

## ORDER SUMMARY – Case Number: C-07-459

**Name(s):** Escrow Visions LLC, d/b/a American West Escrow;  
Barbara Marie Simmons as Managing Member of Escrow Visions LLC;  
and Barbara Marie Simmons Individually

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**Order Number:** C-07-459-13-FO01

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**Effective Date:** January 9, 2013

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**License Number:** Escrow Visions LLC EA license #540-EA-22559 – Revoked  
Barbara Marie Simmons DEO license #540-DO-25974 - Revoked

**Or NMLS Identifier [U/L]** (Revoked, suspended, stayed, application denied or withdrawn)  
If applicable, you must specifically note the ending dates of terms.

**License Effect:** Both licenses are revoked effective the date the Final Order is entered  
by Deborah Bortner.

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**Not Apply Until:** N/A

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**Not Eligible Until:** N/A

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**Prohibition/Ban Until:** All respondents are prohibited for 10 years from the date the Final  
Order is entered by Deborah Bortner. Prohibition covers “participation  
in the conduct of the affairs of any Washington licensed escrow agent,  
in any manner.”

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<b>Investigation Costs</b>	\$ 12,375.00	Due: On entry	Paid: <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date:
<b>Fine</b>	\$ 0	Due:	Paid: <input type="checkbox"/> Y <input type="checkbox"/> N	Date:
<b>Assessment(s)</b>	\$ 0	Due:	Paid: <input type="checkbox"/> Y <input type="checkbox"/> N	Date:
<b>Restitution</b>	\$ 0	Due:	Paid: <input type="checkbox"/> Y <input type="checkbox"/> N	Date:
<b>Judgment</b>	\$ 0	Due:	Paid: <input type="checkbox"/> Y <input type="checkbox"/> N	Date:
<b>Satisfaction of Judgment Filed?</b>	<input type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> N/A			
No. of Victims:	N/A			

Comments: Respondents must maintain all records involving Washington escrow transactions for a minimum of six years following the closure or termination of the escrow transaction.

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1 STATE OF WASHINGTON  
2 DEPARTMENT OF FINANCIAL INSTITUTIONS  
3 DIVISION OF CONSUMER SERVICES

4 IN THE MATTER OF DETERMINING  
5 whether there has been a violation of the  
6 Escrow Agent Registration Act of Washington by:

NO. C-07-459-13-FO01

FINAL ORDER

7 ESCROW VISIONS, LLC, d/b/a AMERICAN WEST  
8 ESCROW, and BARBARA MARIE SIMMONS,  
9 Individually and as Managing Member of Escrow  
10 Visions, LLC,

11 Respondents.

12 I. DIRECTOR'S CONSIDERATION

13 A. Default. This matter has come before the Director of the Department of Financial Institutions of the  
14 State of Washington (Director), through his designee, Consumer Services Division Director Deborah Bortner  
15 (Director's designee), pursuant to RCW 34.05.440(1). On September 23, 2010, the Director, through the  
16 Director's designee, issued a Statement of Charges and Notice of Intent to Enter an Order to Revoke Licenses,  
17 Prohibit from Industry, Collect Investigative Fees, and Maintain Records (Statement of Charges) against  
18 Escrow Visions, LLC and Barbara Marie Simmons, individually and as Managing Member of Escrow Visions  
19 LLC (Respondents). A copy of the Statement of Charges is attached and incorporated into this order by this  
20 reference. The Statement of Charges as was accompanied by cover letters dated September 24, 2010, Notices  
21 of Opportunity to Defend and Opportunity for Hearing, and blank Applications for Adjudicative Hearing for  
22 each Respondent (collectively, accompanying documents).

23 On August 26, 2010, the Department received confirmation from the Proctor Branch Office of the United  
24 States Post Office that mail addressed to Respondents was being delivered to a Post Office Box in Tacoma,  
25 Washington. On September 24, 2010, the Department served Respondents at that address with the Statement  
of Charges and accompanying documents by both regular First-Class mail and certified First-Class mail,  
Return Receipt Requested. On October 15, 2010, the Statement of Charges and accompanying documents

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1 sent by Certified First-Class Mail, Return Receipt Requested, were returned to the Department as unclaimed.  
2 The Statement of Charges and accompanying documents sent by regular First-Class mail were never returned.

