

**ORDER SUMMARY – Case Number: C-08-245**

**Name(s):** Vintage Escrow Inc dba Bellevue Escrow  
Steven William Lusa

**Order Number:** C-08-245-12-FO01

**Effective Date:** April 17, 2012

**License Number:** DFI: 18745 -Vintage; DFI: 21065-Lusa  
**Or NMLS Identifier [U/L]** (Revoked, suspended, stayed, application denied or withdrawn)  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:** Revoked

**Not Apply Until:** \_\_\_\_\_

**Not Eligible Until:** \_\_\_\_\_

**Prohibition/Ban Until:** April 17, 2017

<b>Investigation Costs</b>	\$750	Due	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
<b>Fine</b>	\$27,000	Due	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
<b>Assessment(s)</b>	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
<b>Restitution</b>	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
<b>Judgment</b>	\$	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		
No. of Victims:				

Comments: Exam Fees: \$17,187.50 -Not Paid

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State of Washington  
DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF:

VINTAGE ESCROW INC., d/b/a  
BELLEVUE ESCROW; and STEVEN  
WILLIAM LUSA, Co-Owner and  
Designated Escrow Officer,

Respondents.

OAH NO. 2009-DFI-0040

DFI NO. C-08-245-12-FO01

FINAL DECISION AND ORDER  
MODIFYING INITIAL ORDER OF  
ADMINISTRATIVE LAW JUDGE

THIS MATTER having come before SCOTT JARVIS, Director (“Director”) of the Washington State Department of Financial Institutions (“Department”), on the Division of Consumer Services’ Petition for Review (“Division’s Petition”) dated June 1, 2011, from the Initial Decision and Order (“Initial Order”) dated May 20, 2011, of Administrative Law Judge Anita T. Davidson (“ALJ Davidson”) of the Office of Administrative Hearings; the Presiding Officer having fully considered the entire record on review, including, without limitation, all pleadings, testimony and recorded oral and written argument before ALJ Davidson, together with the Initial Order and the Division’s Petition;

NOW, THEREFORE, the Director issues the following Final Decision and Order:

Respondents, VINTAGE ESCROW INC., d/b/a BELLEVUE ESCROW and STEVEN WILLIAM LUSA (respectively hereinafter, “Respondent Vintage Escrow” and “Respondent Lusa”; collectively, the “Respondents”), timely requested an Administrative Hearing to contest

RE: VINTAGE ESCROW, INC., d/b/a BELLEVUE ESCROW, and STEVEN WILLIAM LUSA, OAH Docket No. 2009-DFI-0040, DFI No. C-08-245-12-FO01

FINAL DECISION AND ORDER MODIFYING INITIAL ORDER OF ADMINISTRATIVE LAW JUDGE - 1

the Statement of Charges and Notice of Intent to Revoke or Suspend Licenses, Prohibit from Industry, Impose Fine, and Collect Investigation and Examination Fees (“Statement of Charges”) entered against Respondents by the Division of Consumer Services (“Division”) dated January 7, 2009. This matter was assigned to the Office of Administrative Hearings (“OAH”), which designated ALJ Davidson to hear the case. Respondents were represented *pro se* by Respondent Lusa. The Division was represented by Assistant Attorney General Charles Clark (“Division’s Counsel”). An in-person hearing on the matter was held by ALJ Davidson on November 16, 2010, at the OAH Seattle office.

In the course of that hearing, ALJ Davidson considered whether the Department’s Statement of Charges and Notice of Intent dated January 7, 2009 should be affirmed; the questions presented were whether:

1) The licenses of Respondent Vintage Escrow and Respondent Lusa to conduct the business of an escrow agent be revoked or suspended;

2) Respondents should be prohibited from the industry of an escrow agent for a period of five (5) years;

3) Respondent Lusa, specifically, should be prohibited from the industry of an escrow agent for a period of five (5) years;

4) Respondents jointly and severally should pay a fine of Twenty-Seven Thousand Dollars (\$27,000.00);

5) Respondents jointly and severally should pay examination and investigation fees of Seventeen Thousand One Hundred Eighty-Seven Dollars and Fifty Cents (\$17,187.50) and Seven Hundred Fifty Dollars (\$750.00), respectively; and

6) Respondents should maintain records in compliance with the Escrow Agent Registrations Act, chapter 18.44 RCW and chapter 208-680 WAC, and provide the Department with location of the books, records, and other information relating to Respondent Vintage Escrow's escrow agent business, and the name, address and telephone number of the individual responsible for maintenance of such records in compliance with the Act.

After considering the record and presiding over the Administrative Hearing, ALJ Davidson issued an Initial Order on May 20, 2010, finding that:

1) It was proper to revoke or suspend Respondent Vintage Escrow's license to conduct the business of an escrow agent;

2) It was proper to revoke or suspend Respondent Lusa's Designated Escrow Officer's license, beginning January 7, 2009;

3) Respondent Vintage Escrow was prohibited from the industry of an escrow agent for a period of five years, beginning January 7, 2009;

4) Respondent Lusa was prohibited from the industry for a period of five (5) years;

5) Respondents jointly and severally shall pay a fine, totaling Twenty-Seven Thousand Dollars (\$27,000.00);

6) Respondents jointly and severally shall pay examination and investigation fees, totaling Seventeen Thousand Nine Hundred Thirty-Seven Dollars and Fifty Cents (\$17,937.50), representing \$17,187.50 in examination fees and \$750.00 in investigation fees; and

7) Respondents must maintain records in compliance with the Escrow Agent Registrations Act and provide the Department with the location of the books, records, and other information relating to Respondent Vintage Escrow's escrow agent business, and the

name, address, and telephone numbers of the individuals responsible for maintenance of such records in compliance with the Act.

The Initial Order contains Findings of Fact (hereinafter, "FOF"), Conclusions of Law (hereinafter, "COL"), and an Order section.

The Division, by and through Division Counsel, timely filed a Petition for Review of Initial Order on June 1, 2011 (the "Division's Petition"). Respondent never filed a response to the Petition for Review, nor did Respondents submit their own Petition for Review.

The Director subsequently ordered, received and has now considered the entire OAH Record. This Final Decision and Order are based upon a consideration of the entire OAH Record, including, without limitation, the following:

1. Statement of Charges;
2. Application for Adjudicative Hearing;
3. Record of Adjudicative Hearing;
4. Department's Exhibits Offered at Adjudicative Hearing;
5. Respondent's Exhibits Offered at Adjudicative Hearing;
6. Initial Order; and
7. Division's Petition.

This record is hereinafter referred to collectively as "Record on Review."

1.0 Summary of the Case. This case comes before the Director on the ultimate issue of whether the Respondents' escrow agent licenses should be revoked or suspended and whether Respondents should be banned from the escrow agent industry for a period of five years. Additionally, the Respondents have been ordered jointly pay a fine totaling \$27,000.00, and

examination and investigation fees totaling \$17,937.50. The Division's Petition This issue revolves around the following undisputed facts and questions of law:

2.0 Preliminary Considerations.

2.1 Proper Consideration by Director Absent Petition for Review from Respondent. Respondent did not file a petition for review contesting the Initial Order. However, even when a party has not filed a petition for review, the Director still has the authority and duty, prior to entering a Final Decision and Order, to consider whether any part of the Initial Order is not supported by the record<sup>1</sup> and whether confirmation of the Initial Order, without modification, would be an error of law. Indeed, with regard to the COL as contained in the Initial Order, the Director is obliged, in the manner of a reviewing court, to consider the statutes and implementing regulations of the Division under the error of law standard, which permits the Director to substitute his judgment for that of the Division's Statement of Charges and the Administrative Law Judge's Initial Order.<sup>2</sup>

3.0 Director's Consideration of Findings of Fact ("FOF") and Conclusions of Law ("COL"). After due consideration of the entire Record on Review, the Director is of the view that, certain conclusions of law contained in the Initial Order should be eliminated as error or otherwise modified.

