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

8 IN THE MATTER OF DETERMINING) No. C-07-459-07-TD01
9 Whether there has been a violation of the Escrow)
10 Agent Registration Act of Washington by:) TEMPORARY ORDER TO
11) CEASE AND DESIST
12 Escrow Visions, LLC, d/b/a American West Escrow,)
13 and Barbara Marie Simmons, Individually and as)
14 Managing Member of Escrow Visions, LLC,)
15)
16)
17 Respondents.)

18 THE STATE OF WASHINGTON TO:

Escrow Visions, LLC
d/b/a American West Escrow
2603 North Proctor
Tacoma, WA 98407

Barbara M. Simmons
7013 Mullen Road SE
Olympia, WA 98503

19 COMES NOW the Director of the Department of Financial Institutions of the State of Washington,
20 by and through his designee, Consumer Services Division Director Deborah Bortner, and finds that
21 Respondents, Escrow Visions, LLC, d/b/a American West Escrow and Barbara Simmons, individually
22 and as Managing Member of Escrow Visions, LLC, have each violated the Escrow Agent Registration
23 Act. Finding that delay in ordering the Respondents to cease and desist from such violations will result
24 in irreparable harm to the public interest, Division Director Bortner enters this Temporary Order to
25 Cease and Desist pursuant to RCW 18.44.440.

I. PRELIMINARY FINDINGS OF FACT

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1.1 Respondent Escrow Visions, LLC, d/b/a American West Escrow (Respondent American West)
is an active Washington for-profit limited liability company authorized to do business in Washington on
February 13, 2004. The Department of Financial Institutions of the State of Washington (Department)
licensed Respondent American West as an Escrow Agent on or about March 15, 2004. Respondent

1 American West currently holds Escrow Agent license 540-EA-22559. Respondent American West's
2 office is located at 2603 North Proctor, Tacoma, Pierce County, Washington.

3 **1.2 Barbara Marie Simmons** (Respondent Simmons) is the Managing Partner and sole owner of
4 Respondent American West. The Department licensed Respondent Simmons as a Designated Escrow
5 Officer (DEO) on March 13, 2004. Respondent Simmons currently holds DEO license 540-DO-25974,
6 and has been the sole DEO of Respondent American West since its formation. Respondent Simmons
7 has been the sole owner and Managing Partner of Respondent American West since February 27, 2007,
8 when she bought the interest of the only other member. Respondent Simmons is also a Limited Practice
9 Officer, license 2093, certified to select, prepare and complete documents for use in closing loans.¹

10 **1.3 Examination.** On August 30, 2007, the Department sent a letter to Respondent American West
11 and Simmons advising them the Department would be conducting a routine examination pursuant to
12 WAC 208-680G-010. The Department requested that Respondents prepare certain items for review
13 during the examination, including trust bank account records, monthly trust bank account
14 reconciliations, and other books and records. The Department further requested that Respondent
15 Simmons be available for an initial interview at the start of the examination.

16 **1.4** The examination commenced on September 12, 2007. During the initial interview, Respondent
17 Simmons reported that Respondent American West had two escrow trust bank accounts: one at U. S.
18 Bank, the last four numbers of which are 8402; and one at Union Bank of California (Union Bank), the
19 last four numbers of which are 8186. Respondent Simmons reported that when she purchased the
20 business, the former owners had an escrow trust bank account at U.S. Bank, the last four numbers of
21 which are 0704.

22 **1.5** During the course of the examination, Respondent Simmons informed the Department that she had
23 decided to close the business and began transferring files, including those sought by the Department, to
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25 ¹ As Respondent Simmons is both the DOE and a LPO, Respondent American West is required to use an IOLTA account for
their escrow trust bank account. An IOLTA (Interest On Lawyers' Trust Accounts) account is a pooled, interest-bearing trust
account for deposit of client funds that are nominal in amount or expected to be held for a short period of time.

1 an off-site storage facility. On or about September 18, 2007, Respondent Simmons delivered a letter to
2 the Department indicating that as of September 17, 2007, Respondent American West would be closing
3 permanently.

4 **1.6 Failure to Produce Records.** During the examination the Department requested all bank and
5 month-end reconciliation records, including duplicate bank deposit books or canceled checks, for the
6 U.S. Bank escrow trust bank account 8402, for the period of October 2006 to September 2007.