3 Respondents did not request an adjudicative hearing within twenty calendar days after the Department  
4 served the Notice of Opportunity to Defend and Opportunity for Hearing, as provided for in WAC 208-08-  
5 050(2).

6 B. Record Presented. The record presented to the Director's designee for her review and for entry of a  
7 final decision included the Statement of Charges, accompanying documents, and documentation for service.

8 C. Factual Findings and Grounds for Order. Pursuant to RCW 34.05.440(1), the Director's designee  
9 hereby adopts the attached Statement of Charges.

## 10 II. FINAL ORDER

11 Based upon the foregoing, and the Director's designee having considered the record and being otherwise  
12 fully advised,

### 13 A. IT IS HEREBY ORDERED that:

- 14 1. Respondent Escrow Visions LLC's license to conduct business of an Escrow Agent is revoked;
- 15 2. Respondent Barbara Marie Simmon's license as a designated escrow officer is revoked;
- 16 3. Respondents Escrow Visions LLC and Barbara Marie Simmons, individually, are prohibited  
17 from participation in the conduct of the affairs of any Washington licensed escrow agent, in any  
18 manner, for a period of ten (10) years;
- 19 4. Respondents Escrow Visions LLC and Barbara Marie Simmons, individually and as the  
20 Managing Member of Escrow Visions LLC, are jointly and severally liable for, and shall pay,  
21 within 30 days of receipt of this order, an investigative fee of \$12,375.00; and
- 22 5. Respondents Escrow Visions LLC and Barbara Marie Simmons shall maintain all records  
23 involving Washington escrow transactions for a minimum of six years following the closure or  
24 termination of the escrow transaction.

25 B. Reconsideration. Pursuant to RCW 34.05.470, each Respondent has 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

1 ten (10) days of service of the Final Order upon that Respondent. The Petition for Reconsideration shall not  
2 stay the effectiveness of this order nor is a Petition for Reconsideration a prerequisite for seeking judicial  
3 review in this matter.

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

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

10 D. Judicial Review. Each Respondent has the right to petition the superior court for judicial review of  
11 this agency action under the provisions of chapter 34.05 RCW. For the requirements for filing a Petition for  
12 Judicial Review, see RCW 34.05.510 and sections following.

13 E. Non-compliance with Order. If any Respondent does not comply with the terms of this order,  
14 including payment of any amounts owed within 30 days of receipt of this order, the Department may seek its  
15 enforcement by the Office of the Attorney General to include the collection of the investigative fees imposed  
16 herein. The Department also may assign the amounts owed to a collection agency for collection.

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

19  
20 DATED this 9th day of January, 2013.



21  
22 STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS

23  
24 [Redacted Signature] \_\_\_\_\_  
DEBORAH BORTNER  
Director, Division of Consumer Services



STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS

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

NO. C-07-459-10-FO01

FINAL ORDER TO CEASE AND DESIST

ESCROW VISIONS LLC, d/b/a AMERICAN WEST  
ESCROW, and BARBARA MARIE SIMMONS,  
Individually and as Managing Member of Escrow  
Visions, LLC,

Respondents.

I. DIRECTOR'S CONSIDERATION

A. Procedural History. This matter has come before the Director of the Department of Financial Institutions of the State of Washington (Director) pursuant to RCW 34.05.464. On November 8, 2007, the Director, through Consumer Services Division Director Deborah Bortner, entered a Temporary Order to Cease and Desist (TCD) against Escrow Visions LLC, d/b/a American Escrow (Respondent American West) and Barbara Marie Simmons (Respondent Simmons). A copy of the TCD is attached and incorporated into this order by this reference. The TCD was accompanied by a Notice of Opportunity to Defend and Opportunity for Hearing, and blank Applications for Adjudicative Hearing for Respondents American West and Simmons (Respondents). The Department served the TCD and accompanying documents on Respondents on November 8, 2007, by First-Class mail.

On November 28, 2007, Respondents, through counsel, each filed an Application for Adjudicative Hearing. The Department subsequently requested the Office of Administrative Hearings to assign an Administrative Law Judge (ALJ) to schedule and conduct a hearing on the TCD. On January 9, 2008, ALJ Cindy L. Burdue conducted a Telephonic Prehearing Conference: both the Department and Respondents, through counsel,

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1 appeared. On January 28, 2008, ALJ Burdue issued a Prehearing Conference Order and Notice of Hearing  
2 scheduling a hearing and setting a discovery and motion calendar.