3.1 Error in FOF 27 and COL 24 of the Initial Order. The Director concurs with the Division's Petition for Review that ALJ Davidson committed error in FOF 27 and COL 24 of the Initial Order by deciding that the responsibility for setting the effective dates of prohibition

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<sup>1</sup> See RCW 34.05.464(4); see also *Northwest Steelhead v. Washington State Department of Fisheries*, 78 Wn. App. 778, 896 P.2d 1292 (1995); see also *Towle v. Department of Fish and Wildlife*, 94 Wn.App. 196, 971 P.2d 591 (1999).

<sup>2</sup> See *Aponte v. Dep't of Soc. & Health Servs.*, 92 Wn. App. 604, 616-17, 965 P.2d 626 (1998), *review denied*, 137 Wn.2d 1028 (1999).

falls to the ALJ themselves, on the theory that the Respondents “faced substantial obstacles to participation in the escrow business since the date the Department issued the Statement of Charges. The Department stated in their Statement of Charges in Section for that it was their “*intention* to ORDER” (emphasis added) that “Respondent Vintage Escrow Inc. dba Bellevue Escrow be prohibited from the industry of an escrow agent for a period of 5 years; and Respondent Steven William Lusa be prohibited from the industry of an escrow agent for a period of 5 years.” The Director is persuaded that this stated *intention* to order the prohibition dates necessarily refers to an act in the future, specifically, the entry of a final order. Upon receipt of the Statement of Charges, the Respondents filed an Application for an Adjudicative Hearing, exercising their due process rights; the Department would have violated the Respondents’ due process rights by imposing a prohibition prior to such hearing. The only procedure available to the Department to take such action prior to a hearing is by entry of a Temporary Cease and Desist Order, pursuant to RCW 31.04.093(7)(l) in this case, however, the Department took no such action and the Respondent was not prohibited from the industry during the course of the adjudicative proceedings. As it would be a violation of Respondent’s due process rights to retroactively apply the date of prohibition to the time the original Statement of Charges was filed, the Director finds that the date of prohibition must begin with the date of entry of the final order and modifies both FOF 27 and COL 24 as follows below.

4.0 Findings of Fact. Now, therefore, the Director re-affirms and otherwise modifies FOF 1 through FOF 48, inclusive, at pages 2-10 of the Initial Order.

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4.1 FOF 1, 3-5, 7-14, 17-21, 23, 25, 28-30, 32-43, 45-48 of the Initial Order. FOF 1, 3-5, 7-14, 17-21, 23, 25, 28-30, 32-43, and 45-48 of the Initial Order are hereby re-affirmed in their entirety and without modification.

4.2 FOF 2 of the Initial Order. Based on the evidence presented during the hearing (See Ex. D1 at 4), FOF 2 is modified as follows:

Vintage Escrow Inc. d/b/a Bellevue Escrow (“Respondent Vintage”) was licensed by the Washington State Department of Financial Institutions to conduct business as an escrow agent from May 17, 1996 through December 31, 2007, when its escrow agent license expired.

4.3 FOF 6 of the Initial Order. Based on the information contained within Exhibit D1 at page 4, FOF 6 contains a typographical error and is modified as follows:

Kate Dixon, a Department financial examiner, was assigned to examine Respondents’ books and records. Beginning February 2, 2008, Ms. Dixon conducted an examination of the Respondents’ books and records at Respondent Lusa’s residence. Respondent Lusa reported that he had moved out of his office at the end of December 2007, and closed the business on January 15, 2008. Ex. D1, p.4

4.4 FOF 15 of the Initial Order. To clarify that reconciled bank statements concern the Respondents’ trust accounts, FOF 15 is modified as follows:

To date, Respondents have not submitted to the Department reconciled bank statements for those trust accounts that were not reconciled.

4.5 FOF 16 of the Initial Order. To correct a typographical error, FOF 16 is modified so that the reference to “WAC 208-680D-050” reads “WAC 208-680D-060”.

4.6 FOF 22 of the Initial Order. To correct a typographical error, FOF 22 is modified by changing the reference to “Ms. Davis’s” to “Ms. Dixon’s”.

4.7 FOF 24 of the Initial Order. To correct a typographical error regarding the hourly rate for examination fees, FOF 24 is modified by changing the reference to “\$62.00” to



“\$62.50”. Thus, \$62.50 times 275 hours accrued during the course of the examination equals the total examination fee of \$17,187.50.

4.8 FOF 26 of the Initial Order. FOF 26 is modified as follows:

In this case, the Department concluded that Respondents’ violations were serious ones, since they reflect breaches in the fiduciary duties entrusted to escrow agents and escrow officers, duties that are set forth in detail in the Act. For example, practicing without a designated escrow officer license is a violation that can be prosecuted as a misdemeanor. The Department further concluded that there were a number of such violations over a significant period of time that reflect Respondents’ failure to properly manage the trust bank accounts, and therefore were not one-time errors or lapses in judgment. And though the Department acknowledges that Respondents’ violations do not reflect any fraud or deceptive practice, the nature of Respondents’ conduct represents a breach in the trust placed in escrow agents and officers, which is codified in the Act. Finally, the fact that there was a \$6,000.00 remaining in one of Respondents’ escrow accounts, which should have been promptly disbursed upon closing raised the question of Respondents’ competence to perform as escrow agents and officers.

The first change describes the license at issue with more precision, as it was Respondent Lusa’s designated escrow officer license that expired prior to concluding the business, not the company’s escrow agent license. The second change is consistent with the ALJ’s discussion of “breaches of fiduciary duties” discussed in the first sentence of FOF 26.

4.9 FOF 27 of the Initial Order. Based on the foregoing discussion regarding the starting date of Respondents’ five year prohibition period, FOF 27 is modified as follows:

The Department maintains that the five-year period should begin on the date of the entry of a final order.

This change is necessary to address ALJ Davidson’s error as discussed in Section 3.1 of this Final Order.

4.10 FOF 31 of the Initial Order. To accurately reflect the record, as noted in FOF 17, FOF 31 is modified as follows:

In calculating the \$27,000.00 fine the Department also considered that Respondents were conducting an escrow business without a licensed designated escrow officer

from May 17, 2007 until the end of business operations on December 31, 2007, 289 days.

4.11 FOF 44 of the Initial Order. To accurately reflect the record, FOF 44 is modified as follows:

According to Respondent Lusa, in spring 2007 one of the examiners returned to Respondent Lusa's office to review the items that were to be completed. The examiner reported that "everything was okay."

The added language, "According to Respondent Lusa...", is necessary to accurately reflect the record. The hearsay statement attributed to the unnamed examiner is based upon Mr. Lusa's testimony only and there is no other evidence providing that the quoted statement was made.

5.0 Conclusions of Law. Now, therefore, the Director re-affirms and otherwise modifies COL 1 through COL 27, at pages 11-17 of the Initial Order, as follows:

5.1 COL 1-4, 7-17, 19-23, and 25-28 of the Initial Order. COL 1-4, 7-17, 19-23, and 25-28 of the Initial Order are hereby re-affirmed in their entirety and without modification.

5.2 COL 5 of the Initial Order. To correct typographical errors (*see* FOF 17), COL 5 is modified as follows:

Respondent Lusa engaged in business as an escrow officer from May 17, 2007, when his license expired, until the closure of his business. February 29, 2008 is the correct date of closure, rather than December 31, 2007 or January 31, 2008, because the company's trust accounts remained open and an employee was charged with taking care of the remaining matters until that date.

5.3 COL 6 of the Initial Order. To correct typographical errors (*see* FOF 17), COL 6 is modified as follows:

In light of the requirement that every escrow agency must have a licensed escrow officer responsible for overseeing the agency operations, Respondent Lusa should have been aware that his license expired on May 17 each year. Though he may have always relied on his staff to renew his annual license, he is ultimately responsible for ensuring

that his license is maintained. He was therefore in violation of this provision of the Act from Many 17, 2007 until February 29, 2008.

5.4 COL 18 of the Initial Order. While ALJ Davidson concedes that a violation of WAC 208-680C-045 occurred, no legal basis is provided for the ALJ's conclusion that such violation alone cannot support the penalties of denial of license and prohibition from practice.

