded and HUD-administered toll-free 800 number for oral interpretation needs.

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