3 On February 12, 2008, ALJ Burdue received notice from counsel for Respondents that Respondents had  
4 formally withdrawn their appeal and Applications for Adjudicative Hearing on the TCD. On February 14,  
5 2008, ALJ Burdue entered an Initial Order of Dismissal dismissing the appeal and hearing request pursuant to  
6 WAC 10-08-230. On February 14, 2008, ALJ Burdue mailed the Initial Order of Dismissal to Respondents and  
7 their counsel.

8 Pursuant to RCW 34.05.464 and WAC 10-08-211, Respondents had twenty (20) days from the date of  
9 service of the Initial Decision and Order to file a Petition for Review of the Initial Decision and Order.  
10 Respondents did not file a Petition for Review during the statutory period.

11 B. Record Presented. The record presented to the Director for his review and for entry of a final  
12 decision included the following:

- 13 1. Temporary Order to Cease and Desist and Notice of Opportunity to Defend and  
14 Opportunity for Hearing, with documentation of service;
- 15 2. Applications for Adjudicative Hearing for Respondents American West and Simmons;
- 16 3. Prehearing Order with documentation of service, and
- 17 4. Initial Order of Dismissal with documentation of service.

18 C. Factual Findings and Grounds For Order. Pursuant to RCW 34.05.461, the Director hereby adopts the  
19 Initial Order of Dismissal, which is attached hereto.

## 20 II. FINAL ORDER

21 Based upon the foregoing, and the Director having considered the record and being otherwise fully  
22 advised, NOW, THEREFORE:

23 A. IT IS HEREBY ORDERED, That:

- 24 1. Respondents Escrow Visions LLC, d/b/a American West Escrow, and Barbara Marie  
25 Simmons permanently cease and desist all escrow activity in violation of the Escrow  
Agent Registration Act, chapter 18.44 Revised Code of Washington; and

1           2. Respondent American West permanently cease accepting new business.

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

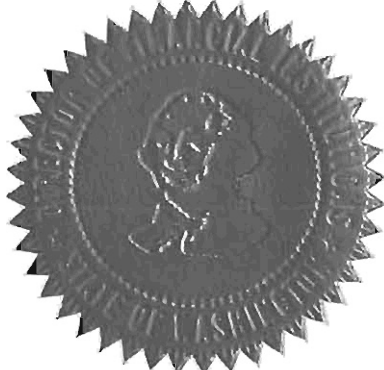
9           A timely Petition for Reconsideration is deemed denied if, within twenty (20) days from the date the  
10 petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice  
11 specifying the date by which it will act on a petition.

12           C. Stay of Order. The Director has determined not to consider a Petition to Stay the effectiveness of this  
13 order. Any such requests should be made in connection with a Petition for Judicial Review made under chapter  
14 34.05 RCW and RCW 34.05.550.

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

18           E. Service. For purposes of filing a Petition for Reconsideration or a Petition for Judicial Review, service is  
19 effective upon deposit of this order in the U.S. mail, declaration of service attached hereto.

20           DATED this 16<sup>th</sup> day of September 2010.



STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS



SCOTT JARVIS  
DIRECTOR

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

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

ESCROW VISIONS, LLC, d/b/a AMERICAN  
WEST ESCROW and BARBARA MARIE  
SIMMONS, Individually and as Managing Member  
of Escrow Visions, LLC,

NO. C-07-459-10-SC01

STATEMENT OF CHARGES and NOTICE OF  
INTENT TO ENTER AN ORDER TO REVOKE  
LICENSES, PROHIBIT FROM INDUSTRY,  
COLLECT INVESTIGATIVE FEES, AND  
MAINTAIN RECORDS

Respondents.