7 Respondent Simmons failed to produce month-end reconciliation records and bank statements for the
8 period of December 2006 to September 2007, and failed to produce any duplicate bank deposit books or
9 canceled checks for the entire period requested.

10 **1.7** On or about September 13, 2007, and again on or about September 19, 2007, the Department
11 requested documentation for all bank and system adjustments, transfers, and credit/debit memos for the
12 escrow trust bank accounts at U.S. Bank and Union Bank. Respondent Simmons failed to produce any
13 documentation in response to the request.

14 **1.8 Failure to Maintain Records.** Respondent Simmons had not prepared for the examination as
15 requested in the August 30, 2007, letter, and did not have a number of requested documents available.
16 In response to a Department request made during the examination for bank and month-end
17 reconciliation records for U.S. Bank escrow trust bank account 0704, Respondent Simmons stated she
18 did not know where the records were located.

19 **1.9 Complaint No. 23538.** On July 19, 2007, the Department received a written letter of complaint
20 from a California consumer concerning a series of transactions she had entered into with Respondents
21 American West and Simmons. At the conclusion of the transactions, the consumer had approximately
22 \$367,000 in seller's proceeds in the escrow trust bank account at Respondent American West. The
23 consumer instructed Respondent Simmons to keep the money in the escrow trust bank account. When
24 the consumer requested the funds, Respondent Simmons said the funds would not be available for two
25 weeks.

1 **1.10** Despite repeated requests, Respondents American West and Simmons refused to release the funds.
2 On June 12, 2007, the consumer traveled from California to Washington to demand payment.
3 Respondent Simmons said that American West had mistakenly paid \$25,000 of the consumer's funds to
4 the wrong party, and that Respondents only had \$342,000 left. Respondent Simmons wrote seven
5 checks to the consumer for the seller's proceeds in six transactions, as follows:

ESCROW #	CHECK #	AMOUNT
06-00115-DLJ	22157	\$ 105,584.38
06-00061-BMS	22158	\$ 12,036.73
06-00005-BMS	22159	\$ 99,013.34
06-00074-BMS	22160	\$ 6,314.03
06-00067-BMS	22161	\$ 81,902.96
06-00006-BMS	22162	\$ 24,744.11
06-00067-BMS	22163	\$ 13,000.00
		\$ 342,595.55

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11 **1.11** The checks were drawn on U.S. Bank escrow trust bank account 8402. The consumer attempted
12 to negotiate the checks, but was informed by U.S. Bank that there were non-sufficient funds (NSF) in
13 the account. The Consumer contacted Respondent Simmons, who again promised that the funds would
14 be available in two weeks. Despite the consumer's repeated attempts to negotiate the checks, there were
15 never sufficient funds in the account.

16 **1.12** Respondent American West's escrow trust bank account, which should have held the entire
17 \$367,000, had not had a month-end balance greater than that amount since May 2006, when the month-
18 end balance was \$482,463.79. At the end of May 2007, just prior to writing the checks to the consumer,
19 the account had a balance of only \$11,433.96.²

20 **1.13** On September 7, 2007, Respondents American West and Simmons wired \$342,595.55 to the
21 consumer's bank account. The consumer is still owed the \$25,000 that was allegedly transferred out of
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24 ² In April 2007, U.S. Bank converted the IOLTA account to a commercial checking account. Shortly after the conversion, the
25 Washington State Department of Revenue (DOR) was able to levy the account for unpaid taxes owed by Respondent American
West. DOR withdrew a total of \$22,661.39 from the account in May, June, and August, 2007. DOR's final levy, taken August
22, 2007, had resulted in a \$0 balance in the account.

1 escrow to the wrong party. On November 6, 2007, Respondent Simmons admitted the escrow trust
2 bank account had not been reconciled for several months prior to writing the checks.

3 **1.14 Referral from WSBA.** On October 17 and 19, 2007, the Washington State Bar Association
4 (WSBA) notified the Department that as part of their IOLTA account monitoring, they had received
5 notice of overdrafts in Union Bank escrow trust bank account 8186. The account was opened by
6 Respondents American West and Simmons in April 2006, and was apparently replacing the escrow trust
7 bank account at U.S. Bank as Respondent American West's primary trust account. The notices from the
8 WSBA identified six checks drawn on the Union Bank IOLTA account that had been returned as NSF:

