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JUN 19 2006
CONSUMER SERVICES DIVISION
FINANCIAL INSTITUTIONS
OLYMPIA, WASHINGTON

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DEPT. OF FINANCIAL INSTITUTIONS
OLYMPIA, WASHINGTON

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
CONSUMER SERVICES DIVISION

IN THE MATTER OF DETERMINING Whether there has been a violation of the Escrow Agent Registration Act of Washington by:	NO. C-02-351-03-CO01
LIBERTY ESCROW, INC., KATHLEEN ALLEN, OWNER; AND KATHLEEN ALLEN, DESIGNATED ESCROW OFFICER,	CONSENT ORDER
Respondents	

COMES NOW the Director of the Department of Financial Institutions (Director), through his designee Chuck Cross, Division Director, Division of Consumer Services, and Kathleen D. Allen and Liberty Escrow, Inc. (Respondents), and finding that the issues raised in the captioned matter may be economically and efficiently settled, agree to the entry of this Consent Order. This Consent Order is entered pursuant to chapter 18.44 of Revised Code of Washington (RCW), and RCW 34.05.060 of the Administrative Procedure Act, based on the following:

AGREEMENT AND ORDER

The Department of Financial Institutions, Division of Consumer Services (Department) and Respondents have agreed upon a basis for resolution of the matters alleged in Statement of Charges and Notice of Intention to Enter an Order To Revoke License, Prohibit from Participation in Industry and Assess Monetary Penalties (Statement of Charges) No. C-02-351-03-SC01 issued August 5, 2003 (copy attached hereto). Pursuant to chapter 18.44 RCW, the Escrow Agent Registration Act (Act) and RCW 34.05.060 of the Administrative Procedure Act, Respondents hereby agree to the Department's entry of this Consent Order and further agree that the issues raised in the above captioned matter may be

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economically and efficiently settled by entry of this Consent Order. The parties intend this Consent Order to fully resolve the Statement of Charges.

Based upon the foregoing:

A. **Jurisdiction.** It is AGREED that the Department has jurisdiction over the subject matter of the activities discussed herein.

B. **Consent to Be Bound By Order.** It is AGREED that the parties shall be bound by the terms and conditions of this Consent Order as set forth herein.

C. **Waiver of Hearing.** It is AGREED that Respondents have been informed of their right to a hearing before an administrative law judge, and that Respondents have waived same right to a hearing and any and all administrative and judicial review of the issues raised in this matter, or of the resolution reached herein. Accordingly, Respondents agree to withdraw their appeal and to inform the Office of Administrative Hearings in writing of their withdrawal.

D. **Non-Compliance with Order.** It is AGREED that Respondents understand that failure to abide by the terms and conditions of this Consent Order may result in further legal action by the Director. In the event of such legal action, Respondents may be responsible to reimburse the Director for the cost incurred in pursuing such action, including but not limited to, attorney fees.

E. **Escrow Agent License Revoked.** It is AGREED that Liberty Escrow Inc.'s license to do business as an escrow agent is revoked.

F. **Escrow Officer License Revoked**. It is AGREED that Kathleen Allen's license to do business as an escrow officer is revoked.

G. **Application for Escrow Agent or Escrow Officer License.** It is AGREED that Respondents shall not apply to the Department for any license issued pursuant to chapter 18.44 RCW under any

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name for a period of ten (10) years from the date of entry of this Consent Order. It is further AGREED that, should Respondents apply to the Department for any license issued pursuant to chapter 18.44 RCW at any time after ten (10) years from the date of entry of this Consent Order, they shall be required to meet any and all application requirements in effect at that time.

H. **Cooperation of Respondents.** It is AGREED that once Respondents became aware of the Statement of Charges and the circumstances described therein, Respondents responded and cooperated with the Department to resolve the issues raised in the Statement of Charges.

I. **Prohibition from Industry**. It is AGREED that Kathleen Allen is prohibited from participating in the conduct of the affairs of any licensed escrow agent as an officer, principal, or employee of any licensed escrow agent or any person subject to licensing under this chapter for ten (10) years from the date of entry of this Consent Order in any capacity, including but not limited to: (1) any financial capacity whether active or passive or (2) as an officer, director, principal, designated escrow officer, or employee or (3) any management, control, oversight or maintenance of any trust account(s) or (4) receiving, disbursing, managing or controlling in any way, consumer trust funds in any way, under R.C.W. 18.44. KA

J. **Compliance with Requests and Directives.** It is AGREED that Respondents shall comply with all information requests and directives from the Department within the timeframes specified in conjunction with the investigation of its business practices.

K. **Maintain Records.** It is AGREED that Respondents, their officers, employees, and agents shall maintain all records involving escrow transactions for a minimum of six (6) years following the closing or termination of the escrow transaction.