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**INTRODUCTION**

Pursuant to RCW 18.44.410, the Director of the Department of Financial Institutions (Director) is responsible for the administration of chapter 18.44 RCW, the Escrow Agent Registration Act (the Act). After having conducted an examination and investigation pursuant to RCW 18.44.420, WAC 208-680G-010, and WAC 208-680G-020, and based upon the facts available as of the date of this Statement of Charges, the Director, through his designee, Deborah Bortner, Division Director, Division of Consumer Services, institutes this proceeding and finds as follows:

**I. FACTUAL ALLEGATIONS**

**1.1 Respondents.**

**A. Escrow Visions, LLC, d/b/a American West Escrow** (Respondent American West) was a Washington for-profit limited liability company authorized to do business on February 13, 2004, and administratively dissolved on June 2, 2008. Located at 2603 North Proctor, Tacoma, Washington, Respondent American West was licensed by the Department of Financial Institutions (Department) as an escrow agent, license number 540-EA-22559, on or about March 15, 2004. Respondent American West was closed and their escrow agent license abandoned on or about September 17, 2007. Though Respondent American West filed a closure form with the Department, the form was incomplete. At all times relevant to this matter, Respondent American West was licensed as an escrow agent by the Department.



1           **B. Barbara Marie Simmons** (Respondent Simmons) was the Managing Member of Respondent  
2 American West, and was the sole owner and member from February 27, 2007, until the LLC was dissolved.  
3 Respondent Simmons was licensed by the Department as a designated escrow officer (DEO), license number  
4 540-DO-25974, on or about March 13, 2004. Respondent Simmons closed Respondent American West and  
5 abandoned her DEO license on or about September 17, 2007. At all times relevant to this matter, Respondent  
6 Simmons was licensed as an escrow officer by the Department.

7           **1.2 Examination.** On or about August 30, 2007, the Department sent a letter to Respondent American  
8 West and Simmons (Respondents) advising them the Department would be conducting a routine examination  
9 of the escrow agent pursuant to WAC 208-680G-010. The Department requested that Respondents prepare  
10 certain items for review during the examination, including bank and trust account reconciliations.

11           The examination commenced on or about September 12, 2007. Respondent Simmons reported that  
12 Respondent American West had a general operating account and an escrow trust bank account at U. S. Bank,  
13 the last four numbers of which were 8287 and 8402, respectively. In addition, Respondent American West  
14 had an escrow trust bank account at Union Bank of California (Union Bank), the last four numbers of which  
15 were 8186. Respondent Simmons further reported that Respondents had taken control of the former owners'  
16 escrow trust bank account at U.S. Bank, the last four numbers of which were 0704.

17           **1.3 Failure to Reconcile Escrow Trust Bank Account.** During the examination the Department reviewed  
18 Respondents' September 30, 2006, Bank Reconciliation Report for escrow trust account 8402. The adjusted  
19 balance was at least \$18,098.07 to the negative: (\$18,098.07). More than 60 accounting exceptions dating  
20 back to August 2004 and totaling at least \$1,445,000 were included in the negative balance. On November 6,  
21 2007, Respondent Simmons admitted the U.S. Bank escrow trust bank account 8402 had not recently been  
22 reconciled.

23           **1.4 Failure to Deposit Escrow Funds in Trust Account.** During the review of the September 30, 2006,  
24 Bank Reconciliation Report, the Department discovered that in November 2004, Respondent Simmons had  
25 credited the account with a series of six deposits totaling \$296,026.06. The Bank Reconciliation Report noted

1 that no deposit to the escrow trust account had been made. The Department obtained and reviewed account  
2 statements for the general operating account at U.S. Bank, account 8287, and discovered that Respondent  
3 Simons had deposited the \$296,026.06 in escrow trust funds into her general operating account. In July 2005,  
4 Respondent Simmons attempted to transfer the funds from her general operating account to the escrow trust  
5 bank account, but at the time her general operating account did not have sufficient funds. On or about July 8,  
6 2005, the escrow trust bank account 8402 at U.S. Bank had a balance of at least \$439,933.27 to the negative:  
7 (\$439,933.27).

8 **1.5 Failure to Maintain Trust Account.** During the examination the Department discovered that an audit  
9 performed by the Washington State Department of Revenue (DOR) had discovered more than \$50,000 in  
10 unpaid taxes for the period February 1, 2004, through March 31, 2006. In April 2007, the U.S. Bank escrow  
11 trust account 8402 was converted by U.S. Bank from a "Lawyers Trust" account to a "Commercial Checking"  
12 account. From May 4, 2007, through August 22, 2007, DOR levied the account for unpaid taxes, penalties  
13 and interest owed by Respondents in the amount of \$22,661.39, resulting in a zero balance in the account.