CHECK #	PRESENTED	AMOUNT
30234	09/21/07	\$ 965.00
30247	09/21/07	\$ 236,006.34
30251	09/21/07	\$ 51.95
30254	09/21/07	\$ 544.00
30264	10/02/07	\$ 208,661.92
30265	10/02/07	\$ 213,633.20
		\$ 659,862.41

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14 **1.15 Complaint No. 24784.** On November 2, 2007, the Department received a call from an attorney
15 representing a Washington consumer who had used Respondent American West to close the refinance
16 on an investment property. As part of the refinance, an existing loan secured by the real property was to
17 be paid off. On or about October 23, 2007, Vickie Atkins, an employee of Respondents American West
18 and Simmons, had written a check, 30408, made payable to Westside Community Bank, to pay off the
19 consumer's loan. The \$294,227.62 check, drawn on Respondents' Union Bank escrow trust bank
20 account 8186, was dishonored by Union Bank due to non-sufficient funds on October 29, 2007. A
21 branch manager with Westside Community Bank contacted Union Bank and confirmed that the trust
22 account did not have sufficient funds to negotiate the check.

23 **1.16** On November 2, 2007, the Westside Community Bank received a wire transfer of \$150,000 from
24 Respondents American West and Simmons in partial payment towards the consumer's loan payoff.

1 Respondent Simmons did not respond to subsequent requests from Westside Community Bank for the
2 balance of the loan payoff, and the balance of \$144,227.62 remains due.

3 **1.17** On November 5, 2007, the consumer received a letter from Respondents American West and
4 Simmons explaining the reason check 30408 had been dishonored. According to Respondent Simmons,
5 in late September Union Bank had mistakenly debited the escrow trust bank account twice for a payoff
6 to another lender. In fact, check 30247 in the amount of \$236,006.04, written by Respondent Simmons
7 on September 14, 2007, had been debited twice. However, on both occasions Union Bank had reversed
8 the debit due to non-sufficient funds.

9 **1.18 Failure to Reconcile.** The Department has reason to believe, based upon its examination, that
10 Respondent American West's escrow trust bank accounts have not been reconciled. The Department
11 also has reason to believe, based on the NSF checks reported by consumers and the WSBA, that
12 Respondent American West's escrow trust bank accounts do not contain sufficient funds to cover
13 outstanding obligations.

14 15 **II. GROUNDS FOR ENTRY OF ORDER**

16 **2.1** Respondents American West Escrow and Simmons, individually and as Managing Member of
17 Escrow Visions, LLC, have each violated RCW 18.44.301(2) and (3) of the Escrow Agent Registration
18 Act (the Act).

19 **2.2** Respondents American West Escrow and Simmons, individually and as Managing Member of
20 Escrow Visions, LLC, have each violated RCW 18.44.400(1), (2), and (3) of the Act.

21 **2.3** Respondents American West Escrow and Simmons, individually and as Managing Member of
22 Escrow Visions, LLC, have each violated RCW 18.44.430(1)(b), (d), (e), (f), and (i) of the Act.

23 **2.4** Pursuant RCW 18.44.400(5) and RCW 18.44.430(3), the violations of the Act enumerated above
24 provide grounds, pursuant to RCW 18.44.440, for the entry of a Temporary Order to Cease and Desist
25 against Respondents American West Escrow and Simmons.

1 **III. IRREPARABLE HARM**

2 **3.1** Based on the Preliminary Findings of Fact and Grounds for Entry of Order, and the significant
3 danger that Respondents American West Escrow and Simmons will continue to operate and disburse
4 escrow trust bank account funds in violation of the Act, the Director of the Department of Financial
5 Institutions finds that the public interest will be irreparably harmed by delay in issuing an order, and
6 therefore enters this Temporary Order to Cease and Desist pursuant to RCW 18.44.440.

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8 **IV. TEMPORARY ORDER TO CEASE AND DESIST**

9 Based on the foregoing, NOW, THEREFORE, IT IS HEREBY ORDERED that

10 **4.1 Cease Disbursements Unless Countersigned:** Respondents American West Escrow and
11 Simmons, their agents and employees shall each immediately cease and desist from making any
12 disbursements from any bank accounts holding funds belonging to, or transferred from, any
13 commercial, business, or escrow trust bank accounts belonging to, related to, or controlled by
14 Respondents American West Escrow and Simmons unless the disbursement has been countersigned by
15 the designated person identified in paragraph 4.4 below. This order includes but is not limited to the
16 following bank accounts:

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U.S. Bank	Account Type	Union Bank	Account Type
*****8402	Escrow Trust	*****8186	Escrow Trust
*****8287	General Operating	*****8216	General Operating
*****0704	Escrow Trust	*****8224	Earnings Credit

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20 **4.2 Comply with Escrow Agent Registration Act:** Respondents American West Escrow and
21 Simmons, their agents and employees shall each immediately cease and desist from all escrow activity
22 in violation of RCW 18.44 RCW, the Escrow Agent Registration Act.

