

1  
2  
3  
4  
5  
6  
7  
8

**STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF CONSUMER SERVICES**

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE MATTER OF DETERMINING  
Whether there has been a violation of the  
Escrow Agent Registration Act of Washington by:  
  
NORTH AMERICAN TITLE COMPANY,  
  
Respondent.

NO. C-08-160-08-SC01

STATEMENT OF CHARGES and  
NOTICE OF INTENTION TO ENTER AN  
ORDER TO CEASE AND DESIST, IMPOSE  
FINE, COLLECT INVESTIGATION FEE,  
AND MAINTAIN RECORDS

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**INTRODUCTION**

Pursuant to RCW 18.44.410, the Director of the Department of Financial Institutions (Director) is responsible for the administration of chapter 18.44 RCW, the Escrow Agent Registration Act (the Act). After having conducted an investigation pursuant to RCW 18.44.420 and WAC 208-680G-020, and based upon the facts available as of the date of this Statement of Charges, the Director, through his designee, Division of Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:

**I. FACTUAL ALLEGATIONS**

**1.1 Respondent North American Title Company (Respondent)** is a title and escrow company located at 1855 Gateway Blvd, Suite 600, Concord, California. Respondent has never been licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as an escrow agent in the State of Washington. At all times relevant to this Statement of Charges, Respondent was not a title insurance company having a valid certificate of authority issued by the Washington State Insurance Commissioner and Respondent was not a title insurance agent having a valid license as a title insurance agent issued by the Washington State Insurance Commissioner.

**1.2 Unlicensed Activity.**

**A.** While investigating a complaint related to a loan a borrower received on real property located in the State of Washington, the Department noted that Respondent had acted as the settlement agent and had collected at least \$622 as an "escrow fee."

1           **B.**       On or about October 15, 2007, the Department sent a packet of documents to Respondent. This  
2 packet included, among other things:

- 3           •       a cover letter dated October 15, 2007;
- 4           •       a Washington Escrow Agent License Application;
- 5           •       a copy of the Act and related rules;
- 6           •       a Declaration of Respondent and Agreement to Cease and Desist; and
- 7           •       subpoena No. 24385-07-SD01 issued October 15, 2007.

8       The cover letter explained that, if no exclusion or exemption from the Act applied to Respondent, then Respondent  
9 was to file the following items with the Department within 15 days of the date of the letter:

- 10          •       a completed application with the necessary fees;
- 11          •       a written statement signed under penalty of perjury of the laws of the State of  
12               Washington that Respondent would no longer operate as an Escrow Agent for any  
13               consumers in the State of Washington and that Respondent agreed to permanently  
14               cease and desist any operations without first obtaining a license from the  
              Department; and
- the materials responsive to the subpoena.

15       The subpoena commanded Respondent to produce, within 15 days of the date of the subpoena, a list of all escrow  
16 customers during the period from January 2006, to the present including the name, address and telephone number  
17 of each customer, the nature of the transaction, and the amount of fees Respondent charged for each transaction.

18           **C.**       On or about October 26, 2007, the Department received a letter from Respondent, dated October  
19 22, 2007, acknowledging receipt of the Department's correspondence dated October 15, 2007, including the  
20 subpoena. The letter also stated that Respondent was investigating the allegations contained in the correspondence  
21 and anticipated replying to the subpoena within the time frames outlined in the Department's correspondence and  
22 subpoena.

23           **D.**       On or about March 24, 2008, Respondent's attorney made an oral representation to the Department  
24 that Respondent was not currently conducting any escrow business in the State of Washington.

25

1           **E.**     On or about April 4, 2008, Respondent stated through written correspondence from its attorney  
2 that:

- 3           •     during the period from January 3, 2007, and March 4, 2008, Respondent performed  
4           escrow services in 24 transactions which closed and which involved real property  
5           located in the State of Washington, and Respondent collected fees ranging from  
6           \$200 to \$1,100 on those transactions;
- 7           •     Respondent understood the licensing requirements of the Act;
- 8           •     no exception to the licensing requirement applied to Respondent;
- 9           •     during the period from January 3, 2007, through March 4, 2008, Respondent did not  
10          have an escrow agent license; and
- 11          •     Respondent had cautioned its employees not to close any further transactions unless  
12          Respondent was fully in compliance with the Act.

13           **F.**     On or about April 25, 2008, Respondent certified through written correspondence from its attorney  
14 that Respondent performed escrow services in 24 transactions which closed between January 3, 2007, and April 25,  
15 2008, and which involved real property located in the State of Washington and collected fees ranging from \$200 to  
16 \$1,100 on those transactions.

17           **G.**     In or around April 2008 and May 2008, Respondent provided the Department with four schedules  
18 of escrow transactions and stated through written correspondence from its attorney that with the submission of these  
19 schedules Respondent “has produced all requested information concerning all transactions closed from 2006 to  
20 2008 that concern property located in the State of Washington.” Per these schedules, between January 1, 2006, and  
21 April 30, 2008, Respondent performed escrow services in at least 194 transactions which closed and which  
22 involved real property located in the State of Washington, and Respondent collected at least \$105,000 in escrow  
23 fees on those transactions. These schedules also indicated that:

- 24           •     between January 3, 2007, and March 4, 2008, Respondent performed escrow  
25           services in at least 52 transactions which closed and which involved real property  
            located in the State of Washington, and Respondent collected fees of up to \$5,500  
            on these transactions;
- between March 5, 2008, and April 30, 2008, Respondent performed escrow services  
            in at least 2 transactions which closed and which involved real property located in  
            the State of Washington, and Respondent collected at least \$600 in escrow fees on  
            these transactions; and

- Respondent performed escrow services in at least 3 transactions which remained open as of April 30, 2008, and which involved real property located in the State of Washington.