14 **1.6 Failure to Maintain Required Records.** Respondent Simmons had not prepared for the examination  
15 as requested in the August 30, 2007, letter, and did not have a number of requested documents available.  
16 During the examination Respondent Simmons stated she did not know where the bank and month-end  
17 reconciliation records for U.S. Bank escrow trust bank account 0704 were located.

18 **1.7 Failure to Timely File Quarterly Reports.** As of about February 2005, the Department required  
19 escrow agents, including Respondent American West, to file an Escrow Agent Quarterly Report Form  
20 (Quarterly Report) with the Department within 30 days of the end of each fiscal quarter. As DEO of  
21 Respondent American West, Respondent Simmons was required to submit the forms for both U. S. Bank trust  
22 account 8402 and Union Bank trust account 8216. Respondent Simmons did not file the required reports for  
23 U.S. bank trust account 8402 for the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> quarters of 2007.

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1 **1.8 Failure to Comply with Director's Authority.** During the course of the examination, the Department  
2 requested certain accounting records required to be maintained pursuant to RCW 18.44.400. Respondents did  
3 not produce the requested records, as follows:

4 **A.** On or about August 30, 2007, the Department requested all bank and month-end reconciliation  
5 records, including duplicate bank deposit books or canceled checks, for the U.S. Bank escrow trust bank  
6 account 8402, for the period of October 2006 to September 2007. Respondents did not produce month-end  
7 reconciliation records and bank statements for the period of December 2006 to September 2007 and did not  
8 produce any duplicate bank deposit books or canceled checks for the entire period requested.

9 **B.** On or about September 13, 2007, and again on or about September 19, 2007, the Department  
10 requested documentation for all bank and system adjustments, transfers, and credit/debit memos for the  
11 escrow trust bank accounts at U.S. Bank, account 8402, and Union Bank, account 8186. Respondents did not  
12 produce any documentation in response to the request.

13 **1.9 Failure to Maintain Sufficient Funds in Trust Account.** Prior to the examination, the Department  
14 received information that Respondents had violated their duty to maintain their escrow trust bank accounts in  
15 compliance with RCW 18.44.400.

16 **A. Complaint Number 23538.** On July 19, 2007, the Department received a complaint concerning a  
17 series of escrow transactions involving Respondents. At the conclusion of the transactions, the consumer had  
18 approximately \$367,000 in seller's proceeds in the escrow trust bank account at Respondent American West.  
19 When the consumer initially requested the funds, Respondent Simmons said the funds would not be available  
20 for two weeks. Despite repeated subsequent requests, Respondents refused to release the funds. On June 12,  
21 2007, the consumer demanded payment in person. Respondent Simmons said that Respondent American  
22 West had mistakenly paid \$25,000 of the consumer's funds to the wrong party, and that Respondents only had  
23 \$342,000 left. Respondent Simmons wrote seven checks to the consumer drawn on U.S. Bank escrow trust  
24 bank account 8402. The consumer attempted to negotiate the checks, but was informed by U.S. Bank that  
25 there were non-sufficient funds in the account. The consumer contacted Respondent Simmons, who promised

1 that funds would be available in two weeks. Despite the consumer's subsequent attempts to negotiate the  
2 checks, there were never sufficient funds in the account.

3 **B. WSBA Notices of Overdrafts.** On October 17 and 19, 2007, the Washington State Bar  
4 Association (WSBA) notified the Department that as part of their IOLTA account monitoring, they had  
5 received notice of overdrafts in Union Bank escrow trust bank account 8186. The notices from the WSBA  
6 identified six checks totaling \$213,633.20 that had been returned for non-sufficient funds.

7 **C. Complaint Number 24784.** On November 1, 2007, the Department received a complaint  
8 concerning an escrow transaction involving Respondents. The consumer had used Respondents to close the  
9 refinance on an investment property. As part of the refinance, an existing loan secured by real property was to  
10 be paid off. On or about October 23, 2007, Respondents issued a \$294,227.62 check drawn on Union Bank  
11 escrow trust bank account 8186 to pay off the loan. On October 29, 2007, the check was dishonored due to  
12 non-sufficient funds. On November 5, 2007, the consumer received a letter from Respondents explaining the  
13 reason check 30408 had been dishonored. According to Respondents, Union Bank had mistakenly debited the  
14 escrow trust bank account twice for a payoff to another lender. In fact, though the account had been debited  
15 twice, on both occasions Union Bank had reversed the debit due to non-sufficient funds.

