

Terms Complete
CONSENT ORDER SUMMARY - Case Number: C-09-483

Name(s) Foundation Escrow Company, Inc., d/b/a Foundation Escrow

Order Number C-09-483-10-CO01

Effective Date December 15, 2010

License Number Unlicensed [Entity is NOT DFI licensee 44723 with same name]

License Effect N/A

Not Apply until December 15, 2020

Prohibition/Ban until December 15, 2020

Investigation Costs	\$1,000	Due	Paid YES	Date 12/14/2010
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Assessment(s)	\$	Due	Paid Y N	Date
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Monetary Penalty	\$1,500	Due	Paid YES	Date 12/14/2010
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Other

Special Instructions

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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:

NO. C-09-483-10-CO01

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FOUNDATION ESCROW COMPANY, INC.,
d/b/a FOUNDATION ESCROW,

CONSENT ORDER

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Respondent.

COMES NOW the Director of the Department of Financial Institutions (Director), through his designee Deborah Bortner, Division Director, Division of Consumer Services, and Foundation Escrow Company, Inc., d/b/a Foundation Escrow (Respondent), by and through itself and its attorney Christopher R. Ambrose, and finding that the issues raised in the above-captioned matter may be economically and efficiently settled, agree to the entry of this Consent Order. This Consent Order is entered pursuant to chapter 18.44 of Revised Code of Washington (RCW), and RCW 34.05.060 of the Administrative Procedure Act, based on the following:

AGREEMENT AND ORDER

The Department of Financial Institutions, Division of Consumer Services (Department) and Respondent have agreed upon a basis for resolution of the matters alleged in Statement of Charges No. C-09-483-10-SC01 (Statement of Charges), entered April 5, 2010, (copy attached hereto). Pursuant to chapter 18.44 RCW, the Escrow Agent Registration Act (Act) and RCW 34.05.060 of the Administrative Procedure Act, Respondent hereby agrees to the Department's entry of this Consent Order and further agrees that the issues raised in the above-captioned matter may be economically and efficiently settled by entry of this Consent Order. The parties intend this Consent Order to fully resolve the Statement of Charges.

Based upon the foregoing:

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

CONSENT ORDER
C-09-483-10-CO01
Foundation Escrow Company, Inc.,
d/b/a Foundation Escrow

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DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Consumer Services
150 Israel Rd SW
PO Box 41200
Olympia, WA 98504-1200
(360) 902-8703

1 **B. Waiver of Hearing.** It is AGREED that Respondent has been informed of the right to a hearing
2 before an administrative law judge, and hereby waives its right to a hearing and any and all administrative and
3 judicial review of the issues raised in this matter, or of the resolution reached herein. Accordingly, Respondent,
4 by the signature of its representatives below, withdraws its appeal to the Office of Administrative Hearings.

5 **C. Escrow Agent License Required.** It is AGREED that Respondent understands it must obtain an
6 Escrow Agent license from the Department or meet an exclusion from licensing, as delineated in the Act, in order
7 to engage in business as an escrow agent by performing escrows or any of the functions of an escrow agent
8 described in the Act within the State of Washington or with respect to transactions that involve personal property
9 or real property located in the State of Washington. It is further AGREED that, until such time as Respondent
10 obtains an Escrow Agent license from the Department or meets an exclusion from licensing, as delineated in the
11 Act, Respondent shall not perform escrows or any of the functions of an escrow agent described in the Act within
12 the State of Washington or with respect to transactions that involve personal property or real property located in
13 the State of Washington, and Respondent shall not advertise the ability to perform escrows or any of the functions
14 of an escrow agent described in the Act within the State of Washington or with respect to transactions that involve
15 personal property or real property located in the State of Washington.

16 **D. Application for License.** It is AGREED that Respondent shall not apply to the Department for any
17 license under any name for a period of ten years from the date of entry of this Consent Order. It is further
18 AGREED that, should Respondent apply to the Department for any license under any name at any time later than
19 ten years from the date of entry of this Consent Order, Respondent shall be required to meet any and all
20 application requirements in effect at that time.

21 **E. Fine.** It is AGREED that Respondent shall pay to the Department a fine of \$1,500, in the form of a
22 cashier's check made payable to the "Washington State Treasurer," upon entry of this Consent Order.

1 F. **Investigation Fee.** It is AGREED that Respondent shall pay to the Department an investigation fee
2 of \$1,000, in the form of a cashier's check made payable to the "Washington State Treasurer," upon entry of this
3 Consent Order. The Fine and Investigation Fee may be paid together in one \$2,500 cashier's check made payable
4 to the "Washington State Treasurer."

5 G. **Records Retention.** It is AGREED that Respondent, its officers, employees, and agents shall
6 maintain all records involving Washington State escrow transactions for a minimum of six years from completion
7 of the escrow transactions. It is further AGREED that Respondent shall provide the Department with the location
8 of such records and the name, address, and telephone number of the individual responsible for the maintenance of
9 such records.

10 H. **Authority to Execute Order.** It is AGREED that the undersigned have represented and warranted
11 that they have the full power and right to execute this Consent Order on behalf of the party represented.