Therefore, COL 18 is modified as follows:

Respondent Lusa should have been aware of the required protocol set forth in WAC 208-680C-045 for notifying the Department of office closure within 24 hours, and should have submitted his licenses within five days. Where he failed to comply with WAC 208-680C-045, he violated the Act.

5.5 COL 24 (and Footnote 3) of the Initial Order. Pursuant to the discussion in Section 3.1 above regarding the starting date of a prohibition period, COL 24 is modified as follows:

Regarding the five-year prohibition from the escrow industry, the undersigned concludes that the five-year prohibition should begin upon the entry of a final order by the Director.

Footnote 3 is stricken in its entirety.

6.0 Final Order. Having made certain revisions to the Findings of Fact and Conclusions of Law of the Initial Order as set forth in Sections 4.0 and 5.0 above, IT IS HEREBY ORDERED AS FOLLOWS:

6.1 Revised Findings of Fact and Conclusions of Law. The Findings of Fact and Conclusions of Law of the Initial Order, as modified to the extent of Sections 4.0 and 5.0 above, are affirmed.

6.2 Respondent VINTAGE ESCROW INC., d/b/a BELLEVUE ESCROW's License. Respondent VINTAGE ESCROW INC., d/b/a BELLEVUE ESCROW's license to conduct the business of an escrow agent is revoked.

6.3 Respondent STEVEN WILLIAM LUSA's License. Respondent STEVEN WILLIAM LUSA's Designated Escrow Officer license is revoked.

6.4 Prohibition. Respondents, VINTAGE ESCROW INC., d/b/a BELLEVUE ESCROW and STEVEN WILLIAM LUSA, are prohibited from the industry of an escrow agent for a period of five (5) years, beginning on the date of execution of this final order.

6.5 Fines. Respondents, VINTAGE ESCROW INC., d/b/a BELLEVUE ESCROW and STEVEN WILLIAM LUSA, jointly and severally shall pay to the Washington State Department of Financial Institutions a fine, which totals Twenty-Seven Thousand Dollars (\$27,000.00).

6.6 Examination and Investigation Fees. Respondents, VINTAGE ESCROW INC., d/b/a BELLEVUE ESCROW and STEVEN WILLIAM LUSA, jointly and severally shall pay to the Washington State Department of Financial Institutions examination and investigation fees totaling Seventeen Thousand Nine Hundred Thirty-Seven Dollars and Fifty Cents (\$17,937.50), representing a \$17,187.50 examination fee and a \$750.00 investigation fee.

6.7 Compliance with the Escrow Agent Registration Act. Respondents, VINTAGE ESCROW INC., d/b/a BELLEVUE ESCROW and STEVEN WILLIAM LUSA, shall maintain records in compliance with the Washington Escrow Agent Act, chapter 18.44 RCW and chapter 208-680 WAC, and shall provide the Department with the location of the books, records, and other information relating to Respondent Vintage's escrow agent business, and the name, address, and telephone number of the individuals responsible for maintenance of such records in compliance with the act.

6.8 Reconsideration. Pursuant to RCW 34.05.470, Respondents VINTAGE ESCROW INC., d/b/a BELLEVUE ESCROW and STEVEN WILLIAM LUSA 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 this Final Order upon Respondent. 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. A timely Petition for Reconsideration is deemed denied if, within twenty (20) days from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on a petition.

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

6.10 Judicial Review. Respondents VINTAGE ESCROW INC., d/b/a BELLEVUE ESCROW and STEVEN WILLIAM LUSA have the right to petition the superior court for judicial review of this agency action under the provisions of chapter 34.05 RCW. For the requirements for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

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

6.12 Effectiveness and Enforcement of Final Order. Pursuant to the Administrative Procedures Act, at RCW 34.05.473, this Final Decision and Order shall be effective immediately upon deposit in the United States Mail.

Dated at Tumwater, Washington, on this 17<sup>th</sup> day of April, 2012.

WASHINGTON STATE DEPARTMENT  
OF FINANCIAL INSTITUTIONS

By:



Scott Jarvis, Director

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ENFORCEMENT UNIT  
DIVISION OF CONSUMER SERVICES  
DEPT OF FINANCIAL INSTITUTIONS

STATE OF WASHINGTON  
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF FINANCIAL INSTITUTIONS

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

VINTAGE ESCROW INC., d/b/a  
BELLEVUE ESCROW, and STEVEN  
WILLIAM LUSA, Co-owner and  
Designated Escrow Officer,

Respondents

Docket No. 2009-DFI-0040

No. C-08-245-08-SC01

INITIAL ORDER

Division of Consumer Services

An in-person hearing in this matter was held by Administrative Law Judge Anita T. Davidson on November 16, 2010 at the Seattle offices of the Washington State Office of Administrative Hearings. The Washington State Department of Financial Institutions (the "Department") was represented by Assistant Attorney General Charles Clark. The Department witnesses were Kate Dixon, William Halstead and James Brusselback. Respondents Vintage Escrow, Inc and Steven William Lusa were represented by Steven William Lusa. Respondent witness was Susan Lusa. The proceedings were transcribed by Mary Green, Yamaguchi Obien Mangio.

**STATEMENT OF THE CASE**

Whether the Department's Statement of Charges and Notice of Intent dated January 7, 2009 should be affirmed:<sup>1</sup>

Whether the licenses of Respondents Vintage Escrow, Inc., dba Bellevue Escrow and Steven W. Lusa ("Respondents") to conduct the business of an escrow agent be revoked or suspended; and

Whether Respondents should be prohibited from the industry of an escrow agent for a period of five years; and

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<sup>1</sup> The Department's Statement of Charges and Notice of Intent included an intention to order restitution in an amount to be determined at hearing. Statement of Charges, page 5. At the hearing, however, the Department declared it was not seeking restitution.

Whether Respondent Steven W. Lusa should be prohibited from the industry of an escrow agent for a period of five years; and

Whether Respondents jointly and severally should pay a fine of \$27,000.00; and

Whether Respondents jointly and severally should pay examination and investigation fees of \$17,187.50 and \$750.00, respectively; and

Whether Respondents should maintain records in compliance with the Escrow Agent Registrations Act and provide the Department with the location of the books, records, and other information relating to Respondent Vintage Escrow Inc. dba Bellevue Escrow, escrow agent business, and the name, address, and telephone number of the individual responsible for maintenance of such records in compliance with the Act.

#### **FINDINGS OF FACT:**

1. The findings below are made under a clear, cogent and convincing standard of proof.
2. Vintage Escrow Inc. dba Bellevue Escrow ("Respondent Vintage") was licensed by the Washington State Department of Financial Institutions to conduct business as an escrow agent from May 17, 1996 through December 31, 2008, when its escrow agent license expired.
3. Respondent Vintage was co-owned by Steven W. Lusa ("Respondent Lusa") and Susan Lusa. Respondent Lusa was the licensed Designated Escrow Officer (DEO) for Respondent Vintage until his designated escrow officer license expired May 17, 2007.
4. The Department of Financial Institutions administers the Washington Escrow Agent Registration Act (the "Act"), chapter 18.44 RCW and chapter 208-680 WAC. The Act regulates the escrow agent industry and its primary policy of the Act is to protect consumers. To this end, escrow agents and officers are highly regulated. See Chapter 18.44 RCW and Chapter 208-680 WAC.
5. The Department conducts financial examinations for the purposes of determining compliance with chapter 18.44 RCW and chapter 208-680 WAC to ensure the escrow agent has fulfilled the fiduciary duties as set forth in the Act, and to ensure that escrow accounts are accurate, complete and kept current. WAC 208-680G-010(1).
6. Kate Dixon, a Department financial examiner, was assigned to examine Respondents' books and records. Beginning February 25, 2008 Ms. Dixon conducted an examination of the Respondents' books and records at Respondent Lusa's residence. Respondent Lusa reported that he had moved out of his office at the end of December 2007, and closed the business on January 15, 2010. Exh. D1, p. 4.