16 **1.10 Failure to Timely Provide Notice of Business Closure.** During the examination, Respondent  
17 Simmons informed the Department that she had decided to close the business and began transferring files,  
18 including those sought by the Department, to another location. Respondent Simmons subsequently delivered  
19 a letter to the Department indicating that as of September 17, 2007, Respondent American West would be  
20 closing permanently. Though Respondent American West subsequently filed a closure form with the  
21 Department, the form was incomplete.

22 **1.11 Procedural History.**

23 **A. Temporary Order to Cease and Desist.** Based in part on the above facts the Department issued a  
24 Temporary Order to Cease and Desist against Respondents on November 8, 2007. Respondents, represented  
25 by counsel, timely requested an adjudicative hearing, and on January 9, 2008, a telephonic prehearing

1 conference was conducted by Administrative Law Judge Cindy L. Burdue. On February 14, 2008, based on a  
2 request from Respondents to withdraw their request for an adjudicative hearing, Judge Burdue dismissed the  
3 appeal pursuant to Washington Administrative Code (WAC) 10-08-230. Pursuant to RCW 18.44.440, on  
4 September 16, 2010, the Director entered a Final Order, C-07-459-10-FO01, against Respondents making the  
5 Temporary Order to Cease and Desist permanent.

6 **B. Receivership.** On April 8, 2008, pursuant to RCW 18.44.470, the Department filed a petition in  
7 Pierce County Superior Court, cause number 08-2-06930-9, seeking appointment of Receiver to take over,  
8 operate, or liquidate Respondent American West. On June 18, 2008, the Court appointed Shelly Crocker, an  
9 attorney with the firm of Crocker Kuno PLLC in Seattle, as Receiver with complete possession and control  
10 over all property of Respondent American West. The Court granted the Receiver all powers and duties under  
11 the Act Relating to Receiverships, RCW 7.60. The Receiver was unable to locate Respondent Simmons, and  
12 was therefore unable to obtain the financial and escrow files necessary to reconcile the accounts or even  
13 identify claimants. The Receiver recovered \$26,832.98 from one trust account, but expended \$33,783.74 in  
14 administering the receivership. On September 10, 2010, the Court issued an order terminating the  
15 receivership and closing the case.

16 **C. Bankruptcy.** On June 25, 2008, Respondent Simmons filed a Chapter 13 bankruptcy petition in  
17 U.S. Bankruptcy Court for the Western District of Washington. In her Statement of Financial Affairs filed  
18 with the petition, Respondent Simmons stated that Respondent Escrow Visions was closed, and that the only  
19 assets of the company (furniture, equipment and other office supplies) had been transferred to an employee  
20 who had invested \$10,000 in Escrow Visions, LLC. The bankruptcy was dismissed on October 29, 2008, for,  
21 among other things, Respondent Simmons' failure to pay filing fees.

## 22 23 **II. GROUNDS FOR ENTRY OF ORDER**

24 **2.1 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondents are in  
25 apparent violation of RCW 18.44.301(1), (2), and (3) for directly or indirectly employing a scheme, device or

1 artifice to defraud or mislead any borrower; for directly or indirectly engaging in an unfair or deceptive  
2 practice toward any person; and for directly or indirectly obtaining property by fraud or misrepresentation.

3 **2.2 Requirement to Reconcile Trust Accounts.** Based on the Factual Allegations set forth in Section I  
4 above, Respondents are in apparent violation of RCW 18.44.430(1)(b) by apparently violating WAC 208-  
5 680D-030(1), WAC 208-680E-011(9), and WAC 208-680E-011(8) for failing to (a) prepare monthly  
6 reconciliations of the escrow trust account bank statement with the trust account receipts and disbursements;  
7 (b) failing to reconcile client ledgers with both the trust account bank statement and the trust account receipts  
8 and disbursement records; and (c) failing to ensure the reconciled trust bank account equals at all times the  
9 outstanding trust liability to clients.

10 **2.3 Prohibition against Conversion.** Based on the Factual Allegations set forth in Section I above,  
11 Respondents are in apparent violation of RCW 18.44.430(1)(e) for converting escrow trust funds to their own  
12 use, and failing, upon demand, to return unlawfully converted funds to their rightful owner within 30 days.

