

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

**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:

GUARDIAN TITLE SERVICES,
Respondent.

NO. C-06-134-08-FO01

FINAL ORDER

I. DIRECTOR'S CONSIDERATION

A. Default. This matter has come before the Director of the Department of Financial Institutions of the State of Washington (Director), through his designee, Consumer Services Division Director Deborah Bortner, pursuant to RCW 34.05.440(1). On October 2, 2008, the Director, through Consumer Services Division Director Deborah Bortner, entered a Statement of Charges and Notice of Intention to Enter an Order to Prohibit from Industry, Cease and Desist, Impose Fine, Collect Investigation Fee, and Maintain Records (Statement of Charges). A copy of the Statement of Charges is attached and incorporated into this order by this reference. The Statement of Charges was accompanied by a cover letter dated October 6, 2008, a Notice of Opportunity to Defend and Opportunity for Hearing, and blank Applications for Adjudicative Hearing for Guardian Title Services. The Department served the Statement of Charges, cover letter dated October 6, 2008, Notice of Opportunity to Defend and Opportunity for Hearing, and blank Application for Adjudicative Hearing for Guardian Title Services on Respondent and on Respondents' Registered Agent, Warren R. Whitted Jr., on October 10, 2008, by first class mail and Federal Express overnight delivery. On October 13, 2008, the documents sent via Federal Express overnight delivery were delivered to the Respondent's

1 registered agent. The documents sent via first class mail were not returned to the Department by the
2 United States Post Office as undeliverable. The Registered Agent for Respondent forwarded the
3 documents sent from the Department to Respondent's attorney Robert F. Peterson, who acknowledged
4 receipt of the documents and contacted the Department.

5 Respondent's attorney, Robert F. Peterson, informed the Department that the Respondent
6 would not be requesting an administrative hearing as provided for in WAC 208-08-050(2).

7 Respondent Guardian Title Services did not request an adjudicative hearing within twenty
8 calendar days after the Department served it with the Notice of Opportunity to Defend and Opportunity
9 for Hearing, as provided for in WAC 208-08-050(2).

10
11 B. Record Presented. The record presented to the Director's designee for her review and
12 for entry of a final decision included the following:

- 13 1. Statement of Charges, cover letter dated October 6, 2008, Notice of Opportunity to
14 Defend and Opportunity for Hearing, and blank Application for Adjudicative Hearing
for Guardian Title Services, with documentation of service;
- 15 2. Letter from Respondent's attorney dated October 23, 2008, informing Department the
16 Respondent will not be requesting an administrative hearing.

17 C. Factual Findings and Grounds For Order. Pursuant to RCW 34.05.440(1) the
18 Director's deesignee hereby adopts the Statement of Charges, which is attached hereto.

19 //

20 //

21 //

22 //

23 //

24 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

II. FINAL ORDER

Based upon the foregoing, and the Director's designee having considered the record and being otherwise fully advised, NOW, THEREFORE:

A. IT IS HEREBY ORDERED, That:

1. Respondent Guardian Title Services is banned from participation in the conduct of the affairs of any escrow agent subject to licensure by the Director, in any manner, for a period of 5 years; and
2. Respondent Guardian Title Services Respondent Guardian Title Services cease and desist from providing escrow services in the State of Washington until such time as Respondent Guardian Title Services obtains the appropriate license from the Department or meets an exclusion delineated in RCW 18.44.021; and
3. Respondent Guardian Title Services pay a fine of \$30,000;
4. Respondents Guardian Title Services pay an investigation fee of \$812.50.
5. Respondents Guardian Title Services, its officers, employees, and agents maintain all records involving Washington State escrow transactions within the State of Washington for a minimum of six (6) years following the completion of the escrow transactions.

B. Reconsideration. Pursuant to RCW 34.05.470, Respondents have the right to file a Petition for Reconsideration stating the specific grounds upon which relief is requested. The Petition must be filed in the Office of the Director of the Department of Financial Institutions by courier at 150 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia, Washington 98504-1200, within ten (10) days of service of the Final Order upon Respondents. The Petition for Reconsideration shall not stay the effectiveness of this order nor is a Petition for Reconsideration a prerequisite for seeking judicial review in this matter.

1 A timely Petition for Reconsideration is deemed denied if, within twenty (20) days from the date
2 the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written
3 notice specifying the date by which it will act on a petition.

4 C. Stay of Order. The Director's designee has determined not to consider a Petition
5 to Stay the effectiveness of this order. Any such requests should be made in connection with a Petition
6 for Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.

7 D. Judicial Review. Respondents have the right to petition the superior court for
8 judicial review of this agency action under the provisions of chapter 34.05 RCW. For the requirements
9 for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

10 E. Non-compliance with Order. If you do not comply with the terms of this order, the
11 Department may seek its enforcement by the Office of Attorney General to include the collection of the
12 fines and fees imposed herein.

13 F. Service. For purposes of filing a Petition for Reconsideration or a Petition for
14 Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of service
15 attached hereto.
16

17 DATED this 17th day of November, 2008.

18 STATE OF WASHINGTON
19 DEPARTMENT OF FINANCIAL INSTITUTIONS



25
26
27
28
29
30
31
32
33
34
35


DEBORAH BORTNER
DIRECTOR
DIVISION OF CONSUMER SERVICES

1
2
3
4
5
6
7
8

**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:

GUARDIAN TITLE SERVICES,

Respondent.