Office of Administrative Hearings  
600 University St., Suite 1500  
Seattle, WA 98101-3126  
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FAX (206) 587-5135



7. The examination ultimately covered the time period from January 1, 2006 through February 29, 2008. Ms. Dixon gathered information from Respondent Lusa through his answers to a questionnaire and from Respondents' records and concluded there were a number of irregularities in the handling of escrows and monitoring trust accounts. Exh. D1, p.6.

8. Ms. Dixon concluded Respondents violated the Act by (1) operating the agency without a licensed Designated Escrow Officer; (2) failing to maintain sufficient account balances in the company trust account; (3) failing to timely deposit and disburse funds; (4) failing to reconcile the trust accounts monthly; (5) failing to properly disburse payments; (6) failing to report in a timely manner closure of the company's office; (7) failing to file timely quarterly reports; and (8) failing to receipt funds prior to the disbursement of funds from the trust account.

Operating without a licensed designated escrow officer (DEO).

9. Respondent Lusa's designated escrow officer license expired on May 17, 2007. The license must be renewed each year. Ms. Dixon concluded that Respondents operated without a licensed designated escrow officer from May 17, 2007 through March 13, 2008, the date the Department received Respondents's Escrow Agent Office Closure Form, dated March 10, 2008. She concluded Respondents violated RCW 18.44.171 when Respondent Lusa continued to act as a licensed escrow officer after the expiration of his license. Exh. D1, p. 5.

Failure to maintain sufficient account balances in the agency trust account.

10. From January 2006 through July 2006 Respondents received four Notices of Insufficient Funds and/or Overdraft from its bank. All the checks were written from one trust account:

Trust Account	Overdrawn Amount	Date
[REDACTED]	\$176,520.77	1/4/06
[REDACTED]	\$127,413.41	1/17/06
[REDACTED]	\$ 94,229.67	7/28/06
[REDACTED]	\$ 95,267.39	7/31/06

Exh. D1, p. 6.

11. Ms. Dixon concluded that Respondent Lusa failed to ensure that deposits were at least equal to disbursements on one of the agency's four trust accounts, a responsibility of the agency and the designated escrow officer, and a violation of RCW 18.44.400(3). *Id.*

Failure to timely deposit and disburse funds.

12. According to Respondents' records, a wire deposit in the amount of \$250,364.50 was to be deposited into the trust account ending in 2545 on July 10, 2006. On July 11, 2006 Respondents issued check numbers 1808 through 1822 to disburse the funds in the account. However, the deposit was directed to, and the disbursements were drawn from a different trust account, ending in 3222. In addition, the September 2006 trust account reconciliation indicated that the outstanding deposit and checks from the trust account ending in 2545 were cleared from the account without any notation or explanation. Exh. D1, pp. 6-7.

13. Ms. Dixon concluded that the irregularities set forth above demonstrated that Respondents failed to timely deposit and disburse trust funds, as required under WAC 208-680D-050. *Id.*

Failure to reconcile the trust accounts monthly.

14. Ms. Dixon reviewed Respondents' monthly trial reconciliations and found that after February 2006 the trust accounts with the last four numbers ending in 7704 and 3222<sup>2</sup> were not reconciled monthly, as required. Because Respondents have the responsibility to reconcile all trust accounts monthly, she concluded that Respondents violated WAC 208-680E-011(9). Exh. D1, p. 7.

15. To date, Respondents have not submitted to the Department reconciled bank statements for those statements that were not reconciled.

Failure to properly disburse payments.

16. Ms. Dixon also discovered that one of Respondents' trust accounts held about \$6,000 in trust funds that had not yet been disbursed at the time of her examination. She concluded this was a violation of WAC 208-680D-050, which requires the escrow agent to perform all acts required of the escrow agent as expeditiously as possible and within any time period identified in the escrow instructions. Intentional or negligent delay in such performance is considered a violation of RCW 18.44.430. Exh.D, pp.7-8.

Failure to report closure of Agent's office.

17. Respondent Lusa first reported his company was closed on or about December 31, 2007. Although Respondents did not take in any new business after December 31, the company did not close the trust accounts because Respondent Lusa wanted to ensure that all

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<sup>2</sup> It is uncontroverted that these two trust accounts are the "inactive" accounts that were closed to thwart losses due to identity theft.

previously issued checks cleared. In addition, an employee was charged with staying on to "clean up" any other matters. The employee completed that task on or about February 29, 2008.

18. The Department received Respondents' Escrow Agent Office Closure Form dated March 10, 2008 on March 13, 2008. Respondents were required to follow a specific protocol set forth in the Act, which requires notifying the Department of the office closure within 24 hours, and surrendering dated and signed licenses within five days. Because Respondents did not notify the Department within 24 hours of closure, and did not submit its licenses within five days, Ms. Dixon concluded they had violated WAC 208-680C-045, which sets forth the protocol for closure of an escrow agent. Exh. D1, pp.8-9.

19. Respondent Vintage's license expired December 31, 2007.

Failure to file timely quarterly reports.

20. Respondents failed to file the fourth quarter 2007 quarterly report by January 30, 2008, that is, within 30 days following the end of each fiscal quarter, as required under WAC 208-680E-025(1)-(3). Ms. Dixon concluded the failure to file the report within the time period in the regulation was a violation of RCW 18.44.430. Exh.D1, pp.9-10.

Failure to receipt funds prior to the disbursement of funds from the trust account.

21. Ms. Dixon reviewed a February 2007 examination of Respondents by the Department, in which the previous examiner cited Respondents for failing to receive funds prior to disbursement of trust funds on a particular escrow. At the time of the February 2007 investigation Respondents indicated the deficiency was due to several unusual circumstances, one of which was a last-minute substitution of the lender funding the loan. Ms. Dixon concluded that Respondents' response did not adequately explain the irregularities in the escrow closing, and therefore violated WAC 208-680D-060, which requires immediate disbursement of trust funds upon closing an escrow transaction. *Id.*

Statement of Charges and Notice of Intent.

22. In receipt of Ms. Davis's February 29, 2008 examination report, the Department issued the Statement of Charges and Notice of Intent To Revoke or Suspend Licenses, Prohibit From Industry, Impose Fine, and Collect Investigation and Examination Fees ("Statement of Charges") dated January 7, 2009. Exh. 2.

23. The Statement of Charges does not set forth all the violations cited in the examination report. Rather, the Statement of Charges provides notice of the Department's intent to order:

- (A) The revocation or suspension of Respondent Vintage's license to conduct the business of an escrow agent and the revocation or suspension of Respondent Lusa's designated escrow officer license;
- (B) Respondent Vintage to be prohibited from the industry of an escrow agent for a period of five years;
- (C) Respondent Lusa to be prohibited from the industry of an escrow agent for a period of five years;
- (D) Respondents to jointly and severally pay a fine totaling \$27,000.00;
- (E) Respondents to jointly and severally pay examination and investigation fees totaling \$17,937.50 (\$17,187.50 examination fee and \$750 investigation fee); and
- (F) Respondents to maintain records in compliance with the Act and provide the Department with the location of the books, records, and other information relating to Respondent Vintage Escrow Inc. dba Bellevue Escrow, escrow agent business, and the name, address, and telephone number of the individual responsible for maintenance of such records in compliance with the Act.

Examination and investigation fees.

24. Regarding the examination and investigating fees, the Department has the authority to conduct a financial examination of an escrow agent to ensure compliance with the Act. The Department submitted to this tribunal an Examination Hours Recapitulation documenting on-site and off-site hours spent on examining Respondents records and accounts: 275 hours at the designated rate of \$62.00 per hour: a total of \$17,187.50. The Department's financial legal examiner reported 12 hours of time spent on investigating this matter, at \$62.50 per hour, a total of \$750.00. Payment of the Examination and investigation fees and expenses is due within 30 days of the date of the Department's invoice.

Department's consideration of appropriate penalties.

25. The Department considers several factors in determining sanctions for violations of the Act: (1) the conduct involved; (2) the duration and number of violations; (3) the seriousness of the violations; (4) the experience of the designated escrow agent or other responsible party; and (5) the amount of money involved.