13 **2.4 Prohibition against Disbursing Funds from an Escrow Account Exceeding the Deposits for the**  
14 **Transaction.** Based on the Factual Allegations set forth in Section I above, Respondents are in apparent  
15 violation of RCW 18.44.400(3) and WAC 208-680E-011(14)(c) for disbursing funds from an escrow account  
16 in excess of the amount deposited for the transaction.

17 **2.5 Requirement to Act Expeditiously.** Based on the Factual Allegations set forth in Section I above,  
18 Respondents are in apparent violation of RCW 18.44.430(1)(i), WAC 208-680D-050, and  
19 WAC 208-680D-060 for intentionally and negligently delaying performance of their duties as escrow agent.

20 **2.6 Prohibition against False Entries.** Based on the Factual Allegations set forth in Section I above,  
21 Respondents are in apparent violation of RCW 18.44.301(6) by making false entries in its books and accounts.

22 **2.7 Requirement to Hold Funds in Trust.** Based on the Factual Allegations set forth in Section I above,  
23 Respondents are in apparent violation of RCW 18.44.400(2) and WAC 208-680E-011 by failing to establish  
24 and maintain an escrow trust bank account in a recognized Washington state depository institution.

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1 **2.8 Requirement to Keep and Maintain Accurate Books and Records.** Based on the Factual  
2 Allegations set forth in Section I above, Respondents are in apparent violation of RCW 18.44.400(1), WAC  
3 208-680D-020, and WAC 208-680D-030 for failing to keep adequate records of escrow transactions, for  
4 failing to maintain all records open to inspection by the Department, and for failing to properly maintain  
5 transaction records for six years following the closure or termination of the escrow transaction.

6 **2.9 Requirement to File Quarterly Reports.** Based on the Factual Allegations set forth in Section I  
7 above, Respondents are in apparent violation of RCW 18.44.301(10), RCW 18.44.430, and WAC 208-680E-  
8 025 for failing to file with the Director, within 30 days following the end of each fiscal quarter, reports  
9 concerning operations and trust account administration and reconciliation.

10 **2.10 Requirement to Comply with Director's Authority.** Based on the Factual Allegations set forth in  
11 Section I above, Respondents are in apparent violation of RCW 18.44.430(1)(f) by failing, upon demand, to  
12 produce documents, books, and records for inspection by the Director or his or her authorized representatives.

13 **2.11 Requirement to Notify Department of Office Closure.** Based on the Factual Allegations set forth in  
14 Section I above, Respondents are in apparent violation of RCW 18.44.301(10) and WAC 208-680C-405 by  
15 failing to notify the Department within twenty-four hours of closure; for failing to provide, within twenty-four  
16 hours of office closure, the name, residence address and telephone number of the person responsible for the  
17 records; by failing to deliver to the Department dated and signed original escrow licenses within five working  
18 days of office closure; for failing to provide, within thirty days of closure, an itemized accounting of funds  
19 held in trust at the time of closure, including the names of the principal parties to the transaction, the escrow  
20 number, the amount of funds held, and the purpose of the funds; and for failing to provide, within thirty days  
21 of office closure, the street address where the records were located.

22 **2.12 Prohibition against Incompetence.** Based on the Factual Allegations set forth in Section I above,  
23 Respondents are in apparent violation of RCW 18.44.430(1)(i) for committing acts or engaging in conduct  
24 that demonstrates the licensees to be incompetent, untrustworthy, or a source of injury and loss to the public.

25 //

1 **III. AUTHORITY TO IMPOSE SANCTIONS**

2 **3.1 Authority to Revoke License.** Pursuant to RCW 18.44.430(1)(b), the Director may revoke the license  
3 of any escrow agent or escrow officer for violating any of the provisions of the Act or any lawful rules made  
4 by the Director pursuant to the Act.

5 **3.2 Authority to Prohibit from Industry.** Pursuant to RCW 18.44.430(3), in addition to or in lieu of a  
6 license revocation, the Director may prohibit from participation in the conduct of the affairs of any licensed  
7 escrow agent, any officer, controlling person, director, employee, or licensed escrow agent, for violating any  
8 of the provisions of the Act or any lawful rules made by the Director pursuant to the Act.

9 **3.3 Authority to Collect Investigation Fee.** Pursuant to WAC 208-680G-050(2), the expenses of an  
10 investigation conducted pursuant to WAC 280-680G-020 shall be borne by the person investigated.