L. **Authority to Execute Order.** It is AGREED that the undersigned has represented and warranted that she has the full power and right to execute this Consent Order on behalf of the parties represented.

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M. **Voluntarily Entered.** It is AGREED that the undersigned Respondents have voluntarily entered into this Consent Order, which is effective when signed by the Director's designee.

N. **Completely Read, Understood, and Agreed.** It is AGREED that Respondents have read this Consent Order in its entirety and fully understand and agree to all of the same.

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RESPONDENTS:

Liberty Escrow, Inc.

By:

Kathleen Allen, Owner and Designated Escrow Officer — Date 6/16/06

Kathleen Allen, Individually — Date 6/16/06

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Kathleen Allen is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she is authorized to execute the instrument and acknowledged it on this 16 day of JUNE, 2006, to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: 6/16/06

HEATHER CHERIE COSBY NOTARY PUBLIC COMMISSION EXPIRES 7-09-09 STATE OF WASHINGTON

NOTARY PUBLIC in and for the State of Washington, residing at Snohomish WA.

DO NOT WRITE BELOW THIS LINE

THIS ORDER ENTERED THIS 19th DAY OF June, 2006.

DIVISION OF FINANCIAL INSTITUTIONS STATE OF WASHINGTON

CHUCK CROSS
Director
Division of Consumer Services
Department of Financial Institutions

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STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES

IN THE MATTER OF DETERMINING Whether there has been a violation of the Escrow Agent Registration Act of Washington by: Liberty Escrow Inc., Kathleen Allen, Owner; and Kathleen Allen, Designated Escrow Officer, Respondents.	NO. C-02-351-03-SC01 STATEMENT OF CHARGES and NOTICE OF INTENT TO ASSESS MONETARY PENALTIES, REVOKE LICENSES, AND PROHIBIT FROM PARTICIPATION IN THE ESCROW INDUSTRY

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"). The referenced statutes (RCW) and rules (WAC) are attached, in pertinent part. After having conducted an investigation pursuant to RCW 18.44.420, and based upon the facts available as of August 8, 2003, the Director institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondents:

A. Liberty Escrow, Inc. ("Liberty"), is known to have conducted business as an escrow agent at 700 108th Ave NE Ste 200, Bellevue, Washington 99004. Liberty was licensed to conduct the business of an escrow agent on May 5, 1994, by license number 540-EA-0146-00 (New #18636). This license expired on December 31, 2002. Liberty is a sole proprietorship, with Kathleen Allen known by the Department of Financial Institutions ("Department") to be the owner of Liberty.

B. Kathleen Allen ("Allen") was approved by the Department to act as the Designated Escrow Officer (DEO) for Liberty effective May 5, 1994. Allen's DEO license expired effective May 5, 2001. The

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Department received the renewal fee for Allen on October 26, 2001, and Allen's DEO license was renewed effective November 14, 2001. That license expired on May 5, 2002, and was cancelled effective May 5, 2003.

1.2 Examination:

A. Conduct of Examination: On October 3, 2001, the Department commenced an onsite examination of Liberty's trust accounts. The examination revealed a shortage in the Key Bank escrow collection trust account, and the collection trust account records did not support outstanding checks or adjustments. Further, it was found that Respondents had failed to reconcile the outstanding checks against the bank statement and had not completed a receipt reconciliation proof sheet. In the escrow closing trust account, the client liability exceeded the funds in the account. The examination was temporarily suspended on October 9, 2001, until the trust account was reconciled. Liberty submitted additional materials, however it did not provide supporting documentation to prove the system and bank adjustments were valid.

B. Examination Findings: The examination resulted in the following findings:

i. Failure to Display Licenses: The licenses for Liberty and Allen were stored in a desk drawer and were not displayed in the office.

ii. Operating Without Licensed Escrow Officer: At the time of the examination, the license for Liberty's DEO, Allen, had expired on May 31, 2001. Liberty did not surrender its Escrow Agent license on May 31, 2001. Allen renewed her license as a DEO effective November 14, 2001. Between May 31 and November 14, 2001, Respondents continued to close escrow transactions under the Act without a licensed DEO.

iii. Failure to Complete Monthly Reconciliations: At the time of the examination, monthly reconciliations had not been completed. The trust account for the contract collections had not been reconciled since at least June 30, 2001. Respondents did not supply a trial balance for funds held in escrow for the month ending September 30, 2001. As a result, it was impossible to determine the difference between the liability to clients and the reconciled bank balance or the quantity and dollar amount of the overdraft escrow.

iv. Client Liability in Excess of Reconciled Bank Balance: Respondents allowed client liability to exceed the reconciled bank balance:

