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3 **STATE OF WASHINGTON**
4 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
5 **DIVISION OF CONSUMER SERVICES**

6 IN THE MATTER OF DETERMINING
7 Whether there has been a violation of the
8 Escrow Agent Registration Act of Washington
9 by:

10 AVISTA ESCROW SERVICES, LLC,
11 DOUGLAS A. HUNTINGTON, 40% Owner,
12 SCOTT T. HUNTINGTON, 35% Owner, and
13 LENNIE L. MUELLER, 25% Owner and
14 Designated Escrow Officer,

15 Respondents.

NO. C-08-223-08-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENT TO REVOKE
LICENSES, PROHIBIT FROM INDUSTRY,
IMPOSE FINE, AND COLLECT
EXAMINATION AND INVESTIGATION
FEES

16 **INTRODUCTION**

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

23 **I. FACTUAL ALLEGATIONS**

24 **1.1 Respondents.**

25 **A. Avista Escrow Services, LLC (Respondent Avista)** was licensed by the Department
to conduct the business of an escrow agent on September 25, 2002, and has continued to be licensed to
date. Respondent Avista is license to conduct business from one location at 15 Oregon Avenue #209,
Tacoma, Washington.

1 **B. Douglas A. Huntington (Respondent D. Huntington)** is known to be 40% Owner of
2 Respondent Avista. Respondent D. Huntington is also known to have an ownership interest in two
3 other companies relevant to these charges: Huntington Properties III and Horizon Mortgage and
4 Investments.

5 **C. Scott T. Huntington (Respondent S. Huntington)** is known to be 35% Owner of
6 Respondent Avista. Respondent S. Huntington is also known to have an ownership interest in four
7 other companies relevant to these charges: Huntington Properties I, Huntington Properties II,
8 Huntington Properties III, and Horizon Mortgage and Investments.

9 **D. Lennie L. Mueller (Respondent Mueller)** is known to be 25% Owner and Designated
10 Escrow Officer (DEO) of Respondent Avista. Respondent Mueller was appointed DEO on September
11 25, 2002, and has continued to be the DEO to date.

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13 **1.2 Examination.** On or about March 10, 2008, the Department conducted an examination of
14 Respondents' business practices for the period of February 1, 2007, through January 31, 2008. The
15 Department's examiners conducted a complete review of fourteen escrow transactions and a limited
16 review of thirty additional escrow transactions.

17 **1.2 Failure to Maintain Sufficient Funds in Trust.** Respondents did not maintain sufficient
18 funds in their trust account in an amount at least equal to the disbursements in the following nine of
19 the fourteen transactions completely reviewed:

20 **A.** In escrow 20045051, Respondents received a \$3,376.09 refund check from Countrywide
21 Home Loans (Countrywide) on March 23, 2005, for excess funds received for the seller's loan payoff.
22 The check was deposited into the trust account on March 28, 2005, and Respondents issued check
23 14250 in the amount of \$3,376.09, payable to the seller, the same day without verifying whether the
24 Countrywide check had cleared. Prior to the Countrywide check clearing, Countrywide placed a stop
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1 payment on it, resulting in an overdraft of \$3,376.09. The overdraft was identified as an adjustment
2 item on the March 2005 reconciliation and was carried forward until Countrywide remitted a
3 replacement check on February 28, 2007.

4 **B.** In escrow 20051343, Respondents received a check for \$26,230.29 from Respondent D.
5 Huntington on August 2, 2005, which was deposited into the trust account the same day. The
6 transaction was reportedly cancelled and the funds were transferred by wire from the trust account
7 back to Respondent D. Huntington on August 3, 2005. Respondents, however, failed to verify that
8 Respondent D. Huntington's check had cleared and that the funds were available prior to making the
9 wire transfer. On August 11, 2005, Viking Bank returned Respondent D. Huntington's check due to
10 non-sufficient funds. As a result, the escrow account was overdrawn by \$26,230.29. Respondent D.
11 Huntington did not provide funds to cover the shortage until August 22, 2005.

12 **C.** In escrow 20051383, Respondents were required to collect an additional \$29.79 from the
13 customers at closing on November 11, 2005. Respondents, however, did not collect those funds;
14 overdrawing the escrow account by \$29.79. Respondents did not correct the deficiency until
15 November 24, 2008.

16 **D.** In escrow 20061009, Respondents issued check 19279 in the amount of \$1,486.80 for
17 settlement agent fees. The check cleared the bank on January 31, 2006, but Respondents marked it as
18 voided the same day after it had already cleared. On February 1, 2006, Respondents issued check
19 19312 in the amount of \$1,466.80 for settlement agent fees. This check cleared on February 28, 2006,
20 creating a debit balance in the escrow account of \$1,466.80.