26. In this case, the Department concluded that Respondents' violations were serious ones, since they reflect breaches in the fiduciary duties entrusted to escrow agents and escrow officers, duties that are set forth in detail in the Act. For example, practicing without a designated escrow agent license is a violation that can be prosecuted as a misdemeanor. The Department further concluded that there were a number of such violations over a significant period of time that reflect Respondents' failure to properly manage the trust bank accounts, and therefore were not one-time errors or lapses in judgment. And though the Department acknowledges that Respondents' violations do not reflect any fraud or deceptive practice, the nature of Respondents' conduct represents a break in the trust placed in escrow agents and officers, which is codified in the Act. Finally, the fact that there was \$6,000.00 remaining in one of Respondents' escrow accounts, which should have been promptly disbursed upon closing, raised the question of Respondents' competence to perform as escrow agents and officers.

27. The Department also took into consideration the unusual situation that even three years after the close of business, Respondents have not paid the examination fees in this case.

The Department's decision to prohibit for five years Respondent Lusa's participation in the escrow business is based on its conclusion that revoking Respondent Lusa's license is not a sufficient sanction. That is because there are ways for individuals to participate in the escrow business without a license, such as silent partnerships. Moreover, when the Department concludes that violations are so serious that prohibition is warranted, five years is a standard period of prohibition. The Department in the past has called for prohibition for less than five years, but that decision is typically made in the context of a settlement. The Department maintains that the five-year period should begin on the date of the Statement of Charges, if unappealed, or the date of this Initial Order.

29. The Department seeks an order to require Respondents to retain its records for six years because the retention of records for six years is required under the Act. In addition, over the last eight years, the Department has received about 10 requests requiring the Department to access archived records under a number of scenarios, such as when a reconveyance was not filed, or proof of payment or disbursement must be researched, or a refund was paid in the incorrect amount.

30. The Department has the authority under RCW 18.44.430(3) and WAC 208-680G-040(3) to fine Respondents up to \$100.00 per day for each violation of the Act, which allows the Department to fine more than \$100.00 per day in the case of multiple violations. The \$27,000.00 fine reflects a fine of \$100.00 per day for 270 days. Here, the Department settled on a fine of \$27,000.00. It considers this amount "conservative" in light of Respondents' multiple violations that continued over a significant period of time, and the fact that Respondents' trust accounts remained out of compliance with the Act up until the time of the hearing in this matter.

31. In calculating the \$27,000.00 fine the Department also considered that Respondents were conducting an escrow business without a licensed designated escrow officer from May 17, 2007 until the end of business operations on February 29, 2008, 289 days.

32. Respondents timely appealed the Department's Statement of Charges and Notice of Intent.

33. Respondents argue:

(1) They were not at fault for the overdrafts, which represent the unfortunate result of closing two "original" trust accounts and opening two "new" trust accounts in an effort to thwart identity theft;

(2) Respondents' monthly reconciliations were provided by Jonelle Wheeler of ACS Northwest. Respondent Lusa was therefore unaware of the existence of the unreconciled bank statements (which were from the "inactive" trust accounts). When Ms. Dixon alerted him to the oversight, he promptly took care of it;

(3) The approximately \$6,000 remaining in a trust account at the time of Ms. Dixon's investigation was not a failure to properly distribute trust funds, but a result of uncashed (and unclaimed) disbursements in small check amounts; Respondents issued and reissued these checks, but the \$6,000.00 remained outstanding; Respondent Lusa also explains that his escrow staff assured him that all funds were disbursed from the two "inactive" accounts;

(4) All these issues were addressed in a prior Department examination, and all irregularities were deemed cleared;

(5) None of the violations cited by the Department involve fraud or deceptive practices; rather, they are a result of the pressures inherent in winding down and closing a business; moreover, the violations should be considered in the context of Respondent Lusa's unblemished performance over the entire 15 years he has been in the escrow business; and therefore

(6) The penalties ordered by the Department are too severe, especially the five-year prohibition from participating in the escrow business, since Respondent Lusa has already been unable to secure a license or associate with any individual with a license for three years. He argues that if this tribunal upholds the Department's five-year prohibition, these three years should count toward the five-year penalty.

Respondents' explanation: thwarting identity theft.

34. In fall 2005 Respondent Lusa learned that Vintage Escrow and Bellevue Escrow (a company Respondents bought in 2004) experienced what Respondent Lusa refers to as

identity theft. According to Respondent Lusa, "someone got an escrow check, washed it, and reproduced checks," forged the signature of Respondents' Limited Practice Officer, and then deposited the checks in fictional accounts. Although the attempted theft was discovered before any of the deposited funds were actually withdrawn, the police advised Respondent Lusa to close the "original" escrow accounts and open "new" ones.

35. Respondents took the police's advice, and at the beginning of 2006 Respondents had two escrow accounts - the Bellevue Escrow Trust Account and the Vintage Escrow Trust Account, and each trust account had an "inactive" account adjoined to a "new" account.

36. According to Respondent Lusa the overdrafts occurred because checks were mistakenly drawn on an inactive account, when the available funds were actually in the new account.

At the hearing, he stated there were two overdrafts reflecting four checks: two were written in January 2007 but were "paid immediately" because the money was available in the "inactive" account. Two were written in July 2007, also because the check was drawn on the "inactive" account.

#### Unreconciled bank accounts.

37. Respondent Lusa acknowledges that the two trust accounts that were closed to thwart identity theft were not reconciled after February 2006. But he was unaware that the company was still receiving bank statements from these accounts because he delegated the monthly reconciliation of trust accounts to Jonelle Wheeler of ACS Northwest. Once alerted to the problem, he quickly responded.

#### Failure to properly disburse payments.

38. In the hearing Ms. Dixon stated that one trust account had approximately \$6,000 in undistributed trust funds, which she concluded was the result of Respondents' failure to properly disburse escrow payments.

39. Ms. Dixon concluded that the funds belonged to someone, and should have been disbursed immediately upon closing. If there were unclaimed funds, those funds should have been promptly submitted to the Department of Revenue for disposition instructions in accordance with the Unclaimed Property Act of 1983.

40. Respondent Lusa reports that the \$6,000.00 were held in one of the inactive accounts and were promptly disbursed in small check amounts, but the disbursed checks were not cashed or claimed. Respondent Vintage issued new checks, but checks were still returned. Respondents forwarded the unclaimed funds in December 2008 to be processed as unclaimed property.

Prior examination.

41. In fall 2006 a Department examiner came to Respondents' office. There were some irregularities revealed during the initial examination, and upon learning of the irregularities, Respondent Lusa replaced his limited practice officer who he had hired only three weeks before. Respondent Lusa did not provide evidence as to what irregularities were discovered.

42. The first examiner called in a second to help with the examination. The examiners left a list of items to be completed by Respondents' new limited practice officer. Respondent Lusa did not provide information about what items were to be completed.

Because of business reasons Respondents moved from a 15,000 square foot office to a 3,000 square foot office in January or March 2007. (The record contains conflicting moving dates.)

44. In spring 2007 one of the examiners returned to Respondent Lusa's office to review the items that were to be completed. The examiner reported that "everything was okay."

Expired Designated Escrow Officer License.

45. Respondent Lusa's license, which required annual renewal, expired on May 17, 2007. Respondent Lusa had no idea that his license expired at that time, in part, because he was in the process of closing his business. He had reduced his staff (who in the past were responsible for renewing his license) and was overloaded with work. Consequently, "things fell through the cracks."

Closure of business.

46. Respondents closed the business on December 31, 2007, that is, they stopped accepting new business, but did not close bank accounts at that time to ensure that all issued checks were cleared. In addition, Respondent Lusa assigned an employee to "clean up" any remaining matters, a task that was completed on or about February 29, 2008.

47. Respondent Lusa was aware that he was required under the Act to follow a specific protocol relative to closing the office, but was unaware of the requirements to notify the Department within 24 hours of closure, and to submit his licenses within five days.

48. Respondents timely submitted the Escrow Agent Office Closure Form and the Escrow Agent Closure of Office Escrow Trust Funds Responsibility Form. Exhibit D7, pages 1-2.