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a) **June 2001:** Based on the Respondents' monthly reconciliation as of June 30, 2001, the client liability exceeded the reconciled bank balance by $2,870,929.34, consisting of 180 accounting exceptions totaling $1,632,561.43, 5 bank adjustments totaling $18.56, and 29 overdrawn escrow accounts totaling $1,238,386.47.

b) **July 2001:** Based on the Respondents' monthly reconciliation as of July 31, 2001, the client liability exceeded the reconciled bank balance by $2,681,241.31, consisting of 202 accounting exceptions totaling $2,136,604.99, 5 banking adjustments totaling $18.56, and 23 overdrawn escrow accounts totaling $544,654.88.

c) **August 2001:** Based on the Respondents' monthly reconciliation as of August 30, 2001, the client liability exceeded the reconciled bank balance by $3,176,251.16, consisting of 211 accounting exceptions totaling $2,180,667.73, 6 bank adjustments totaling $18.64, and 27 overdrawn escrow accounts totaling $995,602.07.

d) **October 2001:** Based on the Respondents' monthly reconciliation as of October 31, 2001, the client liability exceeded the reconciled bank balance by $278,139.73, consisting of 34 accounting exceptions totaling $219,118.78, 4 banking adjustments totaling $18.56, and 9 overdrawn escrow accounts totaling $59,039.11. Respondents provided supporting documentation for 5 of the accounting exceptions, totaling $3,998.34.

v. **Failure to Sign Monthly Reconciliations:** The Designated Escrow Officer did not sign the monthly reconciliations.

vi. **Failure to Perform Expeditiously:** In at least one escrow account, Respondents had failed to disburse amounts for recording and title registration, even though that account had closed prior to October 1, 2000.

vii. **Failure to Disclose Fees for Services:** For at least eight (8) escrow accounts, Respondents could not justify the costs of courier/express fees charged to the principals of the transactions, and Respondents

failed to specifically identify courier/express fees payable to the Escrow Agent. In those eight accounts, Respondents failed to justify express/courier fees in the total amount of $488.80.

viii. Failure to Disclose Reconveyance Fee: For at least six (6) accounts, Respondents did not disclose on the HUD settlement statements that it received a reconveyance fee. In those six accounts, Respondents failed to disclose reconveyance fees in the total amount of $475.00.

ix. Failure to Deface Voided Check: In at least one account, Respondents failed to deface a voided check. The check and the supporting check register did not agree, as the payee and the amounts differed.

x. Failure to Account for Outstanding Checks: Respondents had eighty-two (82) potential stale dated checks totaling $7,619.31 that had been outstanding for at least five (5) years as of February 28, 2002. Those funds had not been escheated to the state of Washington as unclaimed property. Respondents had at least 281 potential stale dated checks totaling $81,224.60 that had been outstanding for more than ninety (90) days as of February 28, 2002.

xi. Failure to Promptly Disburse Funds: Respondents' trial balance report as of February 28, 2002, showed that Liberty had $78,335.01 in forty (40) closed escrow accounts that had been closed for more than six (6) months.

1.3 Failure to Properly Close Office: In a letter dated January 11, 2002, Allen stated: "I will close my office on February 15, 2002. In addition to the trust account reconciliation, please advise me what additional paperwork, if any is required . . . ." During a telephone conversation on January 28, 2002, David McCorkle, a representative of Liberty, advised the Department that Liberty would cease operations effective January 31, 2002, and would submit the closure form as soon as possible. A blank closure form was sent to Liberty by telefacsimile on that date. An unsigned note written on the 2002 renewal form and received February 1, 2002, stated: "We are closing the business after 1/31/2002." Respondents have not delivered the original escrow agent and escrow officer licenses to the Department. Respondents have not provided the Department with an itemized accounting of funds held in trust at the time of closure or the name of the person responsible for the records and the location of the records. Respondents have not provided the Department with quarterly reconciliations of the trust bank account to the trial balance.

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

II. GROUNDS FOR ENTRY OF ORDER

2.1 Requirement for License: Based on the Factual Allegations set forth above, Respondents are in apparent violation of RCW 18.44.071 when they allowed escrow transactions to be performed at least between May 31, 2001, and November 14, 2001, without the supervision of a licensed escrow officer.

2.2 Requirement to Display Licenses: Based on the Factual Allegations set forth above, Respondents are in apparent violation of RCW 18.44.101 when they failed to display the escrow agent and escrow officer licenses in a conspicuous place.

2.3 Deception as to Licensed Status: Based on the Factual Allegations set forth above, Respondents are in apparent violation of RCW 18.44.301(1) and (4), when, at least between May 31, 2001, and November 14, 2001, they falsely led consumers and lenders to believe that a licensed escrow company was providing the escrow services and continued to provide escrow services without a licensed DEO.