21 **E.** In escrow 20061077, Respondents accepted a Viking Bank counter check from Huntington
22 Properties I, LLC, owned by Respondent S. Huntington, in the amount of \$140,250 on or about April
23 5, 2006. The check, however, did not have an account number on it and shortly after it was deposited
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1 into Respondents' trust account the bank debited it from the account. As a result, Respondents
2 disbursed funds from the escrow account in excess of what had been deposited. The deficiency was
3 not cured until April 2, 2008.

4 F. In escrow 20061100, Respondents conducted the settlement for a refinance of the
5 customer's property and made two disbursements to the customer; a wire transfer in the amount of
6 \$14,146.34 on April 11, 2006, and a \$182.64 check on April 26, 2006, described on the disbursement
7 register as "Excess Cash to Close." The final disbursement to the customer overdrew the escrow
8 account by \$43.20. The deficiency was not cured until November 24, 2008.

9 G. In escrow 20061289, Respondents were required to collect \$740.44 at closing from
10 Respondent S. Huntington to cover all closing costs. The transaction closed on or about October 4,
11 2006, but Respondents did not collect the required funds. The deficiency was not cured until March
12 11, 2008, when Respondent S. Huntington remitted the required funds.

13 H. In escrow 20061400, Respondents collected an earnest money check in the amount of
14 \$10,000 from buyer Huntington Properties III, owned by Respondents D. Huntington and S.
15 Huntington. The check, however, was not deposited because it had been cancelled. The transaction
16 closed on or about January 9, 2007, and funds were disbursed in excess of the amount deposited by
17 \$10,000. The deficiency was not cured until April 19, 2007, when Huntington Properties III remitted
18 a cashier's check for the \$10,000 earnest money.

19 I. In escrow 20061420, Respondents received a check in the amount of \$350,000 from buyer
20 Huntington Properties I, owned by Respondent S. Huntington, on November 16, 2006. The
21 transaction was canceled November 17, 2006, and Respondents issued a check in the amount of
22 \$350,000 from its trust account to Huntington Properties the same day without first verifying that the
23 check from Huntington Properties I had cleared the bank and that the funds were available. On
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1 November 22, 2006, Viking Bank returned the \$350,000 check received from Huntington Properties I
2 due to non-sufficient funds. The \$350,000 overdraft was not cured until February 16, 2007.

3 **1.3 Failure to Resolve Overdrawn Escrow Accounts in a Timely Manner.** Respondents did not
4 resolve overdrawn escrow accounts in a timely manner in the following eight of the fourteen
5 transactions completely reviewed:

6 **A.** In escrow 20045051, Respondents received a \$3,376.09 refund check from Countrywide on
7 March 23, 2005. The check was deposited into the trust account on March 28, 2005, and Respondent
8 Avista issued check 14250 in the amount of \$3,376.09, payable to the seller, the same day. Prior to
9 the Countrywide check clearing the bank, Countrywide stopped payment, overdrawing the escrow
10 account. The overdraft was identified as an adjustment item on Respondents' March 2005
11 reconciliation, but the deficiency was not corrected until February 28, 2007.

12 **B.** In escrow 20051383, Respondents were required to collect an additional \$29.79 from the
13 customers at closing on November 11, 2005. Respondents, however, failed to collect those funds
14 overdrawing the escrow account by \$29.79. Respondents did not correct the deficiency until
15 November 24, 2008.

16 **C.** In escrow 20061009, Respondents issued check 19279 in the amount of \$1,486.80 for
17 settlement agent fees. The check cleared the bank on January 31, 2006, but Respondents marked it as
18 voided the same day after it had already cleared. On February 1, 2006, Respondents issued check
19 19312 in the amount of \$1,466.80 for settlement agent fees. This check cleared on February 28, 2006,
20 creating a debit balance of \$1,468.80. To date, Respondents have not corrected this deficiency.

21 **D.** In escrow 20061077, Respondents accepted a Viking Bank counter check from Huntington
22 Properties I, LLC, owned by Respondent S. Huntington, in the amount of \$140,250 on or about April
23 5, 2006. The check, however, did not have an account number on it and shortly after it was deposited
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1 into Respondents' trust account the bank debited it from the account. As a result, Respondents
2 disbursed funds from the escrow account in excess of what had been deposited. Respondents did not
3 correct the deficiency until April 2, 2008.