## CONCLUSIONS OF LAW:

1. Pursuant to 34.05 RCW (the Administrative Procedure Act) and RCW 18.44.011 (the Escrow Agent Registration Act), the Statement of Charges issued in this matter is appealable to an administrative law judge. RCW 18.44.270. The decision of the administrative law judge is an initial order, subject to review by the Department in accordance with RCW 34.05.464 and WAC 10-08-211. The Respondents' appeal rights are set forth at the end of this Initial Order.

2. In the absence of a specific statute or regulation that applies to the Department in this matter, the standard of proof to be applied in this hearing, governed by the Washington State Administrative Procedure Act, is preponderance of the evidence. The Department has requested that the undersigned apply a higher standard of proof, that is, a standard of clear, cogent and convincing evidence, in light of certain appeal decisions that call for a higher standard of proof in cases involving the revocation of a professional license. As stated above, the undersigned has applied the clear, cogent and convincing standard to the findings in this matter in the event that this matter is appealed and a higher standard of proof applies.

### Engaging in business without a license.

3. According to RCW 18.44.021 it is "unlawful for any person to engage in business as an escrow agent by performing escrows or any of the functions of an escrow agent as described in RCW 18.44.011(4) within this state or with respect to transactions that involve personal property or real property located in this state unless such person possesses a valid license issued by the director pursuant to this chapter.

4. RCW 18.44.171 provides that

[a]ny person required by this chapter to obtain a license who . . . willfully continues to act as an escrow agent or licensed escrow officer after . . . expiration . . . of his or her license, is guilty of a misdemeanor punishable by imprisonment for not more than ninety days, or by a fine of not more than one hundred dollars per day for each day's violation, or by both such fine and imprisonment.

5. Respondent Lusa engaged in business as an escrow agent from May 17, 2007, when his license expired, until the closure of his business. February 28, 2008 is the correct date of closure, rather than December 31, 2007 or January 31, 2008, because the company's trust accounts remained open and an employee was charged with taking care of the remaining matters until that date.

6. In light of the requirement that every escrow agency must have a licensed escrow officer responsible for overseeing the agency operations, Respondent Lusa should have been aware

that his license expired on May 17 each year. Though he may have always relied on his staff to renew his annual license, he is ultimately responsible for ensuring that his license is maintained. He was therefore in violation of this provision of the Act from May 17, 2007 until February 28, 2008.

Failure to maintain sufficient funds in Trust Account.

7. A review of the Act reveals that escrow agencies and their designated escrow officers are highly regulated. Their responsibilities are spelled out in detail because of the large amounts of money involved in transactions requiring escrow accounts, and the risk of great harm to consumers.

8. RCW 18.44.400(3) sets forth the responsibilities of a licensed escrow agent regarding the segregation and disbursements of trust funds, and for adequate record keeping:

An escrow agent . . . shall not make disbursements on any escrow account without first receiving deposits directly relating to the account in amounts at least equal to the disbursements.

RCW 18.44.400(3).

9. Respondents violated RCW 18.44.400(3), evidenced by the four Notices of Insufficient Funds and/or Overdraft sent by Respondents' bank to the Respondents. The undersigned recognizes that Respondents argue the overdrafts and other consequences of the overdrafts were a result of the need to open up "adjoining" accounts because of the forged checks drawn on its trust accounts in fall 2005. But Respondents presented no evidence that the overdrafts were the result of bank error. Rather, the record demonstrates that the overdrafts were the result of Respondents' poor management of these accounts. Moreover, the overdrafts occurred in one of Respondents' new accounts, not an inactive one as Respondent Lusa maintains, which underscores the Department's concerns that Respondents' trust accounts were not being properly monitored.

Failure to reconcile trust accounts monthly.

10. WAC 208-680E-011(9) states:

The agent shall be responsible for preparation of a monthly trial balance of the client's ledger, reconciling the ledger with both the trust account bank statement and the trust account receipts and disbursement records. The reconciliation will be signed by the designated escrow officer or branch designated escrow officer. Such reconciliations are to be retained as permanent records.

11. Respondent Lusa failed to reconcile the trust account bank statements on two of the accounts, which he identifies as the inactive accounts that were closed when he discovered the check forging. But he offers as explanation the fact that his primary reconciler was ACS Northwest, and that monthly reconciliations were completed by Jonelle Wheeler. Ms. Wheeler presented him each month after February 2006 only two reconciliation reports, which he signed as required. He was unaware that there were still funds in the inactive trust accounts.

12. Although Respondent Lusa delegated the task of reconciling his agency's trust accounts monthly, he is ultimately responsible for performing that task:

The designated escrow officer shall be responsible for [the agent's] handling of escrow transactions, management of the agent's trust account, and supervision of all other licensed escrow officers employed by the agent.

RCW 18.44.071. The designated escrow officer also bears responsibility for supervising all other persons performing escrow transactions. Respondent Lusa should have been aware that there were two other trust accounts holding funds that had not yet been disbursed. His failure to do so represents a violation of WAC 208-680E-011(9).

Failure to file timely quarterly reports.

13. WAC 208-680E-025(1), (2) and (3) state:

(1) For purposes of determining compliance with chapter 18.44 RCW and chapter 208-680WAC, each escrow agent shall file with the director, within thirty days following the end of each fiscal quarter, a report concerning its operations and trust account administration and reconciliation. The report shall be on a form provided by the director and shall include exhibits as specified therein.

(2) As to trust account matters, the designated escrow officer of the escrow agent shall certify under penalty of perjury, in a manner consistent with RCW 9A.72.085, that he or she has reviewed the report and any exhibits filed with it and that the information contained in the report and in all exhibits is true and correct. The chief executive officer or chief financial officer of the escrow agent, or other knowledgeable person acceptable to the director, may certify the information on the report not related to trust account matters.

(3) Failure to file the report within the time period specified in this rule shall be considered a violation of RCW 18.44.430.

14. RCW 18.44.430 sets forth the actions the director may take to deny, suspend, decline to renew, or revoke the license of any escrow agent or escrow officer who violates any of the

provisions in chapter 18.44 RCW or any lawful rules made by the director pursuant to this chapter.

15. In this case, Respondents failed to file the fourth quarter 2007 report by the required deadline of January 30, 2008, since the Department received the report on March 13, 2008. In the hearing in this matter Respondent Lusa did not provide any explanation for why the report was not timely filed. Since he was aware of his responsibilities to file quarter reports, and aware of the requirement to file with 30 days of the end of the quarter, Respondents are in violation of WAC 208-680E-025 (1)-(3).

Failure to report closure of Agent's office.

16. The designated escrow officer, owner of the firm or other controlling person is responsible for following a particular protocol when an office is closed: (1) the Department must be notified within 24 hours of closure; (2) all original escrow licenses for the office being closed must be dated and signed and returned to the Department within five days; (3) an itemized accounting of funds held in trust at the time of closure must be submitted to the Department within 30 days; (4) the name, residence address and telephone number of the person responsible for the Agent's records must be submitted to the Department within 24 hours of closure; (5) the street address where the records are located must be submitted to the Department within 30 days of closure; (6) all responsible persons are jointly and severally obliged to notify the Department within 30 days of any change in the person responsible for the records or the place the records are maintained. WAC 208-680C-045.

17. Respondent Lusa submitted the Escrow Agent Office Closure Form dated March 10, 2008 (which includes the information required under WAC 208-680C-045) to the Department, and it was received on March 13, 2008. On the form, Respondent Lusa indicated that the effective date of closure was January 31, 2008. In the hearing, however, he explained that the agency's trust accounts were not closed by January 31, 2008, and that an employee was charged with "closing out" operations, which was completed on or about February 29, 2008.

18. Respondent Lusa should have been aware of the required protocol set for in WAC 208-680C-045 for notifying the Department of his office closure within 24 hours, and should have submitted his licenses within five days. He has therefore violated the letter of the Act. But the undersigned does not consider this violation - especially in light of his timely submission of his closure forms - to rise to same level as the failures of a fiduciary nature described above. This violation alone cannot support the penalties of denial of license and prohibition from practice.