2.4 Failure to Reconcile Trust Account: Based on the Factual Allegations set forth above, Respondents are in apparent violation of RCW 18.44.400(1) by failing to keep adequate records of all transactions. Respondents are in apparent violation of WAC 208-680E-011(8) and (9) by failing to reconcile the trust bank accounts and to sign the reconciliations. Further, Respondents are in apparent violation of WAC 208-680D-030(1) when they failed to reconcile the escrow trust bank accounts against the client ledgers. Respondents have demonstrated incompetence or untrustworthiness by their unwillingness and/or inability to reconcile the trust accounts.

2.5 Failure to Complete Requirements for Closure of Office: Based on the Factual Allegations set forth above, Respondents are in apparent violation of RCW 18.44.301(10) and WAC 208-680C-045 when they failed to provide the Department with the information required upon closure of an office.

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2.6 Failure to Provide Proper Disclosure: Based on the Factual Allegations set forth above, Respondents are in apparent violation of WAC 208-680D-040(2) when they failed to provide specific disclosures identifying that Liberty was making a profit on courier/express fees and that it would charge reconveyance fees. Respondents are in apparent violation of WAC 208-680D-040(8)(c) when they failed to provide specific disclosures identifying that it would charge reconveyance fees.

2.7 Failure to Perform Acts Expeditiously: Based on the Factual Allegations set forth above, Respondents are in apparent violation of WAC 208-680D-050, when they failed to promptly resolve issues in at least two (2) accounts that have been closed for more than 90 days. Further, Respondents are in apparent violation of this section when they failed to promptly resolve issues related to: 82 potential stale dated checks more than five years old, with a cumulative total of $7,619.31; and 281 potential stale dated checks that have been outstanding for more than 90 days, with a cumulative total of $81,224.60.

2.8 Failure to Disburse Funds: Based on the Factual Allegations set forth above, Respondents are in apparent violation of WAC 208-680D-060, when they failed to promptly disburse funds immediately upon the closing of escrow transactions.

2.9 Failure to Properly Administer Funds Held in Trust: Based on the Factual Allegations set forth above, Respondents are in apparent violation of WAC 208-680E-011(14), when they disbursed funds to Liberty from the trust account for express/courier fees that were not supported.

2.10 Director's Discretion: Pursuant to RCW 18.44.410 and WAC 208-680G-030, the Director has the power and broad administrative discretion to administer and interpret this chapter to facilitate the delivery of services to citizens of this state by escrow agents and others subject to this chapter, including the issuance of rules and regulations, the revocation of licenses, and revocation of authority to act as a designated escrow officer.

2.11 Authority to Revoke License: Pursuant to RCW 18.44.430(1)(b), the Director may upon notice to the escrow agent and to the insurer providing coverage under RCW 18.44.201, deny, suspend, decline to renew, or revoke the license of any escrow agent or escrow officer for violating any of the provisions of the Act or any lawful rules made by the Director pursuant to the Act. Pursuant to RCW 18.44.430(1)(i), the Director may

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revoke the license of any escrow agent or escrow officer for committing acts or engaging in conduct that demonstrate the licensee to be incompetent or untrustworthy.

2.12 Authority to Impose Fines: Pursuant to RCW 18.44.430(3) and WAC 208-680G-040(3), the Director may impose fines in addition to or in lieu of revocation.

2.13 Authority to Prohibit from the Industry: Pursuant to RCW 18.44.430(3) and WAC 208-680G-040(2), the Director may remove and/or prohibit from participation in the conduct of the affairs of a licensed escrow agent, any officer, controlling person, director, employee, or licensed escrow officer in addition to or in lieu of revocation.

III. NOTICE OF INTENTION TO ENTER AN ORDER

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

3.1 That the license of Liberty Escrow Inc. to do business as an escrow agent be revoked; and

3.2 That the license of Kathleen Allen to do business as an escrow officer be revoked; and

3.3 That Kathleen Allen be prohibited from participation in the conduct of the affairs of a licensed escrow agent as an officer, principal, or employee of any licensed escrow agent or any person subject to licensing under this chapter for five (5) years, and

3.4 That Liberty Escrow Inc. and Kathleen Allen, jointly and severally, shall pay fines in the amount of $3000.00, calculated at $100.00/day for 30 days; and

3.5 That Respondents comply with all information requests and directives from the Department within the timeframes specified in conjunction with the investigation of its business practices; and

3.6 That Respondents, their officers, employees, and agents shall maintain all records involving escrow transactions for a minimum of six (6) years following the closing or termination of the escrow transaction; and

3.7 That Respondents immediately fulfill the requirements of an escrow agent set forth in the Act and chapter 208-680 WAC pertaining to funds owed to consumers by disbursing funds, as necessary. Should Respondents be unable to locate the person to whom the money is owed, Respondents must escheat the funds to the Washington State Department of Revenue. Respondents must provide the Department with written proof of payments to consumers and, if escheated, payments to the Department of Revenue. Written proof, at a minimum, must include copies of the front and back of cancelled checks.