**H.** On or about April 25, 2008, Respondent provided the Department with a Declaration of Respondent and Agreement to Cease and Desist dated April 25, 2007, and signed under penalty of perjury of the laws of the State of California. On or about April 30, 2008, Respondent provided the Department with a Declaration of Respondent and Agreement to Cease and Desist dated April 28, 2008 and signed under penalty of perjury of the laws of the State of California.

**1.3 Records Maintenance.** In searching its records in order to comply with the subpoena, Respondent identified five files for which Respondent was unable to locate any documents and for which Respondent was unable to provide any information to the Department.

**1.4 On-Going Investigation.** The Department's investigation into the alleged violations of the Act by Respondent continues to date.

## II. GROUNDS FOR ENTRY OF ORDER

**2.1 Definition of Escrow.** Pursuant to RCW 18.44.011(4), "Escrow" means any transaction wherein any person or persons, for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance, or lease of real or personal property to another person or persons, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by such third person until the happening of a specified event or the performance of a prescribed condition or conditions, when it is then to be delivered by such third person, in compliance with instructions under which he or she is to act, to a grantee, grantor, promisee, promisor, obligee, obligor, lessee, lessor, bailee, bailor, or any agent or employee thereof.

**2.2 Definition of Escrow Agent.** Pursuant to RCW 18.44.011(6) "Escrow Agent" means any person engaged in the business of performing for compensation the duties of the third person referred to in RCW 18.44.011(4).

**2.3 Requirement to Obtain and Maintain License.** Based on the factual allegations set forth in Section I above, Respondent is in apparent violation of RCW 18.44.021 for engaging in business as an escrow agent by

1 performing escrows or any of the functions of an escrow agent within this state or with respect to transactions that  
2 involve personal property or real property located in this state without first obtaining a license.

3 **2.4 Requirement to Maintain Records.** Based on the factual allegations set forth in Section I above,  
4 Respondent is in apparent violation of RCW 18.44.400 and WAC 208-680D-030 for failing to maintain adequate  
5 records of all transactions handled by or through Respondent in the State of Washington for a period of six (6) years  
6 from completion of the transaction.

### 7 **III. AUTHORITY TO IMPOSE SANCTIONS**

8 **3.1 Authority to Issue Order to Cease and Desist.** Pursuant to RCW 18.44.440 and WAC 208-680G-030, if  
9 the Director determines after notice and hearing that a person has violated any provisions of the Act or rules  
10 adopted under the Act, or engaged in any false, unfair and deceptive, or misleading business practices, the Director  
11 may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative  
12 action as in the judgment of the Director will carry out the purposes of the Act.

13 **3.2 Authority to Impose Fines.** Pursuant to RCW 18.44.430(3) and WAC 208-680G-040(3), the Director  
14 may impose a fine of up to \$100 per day for each day's violation of the Act or rules adopted under the Act.

15 **3.3 Authority to Collect Investigation Fee.** Pursuant to RCW 18.44.121 and WAC 208-680G-050, the  
16 expense of an investigation pursuant to WAC 208-680G-020 inside or outside this state shall be borne by the  
17 person investigated.

### 18 **IV. NOTICE OF INTENTION TO ENTER ORDER**

19 Respondent's violations of the provisions of chapter 18.44 RCW as set forth in the above Factual  
20 Allegations, Grounds For Entry Of Order, and Authority to Impose Sanctions, constitute a basis for the entry of an  
21 Order under RCW 18.44.400, RCW 18.44.410, RCW 18.44.430, RCW 18.44.440, and WAC 208-680G-030.

22 Therefore, it is the Director's intention to ORDER that:

23 **4.1** Respondent North American Title Company cease and desist from providing escrow services in the  
24 State of Washington until such time as Respondent North American Title Company obtains the  
appropriate license from the Department or meets an exclusion delineated in RCW 18.44.021;

25 **4.2** Respondent North American Title Company pay a fine which as of the date of this document totals  
\$40,000;

1 4.3 Respondent North American Title Company pay an investigation fee which as of the date of this  
document totals \$2,500; and

2 4.4 Respondent North American Title Company, its officers, employees, and agents maintain all records  
3 involving Washington State escrow transactions within the State of Washington for a minimum of six  
4 (6) years following the completion of the escrow transactions.

5 **V. AUTHORITY AND PROCEDURE**

6 This Statement of Charges and Notice of Intention to Enter an Order to Cease and Desist, Impose Fine,  
7 Collect Investigation Fee, and Maintain Records (Statement of Charges) is entered pursuant to the provisions of  
8 RCW 18.44.410, RCW 18.44.430, and RCW 18.44.440, and is subject to the provisions of chapter 34.05 RCW.  
9 Respondent may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO  
10 DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges.

11 DATED this 3<sup>rd</sup> day of June, 2008.

12  
13 

14 DEBORAH BORTNER  
15 Director  
16 Division of Consumer Services  
17 Department of Financial Institutions

18 Presented by:

19 

20 MARK T. OLSON  
21 Financial Examiner



22 Approved by:

23 

24 JAMES R. BRUSSELBACK  
25 Enforcement Chief