Penalties.

19. The Director may suspend or revoke the license of any escrow agent or escrow officer for violating any provisions of the Act. RCW 18.44.430(1) and WAC 208.680G-040.

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20. The Director may prohibit any escrow officer from participating in the affairs of any licensed escrow agent for violating any provisions of the Act, and may impose fines for violating any provisions of the Act:

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

RCW 18.44.430(3). See also WAC 208-680G-040.

21. The Director may collect the expenses of an investigation and an examination from the person being examined. RCW 18.44.121 and WAC 208-680G-050. Payment of the invoiced amount is due within 30 days. WAC 208-680G-050(3). The Department has provided sufficient documentary and testimonial evidence relative to the hours spent on the financial examination and investigation in this matter.

#### Appropriateness of Penalties.

22. Respondent Lusa argues that the penalties sought by the Department are harsh and excessive, and that any irregularities in Respondents' fiduciary duties are outweighed by his respectable performance in the 15 years he has been in the escrow business.

23. But the Department's sanctions are reasonable in light of the nature of Respondents' conduct - multiple violations of the fiduciary responsibilities placed on agents and officers under the Act. Respondents lost track of two out of four trust accounts, overlooked monthly reconciliations, and left at least \$6,000.00 in trust funds undisbursed. Though Respondent Lusa maintains that he has an unblemished record of 15 years in the escrow business, the record here reveals a pattern of poor management of trust accounts and "things falling in the cracks" beginning January 2006. Even at the hearing in this matter, Respondent Lusa believed that the four bank overdrafts were mistakenly drawn on an inactive trust account, though the evidence demonstrates that the four overdrafts were issued to a "new" account. And though Respondent Lusa's staff may have misled him as to the status of several matters, he is ultimately responsible for supervision of the staff and for compliance with the Act under RCW 18.44.071.

24. Regarding the five-year prohibition from the escrow industry, the Department maintains that the appropriate start for the prohibition in this matter is the date of this Initial Order. That date is appropriate since this is the date when the prohibition would first go into effect. In this matter, however, a significant period of time has passed since the Department issued the Statement of Charges dated January 7, 2009. Although Respondents have not been formally

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subject to the prohibition since January 7, 2009, Respondents have faced substantial obstacles to participation in the escrow business since that date. The Department's intent to order Respondents' prohibition from the industry meant that Respondents would have to consider an eventual bar and would have to disclose that possibility to escrow agents or escrow officers they might approach. Under these circumstances, the undersigned concludes that the five-year prohibition should begin on the date of the Statement of Charges, January 7, 2009.<sup>3</sup>

25. The undersigned is unaware of any statute, regulation or policy that permits an administrative law judge to challenge the Department's decisions regarding fees, fines and other sanctions, if the decisions are not arbitrary and capricious. The Department's decisions regarding the prohibition from participation in the escrow industry, the \$27,000.00 fine for violations of the Act, and its calculation of examination and investigation fees, are not arbitrary and capricious.

26. Rather, the Department's decisions on these matters are conservative, providing some consideration for the difficulties that might arise when a business is closing. For example, the Department could have fined Respondents \$200.00 per day in light of the fact that several of the violations occurred on the same day (operating without a DEO license and failing to reconcile "inactive" trust accounts, for example), but did not do so. The Department could have fined Respondents \$100.00 per day for every day from May 17, 2007 and March 13, 2008, but did not do so.

27. The undersigned also recognizes the Respondent Lusa may have faced personal difficulties as his business was winding down in 2006 and 2007. But the Act contains no provisions for a "good cause" defense to the responsibilities of escrow agents and officers under the Act.

28. Regarding the maintenance of the company's records, such maintenance even after a business has closed is required under WAC 208-680D-030, and the Department provided sufficient examples of the rationale behind the requirements.

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<sup>3</sup> The undersigned intended to begin the five-year period of prohibition on the date Respondents learned of the Department's intent to order that sanction. Though the Statement of Charges is signed on January 7, 2009, there is no evidence in the record as to when the Statement of Charges was served on Respondents. And though it appears that Respondents mailed the appeal on April 13, 2009, there is no evidence as to when the appeal was received by the Department. Since neither party has raised jurisdictional issues, the undersigned has determined the five-year prohibition shall begin on January 7, 2009.

27. The undersigned has considered all Respondents' arguments set forth in Paragraph 21 in the above Findings of Fact. Those not specifically addressed are deemed without merit in light of the above conclusions.

### ORDER

Respondent Vintage's license to conduct the business of an escrow agent is revoked or suspended; and

Respondent Lusa's Designated Escrow Officers's licence is revoked or suspended beginning January 7, 2009; and

Respondents Vintage is prohibited from the industry of an escrow agent for a period of five years beginning January 7, 2009; and

Respondent Lusa is prohibited from the industry of an escrow agent for a period of five years; and

Respondents Vintage and Lusa joint and severally shall pay a fine, which totals \$27,000; and

Respondents Vintage and Lusa jointly and severally shall pay examination and investigation fees, totaling \$17,937.50 (\$17,187.50 examination fee; and \$750 investigation fee); and

Respondents Vintage and Lusa shall maintain records in compliance with the Act and provide the Department with the location of the books, records, and other information relating to Respondent Vintage Escrow Inc. dba Bellevue Escrow escrow agent business, and the name, address, and telephone number of the individuals responsible for maintenance of such records in compliance with the Act.

SERVED on the date of mailing.

  
Anita T. Davidson  
Administrative Law Judge

### NOTICE OF APPEAL RIGHTS

Pursuant to RCW 34.05.464 and WAC 10-08-211, any party to this proceeding may file a petition for review of this initial order. You must file your petition for review with the Director of the Department of Financial Institutions, PO Box 41200, Olympia, WA 98501-1200 (mailing address) or Department

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of Financial Institutions, 150 Israel Rad SW, Tumwater, WA 98501 (physical address). The petition for review must be mailed within twenty (20) days from the date this initial order was mailed to you. A copy of the petition for review must be sent to all parties of record. Your petition for review must specify the portions of the initial order with which you disagree, and must refer to the evidence in the record which supports your position.

Any party to this proceeding may file a reply to a petition for review. The reply must be filed with the Director of the Department of Financial Institutions at the address(es) above within ten (10) days from the date the petition for review was mailed, and copies of the reply shall be mailed to all other parties or their representatives at the time the reply is mailed.

ATD:tpt

A copy was mailed to the following:

**Appellant:**

Steven William Lusa  
Vintage Escrow, Inc. dba Bellevue Escrow  
9511 - 172nd St SE  
Snohomish, WA 98296

**Department Representative:**

Charles Clark, Assistant Attorney General  
Attorney General of Washington  
PO Box 40100  
Olympia, WA 98504

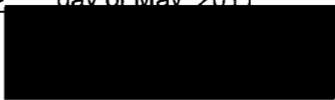
**Department Contact:**

James Brusselback, Chief  
Department of Financial Institutions  
PO Box 41200  
Olympia, WA 98504

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF KING         )

I hereby certify that I have this day served a copy of this document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent.

DATED at Seattle, Washington, this 20<sup>th</sup> day of May, 2011

  
\_\_\_\_\_  
Representative, Office of Administrative Hearings

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

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

VINTAGE ESCROW INC. dba BELLEVUE  
ESCROW, and STEVEN WILLIAM LUSA,  
Co-owner and Designated Escrow Officer,

Respondents.

NO. C-08-245-08-SC01

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

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**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:

**I. FACTUAL ALLEGATIONS**

**1.1 Respondents.**

**A. Vintage Escrow Inc. dba Bellevue Escrow (Respondent Vintage)** was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as an escrow agent on May 17, 1996, and was licensed through December 31, 2007, when its license expired. Respondent Vintage was co-owned by Steven William Lusa and Susan Lusa.

**B. Steven William Lusa (Respondent Lusa)** was a co-owner and the licensed Designated Escrow Officer (DEO) for Respondent Vintage until his license expired on May 17, 2007.