IV. AUTHORITY AND PROCEDURE

This Statement of Charges and Notice of Intent to Assess Monetary Penalties, Revoke Licenses, and Prohibit from Participation in the Escrow Industry is entered pursuant to the provisions of RCW 18.44.410 and RCW 18.44.430, and is subject to the provisions of chapter 34.05 RCW. Liberty Escrow, Inc., and Kathleen Allen may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges and Notice of Intent to Assess Monetary Penalties, Revoke Licenses, and Prohibit from Participation in the Escrow Industry.

DATED this 5th day of August 2003.

Chuck Cross, Acting Director and Enforcement Chief
Division of Consumer Services
Department of Financial Institutions

Presented by:

Victoria W. Sheldon
Financial Legal Examiner

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RCW 18.44.071 Escrow officer required for handling transactions -- Responsibility of supervising escrow agent.
Every licensed escrow agent shall ensure that all escrow transactions are supervised by a licensed escrow officer. In the case of a partnership, the designated escrow officer shall be a partner in the partnership and shall act on behalf of the partnership. In the case of a corporation, the designated escrow officer shall be an officer of the corporation and shall act on behalf of the corporation. The designated escrow officer shall be responsible for that agent's handling of escrow transactions, management of the agent's trust account, and supervision of all other licensed escrow officers employed by the agent. Responsibility for the conduct of any licensed escrow officer covered by this chapter shall rest with the designated escrow officer or designated branch escrow officer having direct supervision of such person's escrow activities. The branch designated escrow officer shall bear responsibility for supervision of all other licensed escrow officers or other persons performing escrow transactions at a branch escrow office.

RCW 18.44.101 License -- Retention and display by agent -- Termination -- Inactive licenses.
The license of a licensed escrow officer shall be retained and displayed at all times by the licensed escrow agent. When the officer ceases for any reason to represent the agent, the license shall cease to be in force. Within three business days of termination of the licensed escrow officer's employment, the licensed escrow agent shall notify the director that the terminated escrow officer no longer represents the escrow agent. Within ten business days of termination of the licensed escrow officer's employment, the licensed escrow agent shall deliver the surrendered escrow officer license to the director. Failure to notify the director within three business days or deliver the surrendered license to the director within ten business days shall, at the discretion of the director, subject the escrow agent to penalties under RCW 18.44.430.
. . .

RCW 18.44.201. Financial responsibility – Fidelity bond – Errors and omissions policy – Surety bond.
(1) At the time of filing an application for an escrow agent license, or any renewal or reinstatement of an escrow agent license, the applicant shall provide satisfactory evidence to the director of having obtained the following as evidence of financial responsibility:
a) A fidelity bond providing coverage in the aggregate amount of two hundred thousand dollars with a deductible no greater than ten thousand dollars covering each corporate officer, partner, escrow officer, and employee of the applicant engaged in escrow transactions;
(b) An errors and omissions policy issued to the escrow agent providing coverage in the minimum aggregate amount of fifty thousand dollars or, alternatively, cash or securities in the principal amount of fifty thousand dollars deposited in an approved depository on condition that they be available for payment of any claim payable under an equivalent errors and omissions policy in that amount and pursuant to rules and regulations adopted by the department for that purpose; and
(c) A surety bond in the amount of ten thousand dollars executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety, unless the fidelity bond obtained by the licensee to satisfy the requirement in (a) of this subsection does not have a deductible. The bond shall run to the state of Washington as obligee, and shall run to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its employee's violation of this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation shall be effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond shall not be liable for any penalties imposed on the licensee, including but not limited to, any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090.
(2) For the purposes of this section, a "fidelity bond" shall mean a primary commercial blanket bond or its equivalent satisfactory to the director and written by an insurer authorized to transact this line of business in the state of Washington. Such bond shall provide fidelity coverage for any fraudulent or dishonest acts committed by any one or more of the employees or officers as defined in the bond, acting alone or in collusion with others. This bond shall be for the sole benefit of the escrow agent and under no circumstances whatsoever shall the bonding company be liable under the bond to any other party. The bond shall name the escrow agent as obligee and shall protect the obligee against the loss of money or other real or personal property belonging to the obligee, or in which the obligee has a pecuniary interest, or for which the

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obligee is legally liable or held by the obligee in any capacity, whether the obligee is legally liable therefor or not. The bond may be canceled by the insurer upon delivery of thirty days' written notice to the director and to the escrow agent.