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

16 J. **Voluntarily Entered.** It is AGREED that Respondent has voluntarily entered into this Consent
17 Order, which is effective when signed by the Director's designee.

18 K. **Completely Read, Understood, and Agreed.** It is AGREED that Respondent has read this Consent
19 Order in its entirety and fully understands and agrees to all of the same.

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1 **RESPONDENT:**

2 **Foundation Escrow Company, Inc. d/b/a Foundation Escrow**

3 By:

4 [Redacted Signature] _____
Masud A. Sarwary

9/30/10
Date

5 [Redacted Signature] _____
Casey J. LeBlanc
6 Vice President

9/30/10
Date

7 [Redacted Signature] _____
8 Christopher R. Ambrose, WSBA No. 26237
9 Attorney for Respondent

10/27/10
Date

11 DO NOT WRITE BELOW THIS LINE

12 THIS ORDER ENTERED THIS 15 DAY OF December, 2010.



13 [Redacted Signature] _____
14 DEBORAH BORTNER
15 Director
16 Division of Consumer Services
17 Department of Financial Institutions

18 Presented by:

19 [Redacted Signature] _____
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21 Approved by:

22 [Redacted Signature] _____
23 JAMES R. BRUSSELBACK
24 Enforcement Chief

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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:

NO. C-09-483-10-SC01

FOUNDATION ESCROW COMPANY, INC.,
d/b/a FOUNDATION ESCROW,

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

Respondent.

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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 investigation pursuant to RCW 18.44.420 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:

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I. FACTUAL ALLEGATIONS

1.1 Respondent Foundation Escrow Company, Inc., d/b/a Foundation Escrow, (Respondent) is headquartered at 3131 Camino Del Rio North, Suite 910, San Diego, California. Respondent has never been licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as an escrow agent in the State of Washington.¹

1.2 Unlicensed Activity. Between at least September 26, 2007, and August 13, 2009, Respondent performed escrow functions in at least 20 Washington residential mortgage loan transactions. Respondent received approximately \$15,683 as "fees" for those loans. On November 27, 2009, Respondent provided the Department with an Agreement to Cease and Desist from providing escrow services in the State of Washington until such time as Respondent obtains a license from the Department or meets an exclusion from licensing as delineated in the Act. As of the date of this Statement of Charges, Respondent's website still contains the following statement: "Can I use

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¹ Respondent is to be distinguished from Foundation Escrow, Inc., d/b/a Foundation Escrow, an escrow agent licensed by the Department and headquartered in Tacoma, Washington

1 your service if I live outside San Diego County? Yes, Foundation Escrow Company processes escrow all
2 throughout California, Arizona, Oregon, *Washington*, and Nevada..." [emphasis added]²

3 **1.3 On-Going Investigation.** The Department's investigation into the alleged violations of the Act by
4 Respondent continues to date.

5 II. GROUNDS FOR ENTRY OF ORDER

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

14 **2.2 Definition of Escrow Agent.** Pursuant to RCW 18.44.011(6) "Escrow Agent" means any person engaged
15 in the business of performing for compensation the duties of the third person referred to in RCW 18.44.011(4).

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

21 **2.4 Requirement to Maintain Records in the State of Washington.** Based on the Factual Allegations set
22 forth in Section 1 above, Respondent is in apparent violation of RCW 18.44.400 and WAC 208-680D-030 for
23 failing to maintain transaction records in the State of Washington for a period of six years from completion of the
24 transaction.

25 _____
² www.foundationescrow.com/about/faq

1 **III. AUTHORITY TO IMPOSE SANCTIONS**

2 **3.1 Authority to Issue Order to Cease and Desist.** Pursuant to RCW 18.44.440 and WAC 208-680G-
3 030, if the director determines after notice and hearing that a person has: violated any provision of the Act; or
4 engaged in any false, unfair and deceptive, or misleading advertising or promotional activity or business
5 practices; the director may issue an order requiring the person to cease and desist from the unlawful practice
6 and to take such affirmative action as in the judgment of the director will carry out the purposes of the Act.

7 **3.2 Authority to Impose Fines.** Pursuant to RCW 18.44.430(3) and WAC 208-680G-040(3), in addition to
8 or in lieu of license denial the Director may impose a fine of up to \$100 per day for each day's violation of the Act.

9 **3.3 Authority to Collect Investigation Fee.** Pursuant to RCW 18.44.410 and WAC 208-680G-050, the
10 expense of an investigation pursuant to WAC 208-680G-020 shall be borne by the entity which is the subject of the
11 investigation.

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

13 Respondent's 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 18.44.400,
15 RCW 18.44.410, RCW 18.44.430, RCW 18.44.440, and WAC 208-680G-030, which authorize the Director to
16 enforce all laws, rules, and regulations related to the registration of escrow agents and licensing of escrow officers.
17 Therefore, it is the Director's intention to ORDER that:

18 **4.1** Respondent Foundation Escrow Company, Inc., d/b/a Foundation Escrow, cease and desist from
19 advertising the ability to perform escrow services in the State of Washington until such time as Respondent
20 Foundation Escrow Company, Inc., d/b/a Foundation Escrow obtains a license from the Department to
provide escrow services in the State of Washington or meets an exclusion from licensing as delineated in
the Act.