11  
12 **IV. NOTICE OF INTENT TO ENTER ORDER**

13 Respondents' violations of the provisions of chapter 18.44 RCW as set forth in the above Factual  
14 Allegations and Grounds for Entry of Order constitute a basis for the entry of an Order under RCW 18.44.410  
15 and RCW 18.44.430. Therefore, it is the Director's intent to ORDER that:

16 **4.1** The escrow agent license held by Respondent Escrow Visions LLC, d/b/a American West Escrow, be  
17 revoked; and

18 **4.2** The designated escrow officer license held by Respondent Barbara Marie Simmons be revoked; and

19 **4.3** Respondents Escrow Visions LLC, d/b/a American West Escrow and Barbara Marie Simmons be  
20 prohibited from participation in the conduct of the affairs of any Washington licensed escrow agent, in  
21 any manner, for a period of ten (10) years; and

22 **4.4** Respondents Escrow Visions LLC, d/b/a American West Escrow and Barbara Marie Simmons, jointly  
23 and severally, pay an investigation fee that as of the date of this Statement of Charges totals \$12,375.00,  
24 representing 198 staff hours at \$62.50 per hour; and

25 **4.5** Respondents Escrow Visions LLC, d/b/a American West Escrow and Barbara Marie Simmons maintain  
all records involving Washington escrow transactions for a minimum of six years following the closure  
or termination of the escrow transaction.

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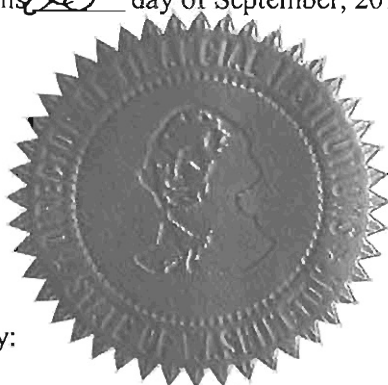
V. AUTHORITY AND PROCEDURE

This Statement of Charges and Notice of Intent to Enter an Order to Revoke Licenses, Prohibit from Industry, Collect Investigation Fees, and Maintain Records (Statement of Charges) 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 (the Administrative Procedure Act). Respondents 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 23<sup>rd</sup> day of September, 2010.



DEBORAH BORTNER  
Director  
Division of Consumer Services  
Department of Financial Institutions



Presented by:



ANTHONY W. CARTER  
Enforcement Attorney

Approved by:



JAMES R. BRUSSELBACK  
Enforcement Chief

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

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IN THE MATTER OF DETERMINING ) Whether there has been a violation of the Escrow ) Agent Registration Act of Washington by: ) Escrow Visions, LLC, d/b/a American West Escrow, ) and Barbara Marie Simmons, Individually and as ) Managing Member of Escrow Visions, LLC, ) Respondents. )	No. C-07-459-07-TD01  TEMPORARY ORDER TO CEASE AND DESIST
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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
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COMES NOW the Director of the Department of Financial Institutions of the State of Washington, by and through his designee, Consumer Services Division Director Deborah Bortner, and finds that Respondents, Escrow Visions, LLC, d/b/a American West Escrow and Barbara Simmons, individually and as Managing Member of Escrow Visions, LLC, have each violated the Escrow Agent Registration Act. Finding that delay in ordering the Respondents to cease and desist from such violations will result in irreparable harm to the public interest, Division Director Bortner enters this Temporary Order to Cease and Desist pursuant to RCW 18.44.440.

**I. PRELIMINARY FINDINGS OF FACT**

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.<sup>1</sup>

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  
24

25 <sup>1</sup> 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.<sup>2</sup>

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  
22  
23

24  
25 <sup>2</sup> In April 2007, U.S. Bank converted the IOLTA account to a commercial checking account. Shortly after the conversion, the 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

13  
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.

7  
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:

17

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

18  
19

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.

19  
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.

5  
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.

10  
11 Entered and Dated this 9<sup>th</sup> day of November, 2007.

12 [Redacted Signature]

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

16 Presented by:  
17 [Redacted Signature]

18 ANTHONY W. CARTER  
19 Enforcement Attorney



20 Approved by:  
21 [Redacted Signature]

22 JAMES R. BRUSSELBACK  
23 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.