(3) For the purposes of this section, an "errors and omissions policy" shall mean a group or individual insurance policy satisfactory to the director and issued by an insurer authorized to transact insurance business in the state of Washington. Such policy shall provide coverage for unintentional errors and omissions of the escrow agent and its employees, and may be canceled by the insurer upon delivery of thirty days' written notice to the director and to the escrow agent.

(4) Except as provided in RCW 18.44.221, the fidelity bond, surety bond, and the errors and omissions policy required by this section shall be kept in full force and effect as a condition precedent to the escrow agent's authority to transact escrow business in this state, and the escrow agent shall supply the director with satisfactory evidence thereof upon request.

RCW 18.44.301 Prohibited practices.

It is a violation of this chapter for any escrow agent, controlling person, officer, designated escrow officer, independent contractor, employee of an escrow business, or other person subject to this chapter to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

. . . .

(4) Knowingly make, publish, or disseminate any false, deceptive, or misleading information in the conduct of the business of escrow, or relative to the business of escrow or relative to any person engaged therein;. . .

(10) Fail to make any report or statement lawfully required by the director or other public official.

RCW 18.44.400. Records and accounts – Segregation and disbursements of funds – Violation of section, penalties.

(1) Every licensed escrow agent shall keep adequate records, as determined by rule by the director, of all transactions handled by or through the agent including itemization of all receipts and disbursements of each transaction. These records shall be maintained in this state, unless otherwise approved by the director, for a period of six years from completion of the transaction. These records shall be open to inspection by the director or the director's authorized representatives.

RCW 18.44.410 Powers of director.

(1) The director has the power and broad administrative discretion to administer and interpret this chapter to facilitate the delivery of services to citizens of this state by escrow agents and others subject to this chapter.

(2) The director may issue rules and regulations to govern the activities of licensed escrow agents and escrow officers. The director shall enforce all laws and rules relating to the licensing of escrow agents and escrow officers and fix the time and places for holding examinations of applicants for licenses and prescribe the method of conducting the examinations. The director may hold hearings and suspend or revoke the licenses of violators and may deny, suspend, or revoke the authority of an escrow officer to act as the designated escrow officer of a person who commits violations of this chapter or of the rules under this chapter.

Except as specifically provided in this chapter, the rules adopted and the hearings conducted shall be in accordance with the provisions of chapter 34.05 RCW, the administrative procedure act.

RCW 18.44.420. Investigation of violations – Procedure – Powers of director. The director may:

(1) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this chapter or any rule or order under this chapter, or to aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter; or

(2) Require or permit any person to file a statement in writing, under oath or otherwise as the director determines, as to all facts and circumstances concerning the matter to be investigated.

For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by the director may administer oaths or affirmations, and upon his or her own motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the director may apply to the superior court for an order compelling compliance.

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Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the administrative procedure act, chapter 34.05 RCW.

RCW 18.44.430 Actions against license -- Grounds.

(1) The director may, upon notice to the escrow agent and to the insurer providing coverage under RCW 18.44.201, deny, suspend, decline to renew, or revoke the license of any escrow agent or escrow officer if the director finds that the applicant or any partner, officer, director, controlling person, or employee has committed any of the following acts or engaged in any of the following conduct:

(a) Obtaining a license by means of fraud, misrepresentation, concealment, or through the mistake or inadvertence of the director.

(b) Violating any of the provisions of this chapter or any lawful rules made by the director pursuant thereto.

(c) The commission of a crime against the laws of this or any other state or government, involving moral turpitude or dishonest dealings.

(d) Knowingly committing or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person lawfully relying upon the word, representation, or conduct of the licensee or agent or any partner, officer, director, controlling person, or employee acts to his or her injury or damage.

(e) Conversion of any money, contract, deed, note, mortgage, or abstract or other evidence of title to his or her own use or to the use of his or her principal or of any other person, when delivered to him or her in trust or on condition, in violation of the trust or before the happening of the condition; and failure to return any money or contract, deed, note, mortgage, abstract, or other evidence of title within thirty days after the owner thereof is entitled thereto, and makes demand therefor, shall be prima facie evidence of such conversion.

(f) Failing, upon demand, to disclose any information within his or her knowledge to, or to produce any document, book, or record in his or her possession for inspection of, the director or his or her authorized representatives.

(g) Committing any act of fraudulent or dishonest dealing, and a certified copy of the final holding of any court of competent jurisdiction in such matter shall be conclusive evidence in any hearing under this chapter.

(h) Accepting, taking, or charging any undisclosed commission, rebate, or direct profit on expenditures made for the principal.

(i) Committing acts or engaging in conduct that demonstrates the applicant or licensee to be incompetent or untrustworthy, or a source of injury and loss to the public.

(2) Any conduct of an applicant or licensee that constitutes grounds for enforcement action under this chapter is sufficient regardless of whether the conduct took place within or outside of the state of Washington.