23 **4.3 Close Escrow Agent:** In light of Respondent Simmons' written notice to the Department that
24 American West Escrow was permanently closed effective September 17, 2007, Respondent American
25 West shall immediately cease accepting new business. Furthermore, by 9:00 a.m. Tuesday, November

1 13, 2007, Respondents shall deliver to the Department the completed Escrow Agent Office Closure
2 Form attached to this Order.

3 **4.4 Identify Designated Person:** At 9:00 a.m. Tuesday, November 13, 2007, Respondent Simmons
4 shall deliver to the Department the name and contact information of an attorney, designated escrow
5 officer, or LPO licensed in Washington who will be designated to countersign all disbursements from
6 any open accounts listed in paragraph 4.1. Respondent Simmons shall add the designated person to the
7 signature cards of any open accounts listed in paragraph 4.1. On or after November 13, 2007, any
8 disbursements made from those accounts must be countersigned by the designated person.

9 **4.5 Provide Testimony Under Oath:** Respondent Simmons shall appear and give testimony under
10 oath before the Department of Financial Institutions, Division of Consumer Services, 150 Israel Road
11 SW, Tumwater, Washington, at 9:00 a.m. on Tuesday, November 13, 2007, concerning this matter.

12 **4.6 Produce Documents:** Respondent Simmons, individually and as Custodian of Records for
13 Respondent American West, shall produce documents to the Department of Financial Institutions,
14 Division of Consumer Services, 150 Israel Road SW, Tumwater, Washington, at 9:00 a.m. on Tuesday,
15 November 13, 2007, concerning this matter, such documents to include those described in the attached
16 Exhibit A, incorporated herein by reference as though set out in full.

17 **4.7 Order Effective Immediately:** This order shall take effect immediately, and shall remain in effect
18 unless otherwise directed by the Department in writing.

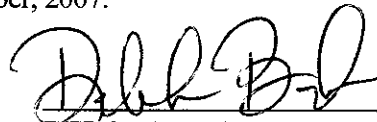
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20 **NOTICE**

21 PURSUANT TO CHAPTER 18.44 RCW, YOU ARE ENTITLED TO A HEARING TO
22 DETERMINE WHETHER THIS ORDER SHALL BECOME PERMANENT. IF YOU DESIRE A
23 HEARING, YOU MUST RETURN THE ATTACHED APPLICATION FOR ADJUDICATIVE
24 HEARING.

1 FAILURE TO COMPLETE AND RETURN THE APPLICATION FOR ADJUDICATIVE
2 HEARING SO THAT IT IS RECEIVED BY THE DEPARTMENT OF FINANCIAL INSTITUTIONS
3 WITHIN TWENTY (20) DAYS OF THE DATE THIS ORDER WAS SERVED ON YOU WILL
4 CONSTITUTE A DEFAULT AND WILL RESULT IN THE LOSS OF YOUR RIGHT TO A HEARING.

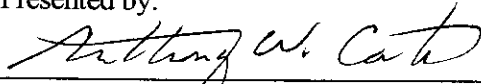
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6 SERVICE ON YOU IS DEFINED AS POSTING IN THE U.S. MAIL, POSTAGE PREPAID, TO
7 YOUR LAST KNOWN ADDRESS, OR PERSONAL SERVICE. BE ADVISED THAT DEFAULT
8 WILL RESULT IN THIS TEMPORARY ORDER TO CEASE AND DESIST BECOMING
9 PERMANENT ON THE TWENTY-FIRST (21ST) DAY FOLLOWING SERVICE OF THIS ORDER.

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11 Entered and Dated this 9th day of November, 2007.