21 **4.2** Respondent Foundation Escrow Company, Inc., d/b/a Foundation Escrow, pay a fine. As of the date of
22 this Statement of Charges, the fine totals \$25,000.

23 **4.3** Respondent Foundation Escrow Company, Inc., d/b/a Foundation Escrow, pay an investigation fee. As
of the date of this Statement of Charges, the investigation fee totals \$600.

24 **4.4** Respondent Foundation Escrow Company, Inc., d/b/a Foundation Escrow, its officers, employees, and
25 agents maintain all records involving Washington State escrow transactions within the State of Washington
for a period of six years from completion of the escrow transactions.

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V. AUTHORITY AND PROCEDURE

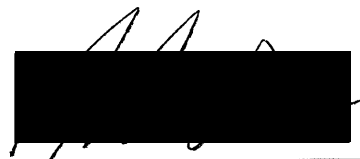
This Statement of Charges and Notice of Intention to Enter an Order to Cease and Desist, Impose Fine, Collect Investigation Fee, and Maintain Records (Statement of Charges) is entered pursuant to the provisions of RCW 18.44.410, RCW 18.44.430, and RCW 18.44.440, and is subject to the provisions of chapter 34.05 RCW. Respondent may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges.

DATED this 5th day of April, 2010.



Division of Consumer Services
Department of Financial Institutions

Presented by:



MARK T. OLSON
Financial Legal Examiner



Approved by:



JAMES R. BRUSSELBACK
Enforcement Chief

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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:

C-09-483-10-SC01

FOUNDATION ESCROW COMPANY, INC.,
d/b/a FOUNDATION ESCROW,

NOTICE OF OPPORTUNITY TO DEFEND
AND OPPORTUNITY FOR HEARING

Respondent.

8 THE STATE OF WASHINGTON TO: FOUNDATION ESCROW COMPANY, INC.
d/b/a FOUNDATION ESCROW

9
10 YOU ARE HEREBY NOTIFIED that a STATEMENT OF CHARGES has been filed by the Department
of Financial Institutions, a true and correct copy of which is attached and made a part hereof.

11 YOU ARE HEREBY NOTIFIED that you may file an application for an adjudicative hearing before the
12 Washington State Department of Financial Institutions on the Statement of Charges. Service of this notice is
13 deemed complete upon deposit in the United States mail. YOUR APPLICATION MUST BE RECEIVED BY
14 THE DEPARTMENT OF FINANCIAL INSTITUTIONS WITHIN 20 DAYS FROM THE DATE YOU
15 RECEIVED THIS NOTICE. If you demand a hearing, you will be notified of the time and place for the hearing at
16 least seven days in advance of the hearing date.

17 At the hearing, you may appear personally, and by counsel, if you desire. The hearing will be as informal
18 as is practical within the requirements of the Administrative Procedure Act (see chapter 34.05 RCW). The hearing
19 will be recorded. The primary concern will be getting to the truth of the matter insofar as the Statement of Charges
20 is concerned. Technical rules of evidence will not be binding at the hearing except for the rules of privilege
21 recognized by law. You have the right to present evidence and witnesses in your own behalf, and to cross-examine
22 those witnesses presented in support of the Statement of Charges. You may require the attendance of witnesses by
23 subpoena. If you are limited English- speaking or hearing impaired, you have the right to have an interpreter
24 appointed at no cost to you, as discussed below.
25

1 INTERPRETER AVAILABILITY. If you or a witness for you is a person who, because of non-English-
2 speaking cultural background, cannot readily speak or understand the English language, or if you or a witness for
3 you is a person who, because of a hearing impairment or speech defect, cannot readily understand or communicate
4 in spoken language, including persons who are deaf, deaf and blind, or hard of hearing, AND YOU NEED AN
5 INTERPRETER, then a qualified interpreter will be appointed at no cost to you or to the witness. You may request
6 the appointment of a qualified interpreter by indicating your request on the attached Application for Adjudicative
7 Hearing form.

8 YOU ARE FURTHER NOTIFIED that if the Department of Financial Institutions does not RECEIVE the
9 Application for Adjudicative Hearing form within twenty days from the date you received this notice, this will
10 constitute a waiver of your right to a hearing and the Director will find that you do not contest the allegations of the
11 Statement of Charges. Upon such a finding by the Director a final order will be immediately entered disposing of
12 this matter as described in the Statement of Charges. If you desire a hearing in this matter, please return the
13 attached Application for Adjudicative Hearing to:

14 Department of Financial Institutions
15 Division of Consumer Services
16 Attn: Fatima Batie
17 PO Box 41200
18 Olympia, Washington 98504-1200

19 Dated this 5 day of April, 2010.



18 [REDACTED]
19
20 DEBORAH BORTNER
21 Director
22 Division of Consumer Services
23 Department of Financial Institutions