(3) In addition to or in lieu of a license suspension, revocation, or denial, the director may assess a fine of up to one hundred dollars per day for each day's violation of this chapter or rules adopted under this chapter and may remove and/or prohibit from participation in the conduct of the affairs of any licensed escrow agent, any officer, controlling person, director, employee, or licensed escrow officer.

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WAC 208-680C-045 Closure of office. (1) **Effect of closure.** When the main office of an escrow agent closes, all branch offices must close. When a branch office closes and the main office remains licensed, the responsibility for records maintenance and trust accounting reverts to the main office.

(2) **Notification.** When either the main office or a branch office of an escrow agent closes, all responsible persons are jointly and severally obliged to notify the department within twenty-four hours of closure.

(a) "Responsible person" means: The designated escrow officer; the owner of the firm; a controlling person as defined in RCW 18.44.011(12); and the officers, owners and partners of the entity. The department may allow a person other than a responsible person as defined in this subsection to assume these duties.

(b) Additional notifications shall include:

(i) Delivery of all original escrow licenses for offices being closed to the department within five working days of office closure. All licenses returned must be dated and signed. If a branch office is closing, the branch office license must be returned to the department. If the main office is closing, all licenses issued to the main and all branch offices must be returned.

(ii) Within thirty days of office closure, an itemized accounting of funds held in trust at the time of closure, including the names of the principal parties to the transaction, the escrow number, the amount of funds held and the purpose of the funds. If the trust bank account balance is zero, the escrow agent must provide a reconciliation of the trial balance supporting the zero balance.

(iii) Within twenty-four hours of office closure, the name, residence address and telephone number of the person responsible for the records.

(iv) Within thirty days of office closure, the street address where the records are located.

(c) All responsible persons are jointly and severally obliged to notify the department within thirty days of any change in the person responsible for the records or the place the records are maintained.

(3) **Maintenance of records after closure.** When an escrow office closes, the records must be maintained in the state of Washington for at least six years. The records shall be available upon demand of the department during business hours and maintained in a manner to be readily retrievable.

(4) **Trust account.** If the trust bank account contains client funds at the time of closure, the person responsible for the records shall provide the department with quarterly reconciliations of the trust bank account to the trial balance, in compliance with WAC 208-680E-011(9), until the trust bank account balance is zero. The responsible person shall submit the reconciliations for the periods ending March, June, September and December. These reconciliations are due within thirty days of the end of the preceding period.

WAC 208-680D-030 Accuracy and accessibility of records. (1) **Accuracy.** All records shall be accurate, posted and kept current to the date of the most recent transaction.

. . . .

WAC 208-680D-040 Agreements and closings. The escrow agent shall be responsible for the effecting and closing of escrow agreements between the principal parties. The agent shall as a minimum:

. . . .

(2) Disclose in writing to the principal parties when fees for services provided may be realized by the escrow agent. The disclosure must specifically identify the fees using the same terminology as that provided on the closing statement (for example HUD1 or HUD1A), and reflect the dollar amount associated with each item identified as a fee payable to the escrow agent. For purposes of this section, fees payable to the escrow agent shall mean any item payable directly to the escrow agent whether realized by the escrow agent as profit, potential for profit, or the offset of justifiable costs.

. . . .

(8) Provide a complete detailed closing statement (for example HUD1 or HUD1A) as it applies to each principal at the time the transaction is closed. The escrow agent shall retain a copy of all closing statements in the transaction file, even if funds are not handled by the agent. The closing statements (for example HUD1 or HUD1A) shall show:

(a) The date of closing.

(b) The total purchase price

(c) An itemization of all adjustments, monies or things of value received or paid in compliance with requirements of the Real Estate Settlement Procedures Act, 12 U.S.C. Section 2601, and Regulation X, 24 C.F.R. Section 3500 and all applicable rules and regulations. Such itemization must include the name of the person or company to whom each individual amount is paid, or from whom each individual amount is received.

(d) A detail of debits and credits identified to each principal party.
(e) Names of payees, makers and assignees of all notes paid, made or assumed.

WAC 208-680D-050 Expeditious performance.
An escrow agent shall perform all acts required of the escrow agent as expeditiously as possible and within any time period identified in the escrow instructions. Intentional or negligent delay in such performance shall be considered in violation of RCW 18.44.430 (1)(i).