4 **E.** In escrow 20061100, Respondents conducted the settlement of a refinance of the
5 customer's property and made two disbursements to the customer; a wire transfer in the amount of
6 \$14,146.34 on April 11, 2006, and a \$182.64 check on April 26, 2006. The final disbursement to the
7 customer overdrew the escrow account by \$43.20. Respondents did not correct the deficiency until
8 November 24, 2008.

9 **F.** In escrow 20061289, Respondents were required to collect \$740.44 at closing from
10 Respondent S. Huntington to cover all closing costs. The transaction closed on or about October 4,
11 2006, but Respondents did not collect the required funds. The deficiency was not cured until March
12 11, 2008.

13 **G.** In escrow 20061400, Respondents collected an earnest money check in the amount of
14 \$10,000 from buyer Huntington Properties III, owned by Respondents D. Huntington and S.
15 Huntington. The check, however, was not deposited. The transaction closed on or about January 9,
16 2007, and funds were disbursed in excess of the amount deposited by \$10,000. The deficiency was
17 not cured until April 19, 2007.

18 **H.** In escrow 20061420, Respondents received a check in the amount of \$350,000 from buyer
19 Huntington Properties I, owned by Respondent S. Huntington, on November 16, 2006, and deposited
20 the check into Respondents' trust account. The transaction was canceled November 17, 2006, and
21 Respondents issued a check in the amount of \$350,000 from its trust account to Huntington Properties
22 I the same day. On November 22, 2006, Viking Bank returned the \$350,000 check received from
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1 Huntington Properties I due to non-sufficient funds. The deficiency was not cured until February 16,
2 2007.

3 **1.4 Failure to Perform Other Duties Expeditiously.** Respondents' January 2008 month-end
4 reconciliation report shows that Respondents did not clear several system and bank adjustments.
5 Additionally, Respondents' "Outstanding Instruments" report shows a total of \$26,687.71 in stale
6 checks for the period of August 18, 2004, to September 4, 2007.

7 **1.5 Failure to Maintain Accurate Records.** Respondents did not properly post receipts and
8 disbursements to Respondents' operating system, requiring Respondents to perform \$553,471.71 in
9 adjustments to the accounting system during the period of February 1, 2007, through January 31,
10 2008. Additionally, Respondents were unable to explain why \$100,889.05 appeared as an adjustment
11 on Respondents' January 2007 reconciliation or why that amount was cleared without identifying what
12 caused the adjustment. This is a repeat violation from Respondents' 2004 examination, a copy of
13 which was previously provided to Respondents.

14 **1.6 Failure to Timely Submit Quarterly Reports.** Respondents did not file quarterly reports for
15 the first and third quarters of 2007, and did not file quarterly reports within 30 days of the end of the
16 quarter for the second and fourth quarters of 2007.

17 **1.7 On-Going Investigation.** The Department's investigation into the alleged violations of the Act
18 by Respondents continues to date.
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20 II. GROUNDS FOR ENTRY OF ORDER

21 **2.1 Definition of Escrow Agent.** Pursuant to RCW 18.44.011(6) "Escrow Agent" means any person
22 engaged in the business of performing for compensation the duties of the third person referred to in
23 RCW 18.44.011(4).
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1 **2.2 Prohibition against Disbursing Funds from an Escrow Account Exceeding the Deposits for**
2 **the Transaction.** Based on the factual allegations set forth in Section I above, Respondents are in
3 apparent violation of RCW 18.44.400(3) and WAC 208-680E-011(14)(c) for disbursing funds from an
4 escrow account in excess of the amount deposited for the transaction.

5 **2.3 Requirement to Perform Duties Expeditiously.** Based on the factual allegations set forth in
6 Section I above, Respondents are in apparent violation of RCW 18.44.430(1)(i) and WAC 208-680D-050
7 for negligently failing to perform all acts required by an escrow agent as expeditiously as possible.

8 **2.4 Requirement to Maintain Accurate Records.** Based on the factual allegations set forth in
9 Section I above, Respondents are in apparent violation of RCW 18.44.301(6) and (8) and WAC 208-
10 680D-030(1) for failing to maintain accurate records. Additionally, Respondent Mueller is in apparent
11 violation of WAC 208-680D-010 for failing to ensure the correctness of entries in all required escrow
12 records.

13 **2.5 Requirement to Submit Quarterly Reports.** Based on the factual allegations set forth in
14 Section I above, Respondent is in apparent violation of RCW 18.44.430(1)(f) and WAC 208-680E-
15 025(1), (2), and (3) for failing to submit all four 2007 quarterly reports within 30 days following the end
16 of each quarter.