NO. C-06-134-07-SC01

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

9
10
11
12
13
14

INTRODUCTION

Pursuant to RCW 18.44.410 and RCW 18.44.430, the Director of the Department of Financial Institutions (Director) is responsible for the administration of chapter 18.44 RCW, the Escrow Agent Registration Act (Act). After having conducted an investigation pursuant to RCW 18.44.420, and based upon the facts available as of the date of this Statement of Charges, the Director, through his designee, Deborah Bortner, Division Director, Division of Consumer Services, institutes this proceeding and finds as follows:

15
16
17
18
19
20
21
22
23
24
25

I. FACTUAL ALLEGATIONS

1.1 Respondent Guardian Title Services (Respondent Guardian), a Nebraska corporation, is not and has never been licensed by the State of Washington to operate as an escrow agent.

1.2 Unlicensed location. Respondent is known to have conducted business as an Escrow Agent in the State of Washington from 15675 Spaulding Street, Omaha, Nebraska 68116. To date, the Respondent has not applied for and the Department has not issued a license to Respondent to conduct the business of an escrow agent in the State of Washington from any location.

1.3 Unlicensed Activity. Between at least January 27, 2005, and December 15, 2005, Respondent performed escrow agent functions for over 120 properties located in Washington State. The total fees collected by the Respondent for these loans was at least \$78,000.

1 **1.4 On-Going Investigation:** The Department's investigation into the alleged violations of the Act by
2 Respondent continues to date.

3 **II. GROUNDS FOR ENTRY OF ORDER**

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

12 **2.2 Definition of Escrow Agent.** Pursuant to RCW 18.44.011(6) "Escrow Agent" means any person engaged
13 in the business of performing for compensation the duties of the third person referred to in RCW 18.44.011(4).

14 **2.3 Requirement to Obtain and Maintain License.** Based on the factual allegations set forth in Section I
15 above, Respondent is in apparent violation of RCW 18.44.021 for engaging in business as an escrow agent by
16 performing escrows or any of the functions of an escrow agent within this state or with respect to transactions
17 that involve personal property or real property located in this state without first obtaining a license.

18 **2.4 Requirement to Maintain Records.** Respondent is required, pursuant to RCW 18.44.400 and WAC 208-
19 680D-030 to maintain adequate records of all transactions handled by or through Respondent in the State of
20 Washington for a period of six (6) years from completion of the transaction.

21 **III. AUTHORITY TO IMPOSE SANCTIONS**

22 **3.1 Authority to Prohibit from Industry.** Pursuant to RCW 18.44.430(3), the Director may prohibit from
23 participation in the conduct of the affairs of any licensed escrow agent, any officer, controlling person, director,
24 employee, or licensed escrow officer for any violation of the Act or the lawful rules made by the director
25 pursuant thereto.

1 **3.2 Authority to Issue Order to Cease and Desist.** Pursuant to RCW 18.44.440 and WAC 208-680G-030, if
2 the Director determines after notice and hearing that a person has violated any provisions of the Act or rules
3 adopted under the Act, or engaged in any false, unfair and deceptive, or misleading business practices, the Director
4 may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative
5 action as in the judgment of the Director will carry out the purposes of the Act.

6 **3.3 Authority to Impose Fines.** Pursuant to RCW 18.44.430(3) and WAC 208-680G-040(3), the Director
7 may impose a fine of up to \$100 per day for each day's violation of the Act or rules adopted under the Act.

8 **3.4 Authority to Collect Investigation Fee.** Pursuant to RCW 18.44.121 and WAC 208-680G-050, the
9 expense of an investigation pursuant to WAC 208-680G-020 inside or outside this state shall be borne by the
10 person investigated.

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

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


- 17 4.1 Respondent Guardian Title Services be prohibited from participation in the conduct of any
18 licensed escrow agent for consumers or property in the state of Washington for five years;
- 19 4.2 Respondent Guardian Title Services cease and desist from providing escrow services in the
20 State of Washington until such time as Respondent Guardian Title Services obtains the
21 appropriate license from the Department or meets an exclusion delineated in RCW 18.44.021;
- 22 4.3 Respondent Guardian Title Services pay a fine which as of the date of this document totals
23 \$30,000.
- 24 4.4 Respondent Guardian Title Services pay an investigation fee which as of the date of this
25 document totals \$812.50;
- 4.5 Respondent Guardian Title Services, its officers, employees, and agents maintain all records
involving Washington State escrow transactions within the State of Washington for a minimum
of six (6) years following the completion of the escrow transactions.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

V. AUTHORITY AND PROCEDURE

This Statement of Charges and Notice of Intention to Enter an Order to Prohibit from Industry, Cease and Desist, Impose Fine, Collect Investigation Fee, and Maintain Records (Statement of Charges) is entered pursuant to the provisions of RCW 18.44.410, RCW 18.44.430, and RCW 18.44.440, and is subject to the provisions of chapter 34.05 RCW. Respondent 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.

DATED this 2nd day of October, 2008.


DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:


WILLIAM J. HALSTEAD
Financial Legal Examiner

Approved by:


JAMES R. BRUSSELBACK
Enforcement Chief