WAC 208-680D-060 Disbursement of funds.
The escrow agent shall disburse funds as set forth in the escrow instructions. Disbursement of any money or other items in violation of the trust or before the happening of the conditions of the escrow agreement or escrow instructions is a violation of RCW 18.44.430 (1)(e). Funds and other items or documents must be paid and/or disbursed immediately upon closing of the transaction or as specifically agreed to in writing by all of the principal parties: Provided, That funds are disbursed in compliance with RCW 18.44.400(3).
Upon written notice from any principal party that the ownership of the funds is in dispute or is unclear based on the written agreement of the parties, the escrow agent must hold such funds until receiving written notice from all principal parties that the dispute has been resolved. In lieu of holding such funds the escrow agent may interplead the funds into a court of competent jurisdiction pursuant to chapter 4.08 RCW. Upon notification of a bona fide dispute between the principal parties, the director may, at his/her discretion, order the escrow agent to interplead the funds into a court of competent jurisdiction.
At no time may an escrow agent disburse or delay the disbursement of funds without the written consent of all principal parties.

WAC 208-680E-011 Administration of funds held in trust. The designated escrow officer or branch designated escrow officer on behalf of the escrow agent shall be responsible for all funds received from any principal or any party to an escrow transaction or escrow collection account and shall hold the funds in trust for the purposes of the transaction or agreement and shall not utilize such funds for the benefit of the agent or any person not entitled to such benefit. The escrow agent shall establish a trust bank account(s) in a recognized Washington state depository. The escrow agent is responsible for depositing, holding, disbursing, and accounting for funds in trust as provided herein.
. . . .
(8) The reconciled trust bank account(s) must equal at all times the outstanding trust liability to clients. The outstanding trust liability to clients must equal the trial balance of all escrows with undisbursed balances.
(9) The agent shall be responsible for preparation of a monthly trial balance of the client's ledger, reconciling the ledger with both the trust account bank statement and the trust account receipts and disbursement records. The reconciliation will be signed by the designated escrow officer or branch designated escrow officer. Such reconciliations are to be retained as permanent records.
. . . .
(14) No disbursement from the trust bank account shall be made:
(a) For items not pertaining to a specific escrow transaction or escrow collection account;
(b) In advance of the closing of an escrow transaction, or before the happening of a condition set forth in the escrow instructions, to any person or for any reason without a written release from all principals of the escrow transaction or collection account, except that if the earnest money agreement terminates according to its own terms prior to closing, disbursement of earnest money funds shall be made as provided by the earnest money agreement without a written release unless the funds are handled as provided in WAC 208-680D-060;
(c) Pertaining to a specific escrow transaction or collection account in excess of the actual amount held in the trust bank account in connection with such account;
(d) In payment of a fee owed to any employee of an agent or in payment of any business expense of the agent. Payment of fees to employees of an agent or of any business expense of the agent shall be paid from the regular business bank account of the agent;
(e) For bank charges of any nature. Arrangements must be made with the bank to have any such charges applicable to the trust bank accounts charged to the regular business bank account, or to provide a separate statement of bank charges so that they may be paid from the agents regular business bank account: Provided, That bank charges may be paid from the interest on accounts allowed under subsection (1)(c) of this section;

(f) For preauthorization of payments by the financial institution for recurring expenses such as mortgage payments on behalf of the owner if the account contains tenant security deposits or funds belonging to more than one client;

(g) Of funds received as a damage or security deposit involving a lease or rental contract, to the property owner or to any person(s) without the written authority of the lessee. Such funds are to be held until the end of the tenancy when they are to be disbursed to the person(s) entitled to the funds as provided by the terms of the rental or lease agreement and consistent with the provisions of RCW 59.18.270, Residential Landlord-Tenant Act, or other appropriate statute.

(h) If the financial institution's automated system does not have the ability to charge fees to another account, or does not provide a separate statement for the service fees as required by (e) of this subsection, and the account is debited for service fees, the escrow agent shall deposit within one banking day after receipt of notice funds from the general business or other nontrust account to cover the service fee charged.

WAC 208-680G-030 Enforcement.

The director, or designated person, may conduct the following types of enforcement activity:

(1) Enter orders, including temporary orders to cease and desist, compelling any person to cease and desist from the unlawful practice, and to take such affirmative action as in the judgment of the director will carry out the purposes of this chapter;

(2) Enter charges for violations of chapter 18.44 RCW and chapter 208-680 WAC;

(3) Bring an action, with or without prior administrative proceedings, in the superior court to enjoin the acts or practices and to enforce compliance with chapter 18.44 RCW, or any rule, regulation, or order of the director;

(4) Appoint a receiver or conservator to take over, operate, or liquidate any escrow office;

(5) Hold hearings; or

(6) Make referrals to other regulatory or law enforcement agencies.

WAC 208-680G-040 Sanctions.

The director may impose the following sanctions:

(1) Denial, suspension, or revocation of license for any violation of RCW 18.44.260;

(2) Remove or prohibit from participation in the conduct of the affairs of any licensed escrow agent, any officer, controlling person, director, employee, or licensed escrow officer for any violation of RCW 18.44.260;

(3) Assess a fine of up to one hundred dollars per day for each day's violation of chapter 18.44 RCW, or these rules.

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