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

17 Presented by:

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19 ANTHONY W. CARTER
20 Enforcement Attorney

21 Approved by:

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23 JAMES R. BRUSSELBACK
24 Enforcement Chief



EXHIBIT A: DOCUMENTS TO BE PRODUCED

INSTRUCTIONS

1. Unless otherwise specified, produce all documents in existence from January 1, 2007, to the present.
2. Each document request seeks production of all documents within your possession, custody, or control, including attorneys, accountants, agents, employees, and independent contractors acting or purporting to act on your behalf.
3. If, for any request, there are documents that would have been responsive, but which were destroyed, mislaid, or transferred beyond your possession, custody, or control, describe the type, title, specific subject matter, and date of the document(s), as well as the circumstances and date on which they were destroyed, mislaid, or transferred.
4. Each document not subject to a claim of privilege shall be produced in its entirety even if only a portion of that document relates to the request. This means that the document shall not be edited, cut, redacted or expunged and shall include all appendices, tables or other attachments and all documents referred to in the document or attachments.
5. Any exact reproduction of a document may be submitted in place of that document, provided that such reproduction shall be legible in its entirety and, where there is writing on both the front and back of the document, both sides are copied. Wherever possible, please produce responsive documents electronically in native format.
6. For any request that production be made in native format, produce the documents as stored on your computer systems, i.e., responses to requests for e-mails should be produced in the Microsoft Outlook .pst format; responses to requests for other documents should be produced in Microsoft Word, Excel, or Access formats.

DEFINITIONS

1. "You" or "Your" means Respondents American West and Barbara Simmons, including their employees and agents.
2. "Document" or "Documents" means all written or graphic matter, however produced or reproduced, and any other tangible record, including but not limited to all writings, computer discs or recordings, whether set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, mechanical or electronic recording, or any other form of data compilation. The term "document" also means every copy of a document where such copy is not an identical duplication of the original, includes the back of any document that contains writing, and includes all drafts or edited versions of documents whether or not used or circulated.
3. Documents "relating to," "related to," or "evidencing" a given subject matter means any document or communication that constitutes, contains, embodies, comprises, reflects, states, refers to, responds to, comments on, describes, analyzes or is in any way pertinent to that subject.
4. "Person" means any natural person, proprietorship, corporation, firm, partnership, group, company, association, community, agency, institution, joint venture, or any other legal entity.

5. "Complaint" means any oral or written inquiry, statement, or comment heard or received by you from customers, investors, competitors, or employees, the primary intent of which is to convey a grievance or expression of dissatisfaction.
6. "Native format" refers to the default format of a data file created by its associated software program. For example, Microsoft Excel produces its output as '.xls' files by default; this is the native format of Excel.

DOCUMENTS TO BE PRODUCED

1. All documents relating to the conversion of U.S. Bank escrow account 8402 from a "Lawyer's Trust" to a "Commercial Checking" account.
2. All documents relating to the Washington State Department of Revenue obligation that resulted in \$22,661.39 being swept from the U.S. Bank escrow account 8402.
3. All documents relating to the Union Bank of California debiting payoff funds from escrow account 8186 twice in error sometime in late September.
4. All documents relating to open escrow accounts. In responding to this request, produce the escrow files of all accounts where funds remain to be received or disbursed pursuant to escrow instructions.
5. All documents relating to Respondent Simmons' financial net worth. In responding to this request, in lieu of producing documents at this time, you may complete and produce the attached financial declaration.
6. All documents relating to the operating accounts belonging to, related to, or under control of Respondents American West and/or Simmons, including but not limited to the general bank accounts listed in paragraph 4.1 of the Temporary Order to Cease and Desist.
7. All documents relating to the trust accounts belonging to, related to, or under control of Respondents American West and/or Simmons, including but not limited to the trust accounts listed in paragraph 4.1 of the Temporary Order to Cease and Desist. In responding to this request, produce:
 - (a) Copies of all duplicate deposit slips validated by the bank or bearing the signature of the designated escrow officer and the date of actual deposit, wires, separate receipts, or other evidence of the deposit of funds into the trust account;
 - (b) Copies of all checks, wires, or other evidence of any disbursement from the trust account;
 - (c) Copies of all bank statements for the trust account, including all paid checks or copies of paid checks, electronic or otherwise, provided that such copies are made in such a manner that the endorsement on the paid check is visible and readable;
 - (d) Client's ledger containing an individual ledger sheet for each transaction. However, if you use a computerized record systems, produce in native format a copy of all trust account records.
 - (e) All monthly account reconciliations for each account from January 1, 2005 to the present.
8. All document relating to complaints received by you. In responding to this request, please ensure that all e-mails relating to the complaints are produced in electronic format.