17 **III. AUTHORITY TO IMPOSE SANCTIONS**

18 **3.1 Authority to Revoke License.** Pursuant to RCW 18.44.430(1)(b), the Director may revoke
19 the license of any escrow agent or escrow officer for violating any of the provisions of the Act or any
20 lawful rules made by the Director pursuant to the Act.

21 **3.2 Authority to Prohibit from the Industry** Pursuant to RCW 18.44.430(3), in addition to or in
22 lieu of license denial the Director may remove and/or prohibit from participation in the conduct of the
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1 affairs of a licensed escrow agent, any officer, controlling person, director, employee, or licensed
2 escrow officer.

3 **3.3 Authority to Impose Fines.** Pursuant to RCW 18.44.430(3) and WAC 208-680G-040(3), in
4 addition to or in lieu of license denial the Director may impose a fine of up to \$100 per day for each day's
5 violation of the Act.

6 **3.4 Authority to Collect Investigation Fee.** Pursuant to RCW 18.44.410 and WAC 208-680G-050,
7 the expense of an investigation pursuant to WAC 208-680G-020 shall be borne by the entity which is the
8 subject of the investigation.
9

10 **IV. NOTICE OF INTENTION TO ENTER ORDER**

11 Respondents' violations of the provisions of chapter 18.44 RCW as set forth in the above Factual
12 Allegations and Grounds For Entry Of Order constitute a basis for the entry of an Order under RCW
13 18.44.410, RCW 18.44.430, RCW 18.44.301, and WAC 208-680G-030 which authorize the Director to
14 enforce all laws, rules, and regulations related to the registration of escrow agents and licensing of escrow
15 officers. Therefore, it is the Director's intention to ORDER that:

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17 **4.1** Respondents Avista Escrow Services, LLC, Douglas A. Huntington, Scott A. Huntington, and
18 Lennie L. Mueller's license to conduct the business of an escrow agent be revoked; and

19 **4.2** Respondent Lennie A. Mueller's license to conduct the business of a designated escrow officer be
20 revoked; and

21 **4.3** Respondents Avista Escrow Services, LLC, Douglas A. Huntington, Scott A. Huntington, and
22 Lennie L. Mueller be prohibited from participating in the conduct of the affairs of any licensed
23 escrow agent, as officer, controlling person, director, employee, or licensed escrow officer, for a
24 period of five years; and

25 **4.4** Respondents Avista Escrow Services, LLC, Douglas A. Huntington, Scott A. Huntington, and
Lennie L. Mueller jointly and severally pay a fine which as of the date of these charges totals
\$25,000; and

4.5 Respondents Avista Escrow Services, LLC, Douglas A. Huntington, Scott A. Huntington, and
Lennie L. Mueller jointly and severally pay costs of examination which as of the date of these

1 charges totals \$3,019.58, and which includes \$2,812.50 calculated at \$62.50 per hour for forty-
2 five staff hours devoted to the examination and \$207.08 for travel expenses; and

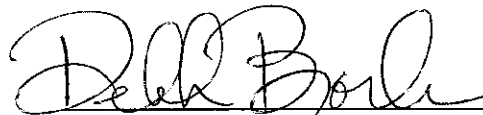
3 **4.6** Respondents Avista Escrow Services, LLC, Douglas A. Huntington, Scott A. Huntington, and
4 Lennie L. Mueller jointly and severally pay an investigation fee which as of the date of these
5 charges totals \$1, 250.00, calculated at \$62.50 per hour for twenty staff hours devoted to the
6 investigation; and

7 **4.7** Respondents Avista Escrow Services, LLC, Douglas A. Huntington, Scott A. Huntington, and
8 Lennie L. Mueller maintain all records involving Washington escrow transactions for a minimum
9 of six years following the closing or termination of the escrow transaction.

10 **V. AUTHORITY AND PROCEDURE**

11 This Statement of Charges and Notice of Intent to Revoke Licenses, Prohibit from Industry,
12 Impose Fine, and Collect Examination and Investigation Fees (Statement of Charges) is entered pursuant
13 to the provisions of RCW 18.44.410 and RCW 18.44.430, and is subject to the provisions of chapter
14 34.05 RCW. Respondents may make a written request for a hearing as set forth in the NOTICE OF
15 OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement
16 of Charges.

17 DATED this 18th day of December, 2008.

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19 DEBORAH BORTNER
20 Director
21 Division of Consumer Services
22 Department of Financial Institutions

23 Presented by:

24 

25 STEVEN C. SHERMAN
Financial Legal Examiner

Approved by:



JAMES BRUSSELBACK
Enforcement Chief