**1.2 Examination.** On February 25, 2008, the Department conducted an examination of the books and records of the Respondents. The Department's examination covered a time frame from January 1, 2006, through February

1 29, 2008. The scope of the examination included analysis, inquiry and testing of Respondent Vintage's financial  
2 records and escrow account records. As a result of the examination, the Department discovered violations of the  
3 Act as outlined below.

4 **1.3 Failure to Operate with a Licensed Designated Escrow Officer.** Respondent Lusa's DEO license  
5 expired on May 17, 2007, but Respondent Vintage continued to conduct business, without a DEO, through March  
6 13, 2008, when it submitted closure forms to the Department.

7 **1.4 Failure to Maintain Sufficient Account Balances in the Company Trust Account.** Respondents did not  
8 maintain sufficient account balances and allowed its trust account, ending in 6521, to be overdrawn 4 times from  
9 January 4, 2006, through July 31, 2006. The overdrawn amounts are as follows:

Trust Account	Overdrawn Amount	Date
Ending in 6521	\$176,520.77	1/4/06
Ending in 6521	\$127,413.41	1/17/06
Ending in 6521	\$ 94,229.67	7/28/06
Ending in 6521	\$ 95,267.39	7/31/06

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14 **1.5 Failure to Reconcile Trust Accounts on a Monthly Basis.** Respondents did not reconcile trust accounts  
15 ending in 7704 and 3222 on a monthly basis. Respondent Lusa informed the Department, during the examination,  
16 that the two trust accounts had not been reconciled since February 2006.

17 **1.6 Failure to Report Closure of Agent's Office.** Respondents did not timely notify the Department of the  
18 closure of Respondent Vintage within 24 hours of closure. In addition, the Respondents did not deliver all original  
19 escrow licenses to the Department within 5 working days from office closure.

20 **1.7 Failure to Timely File Quarterly Reports.** Respondents did not file the 2007 4<sup>th</sup> quarter report by the  
21 January 30, 2008, deadline. The Respondents filed the report on March 13, 2008.

22 **1.8 On-Going Investigation:** The Department's investigation into the alleged violations of the Act by  
23 Respondents continues to date.

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

2 **2.1 Definition of Escrow.** Pursuant to RCW 18.44.011(4), "Escrow" means any transaction wherein any  
3 person or persons, for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance,  
4 or lease of real or personal property to another person or persons, delivers any written instrument, money,  
5 evidence of title to real or personal property, or other thing of value to a third person to be held by such third  
6 person until the happening of a specified event or the performance of a prescribed condition or conditions, when  
7 it is then to be delivered by such third person, in compliance with instructions under which he or she is to act, to  
8 a grantee, grantor, promisee, promisor, obligee, obligor, lessee, lessor, bailee, bailor, or any agent or employee  
9 thereof.

10 **2.2 Definition of Escrow Agent.** Pursuant to RCW 18.44.011(6) "Escrow Agent" means any person engaged  
11 in the business of performing for compensation the duties of the third person referred to in RCW 18.44.011(4).

12 **2.3 Requirement to Obtain and Maintain License.** Based on the factual allegations set forth in Section I  
13 above, Respondent Lusa is in apparent violation of RCW 18.44.081 and RCW 18.44.171 for engaging in business  
14 as an escrow officer by performing escrows or any of the functions of an escrow agent within this state or with  
15 respect to transactions that involve personal property or real property located in this state without first obtaining  
16 and maintaining a license.

17 **2.4 Requirement to Maintain Sufficient Funds in Trust Account.** Based on the factual allegations set  
18 forth in Section I above, Respondents are in apparent violation of RCW 18.44.400(3) for making disbursements  
19 from an escrow account without first receiving deposits directly relating to the account in amounts at least equal to  
20 the disbursements.

21 **2.5 Requirement to Reconcile Trust Accounts Monthly.** Based on the factual allegations set forth in  
22 Section I above, Respondents are in apparent violation of WAC 208-680E-011(9) for not preparing a monthly trial  
23 balance of the client's ledger with the trust account bank statements and the trust account receipts and disbursement  
24 records.

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1 **2.6 Requirement to File Timely Quarterly Reports.** Based on the factual allegations set forth in Section I  
2 above, Respondents are in apparent violation of WAC 208-680E-025(1), (2), and (3), for not filing with the  
3 director, within 30 days following the end of each fiscal quarter, a report concerning its operations, a report  
4 concerning the trust account administration, and a one-page summary of the three-way reconciliation from the last  
5 month of the quarter.

6 **2.7 Requirement to Notify Department of Significant Events.** Based on the factual allegations set forth in  
7 Section I above, Respondents are in apparent violation of WAC 208-680C-045, for not notifying the Department of  
8 office closure within 24 hours of closure and for not returning the original licenses to the Department within 5  
9 working days of office closure.

10 **2.8 Requirement to File Quarterly Reports.** Based on the factual allegations set forth in Section I above,  
11 Respondents are in apparent violation of WAC 208-680E-025, for not filing a quarterly report with the Department,  
12 within 30 days following the end of the fiscal quarter.

### 13 **III. AUTHORITY TO IMPOSE SANCTIONS**

14 **3.1 Authority to Revoke or Suspend Licenses.** Pursuant to RCW 18.44.430(1) and WAC 208-680G-040,  
15 the Director may suspend or revoke the license of any escrow agent or escrow officer for violating any  
16 provisions of this Act.

17 **3.2 Authority to Prohibit from Industry.** Pursuant to RCW 18.44.430(3) and WAC 208-680G-040, the  
18 Director may prohibit any escrow officer from participation in the affairs of any licensed escrow agent for violating  
19 any provisions of this Act.

20 **3.3 Authority to Impose Fines.** Pursuant to RCW 18.44.430(3) and WAC 208-680G-040(3), the Director  
21 may impose fines for violating any provisions of this Act.

22 **3.4 Authority to Collect Investigation and Examination Fees.** Pursuant to RCW 18.44.121 and WAC  
23 208-680G-050, the Director may collect the expenses of an investigation and an examination from the person  
24 being examined.

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

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

- 4.1 Respondents' Vintage Escrow Inc. dba Bellevue Escrow and Steven William Lusa's licenses to conduct the business of an escrow agent be revoked or suspended; and
- 4.2 Respondent Vintage Escrow Inc. dba Bellevue Escrow be prohibited from the industry of an escrow agent for a period of 5 years; and
- 4.3 Respondent Steven William Lusa be prohibited from the industry of an escrow agent for a period of 5 years; and
- 4.4 Respondents Vintage Escrow Inc. dba Bellevue Escrow and Steven William Lusa, jointly and severally, pay a fine, which as of the date of this document totals \$27,000; and
- 4.5 Respondents Vintage Escrow Inc. dba Bellevue Escrow and Steven William Lusa, jointly and severally, pay restitution in an amount to be determined at hearing; and
- 4.6 Respondents Vintage Escrow Inc. dba Bellevue Escrow and Steven William Lusa, jointly and severally pay examination and investigation fees, which at the time of this document total \$17,937.50 (\$17,187.50 examination fee and \$750 investigation fee); and
- 4.7 That Respondents Vintage Escrow Inc. dba Bellevue Escrow, maintain records in compliance with the Act and provide the Department with the location of the books, records, and other information relating to Respondent Vintage Escrow Inc. dba Bellevue Escrow escrow agent business, and the name, address, and telephone number of the individual responsible for maintenance of such records in compliance with the Act.

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**V. AUTHORITY AND PROCEDURE**

This Statement of Charges and Notice of Intent to Revoke or Suspend Escrow Agent, Prohibit from Industry, Impose Fine, Order Restitution, and Collect Investigation and Examination Fees 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. 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 7<sup>th</sup> day of January, 2009.

[Redacted Signature]

DEBORAH BORTNER  
Director  
Division of Consumer Services  
Department of Financial Institutions

Presented by: [Redacted Signature]

WILLIAM J. HALSTEAD  
Financial Legal Examiner



Approved by: [Redacted Signature]

JAMES R. BRUSSELBACK  
Enforcement Chief