

ORDER SUMMARY – Case Number: C-11-0781

Name(s): Performance Title LLC

Order Number: C-11-0781-14-CO02

Effective Date: September 2, 2014

License Number: N/A
Or NMLS Identifier [U/L]

License Effect: N/A

Not Apply Until: September 2, 2019

Not Eligible Until: September 2, 2019

Prohibition/Ban Until: September 2, 2019

Investigation Costs	\$3,862.50	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 9/2/14
Fine	\$35,000.00	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 9/2/14
Assessment(s)	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Restitution	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Judgment	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Satisfaction of Judgment Filed?		<input type="checkbox"/> Y <input type="checkbox"/> N		
No. of Victims:				

Comments: Cease and desist unlicensed escrow activity (company and corporate officers), records retention in accordance
with the EARA.

**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:

PERFORMANCE TITLE, LLC F/K/A
PERFORMANCE TITLE, INC. and
PERRE CABELL, President,

Respondents.

No.: C-11-0781-14-CO02

CONSENT ORDER AS TO
PERFORMANCE TITLE

COME NOW the Director of the Department of Financial Institutions (Director), through his designee Deborah Bortner, Division Director, Division of Consumer Services, and Performance Title, LLC f/k/a Performance Title, Inc. (Respondent Performance Title), and finding that the issues raised in the above-captioned matter may be economically and efficiently settled as to Respondent Performance Title only, agree to the entry of this Consent Order. This Consent Order is entered pursuant to chapter 18.44 of the 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 Performance Title have agreed upon a basis for resolution of the matters alleged in Statement of Charges No. C-11-0781-14-SC01 (Statement of Charges), entered March 19, 2014, (copy attached hereto), solely as related to Respondent Performance Title. Pursuant to chapter 18.44 RCW, the Escrow Agent Registration Act (Act), and RCW 34.05.060 of the Administrative Procedure Act, Respondent Performance Title 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

1 economically and efficiently settled by entry of this Consent Order. The parties intend this Consent
2 Order to fully resolve the Statement of Charges solely as to Respondent Performance Title.

3 Based upon the foregoing:

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

6 B. **Waiver of Hearing.** It is AGREED that Respondent Performance Title has been
7 informed of the right to a hearing before an administrative law judge, and hereby waives its right to a
8 hearing and any and all administrative and judicial review of the issues raised in this matter, or of the
9 resolution reached herein. Accordingly, Respondent Performance Title, by the signature of its
10 representative below, withdraws its appeal to the Office of Administrative Hearings.

11 C. **Cease and Desist.** It is AGREED that Respondent Performance Title represents that it
12 has ceased and desisted from conducting the business of an escrow agent in the State of Washington.
13 It is further AGREED that neither Respondent Performance Title nor any of its corporate officers in
14 their corporate capacity will engage in the business of an escrow agent in the State of Washington
15 until such time as Respondent Performance Title obtains a license in accordance with the Act or
16 satisfies an exception from the Act, subject to the prohibition in paragraph D.

17 D. **Prohibition from Industry.** It is AGREED that, for a period of 5 years from the date of
18 entry of this Consent Order, Respondent Performance Title is prohibited from participating, in any
19 capacity, in the conduct of the affairs of any escrow agent licensed by the Department or subject to
20 licensure or regulation by the Department.

21 E. **Fine.** It is AGREED that Respondent Performance Title shall pay a fine to the
22 Department in the amount of \$35,000, in the form of a cashier's check made payable to the
23 "Washington State Treasurer," upon entry of this Consent Order.

1 **F. Investigation Fee.** It is AGREED that Respondent Performance Title shall pay to the
2 Department an investigation fee of \$3,862.50, in the form of a cashier's check made payable to the
3 "Washington State Treasurer," upon entry of this Consent Order. The Fine and Investigation Fee
4 may be paid together in one \$38,862.50 cashier's check made payable to the "Washington State
5 Treasurer."

6 **G. Records Retention.** It is AGREED that Respondent Performance Title, its officers,
7 employees, and agents shall maintain records in compliance with the Act and provide the Director
8 with the location of the books, records and other information relating to Respondent Performance
9 Title's escrow agent business, and the name, address and telephone number of the individual
10 responsible for maintenance of such records in compliance with the Act.

11 **H. Authority to Execute Order.** It is AGREED that the undersigned has represented and
12 warranted that he has the full power and right to execute this Consent Order on behalf of Respondent
13 Performance Title.

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

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

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

24 //

RESPONDENT:

Performance Title LLC

By

[REDACTED]

Perre Cabell
President

Date

8/27/14

DO NOT WRITE BELOW THIS LINE

THIS ORDER ENTERED THIS ____ DAY OF _____, 2014.

DEBORAH BORTNER
Director, Division of Consumer Services
Department of Financial Institutions

Presented by:

SHANA L. OLIVER
Financial Legal Examiner

Approved by:

CHARLES E. CLARK
Enforcement Chief

1 **RESPONDENT:**

Performance Title LLC

2 By:

3
4 Perre Cabell
President

Date

5
6 DO NOT WRITE BELOW THIS LINE

7 THIS ORDER ENTERED THIS 2nd DAY OF September, 2014.



11
12
13
14 DEBORAH BORTNER
Director, Division of Consumer Services
Department of Financial Institutions

15 Presented by:

16
17
18 SHANA L. OLIVER
Financial Legal Examiner

19 Approved by:

20
21
22 CHARLES E. CLARK
Enforcement Chief

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

**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:

PERFORMANCE TITLE, LLC and
PERRE CABELL, President,

Respondents.

No.: C-11-0781-14-SC01

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

INTRODUCTION

Pursuant to RCW 18.44.410, the Director of the Department of Financial Institutions of the State of Washington (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 WAC 208-680-620, and based upon the facts available as of the date of this Statement of Charges, the Director, through his designee, Division of Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondents.

A. Performance Title, LLC (Respondent Performance Title) is headquartered at 137 Main Street, Bay St. Louis, Mississippi. Respondent Performance Title 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.

B. Perre Cabell (Respondent Cabell) is the President of Respondent Performance Title. Respondent Cabell has never been licensed by the Department to conduct business as an escrow agent in the state of Washington.

1 **1.2 Unlicensed Activity.** Between at least September 17, 2010, and June 20, 2013, Respondent
2 Performance Title performed escrow functions in at least 62 Washington mortgage loan transactions.
3 Respondent received at least \$29,000 as “fees” for those transactions.

4 **1.3 Failure to Respond to Department Subpoenas.** On or about April 25, 2011, the
5 Department issued a subpoena to Respondents regarding their apparent unlicensed activity. The
6 Department received no response. The Department issued a second subpoena on or about May 24,
7 2011. As of the date of this Statement of Charges, Respondents have not responded to either
8 subpoena.

9 **1.4 On-Going Investigation.** The Department’s investigation into the alleged violations of the
10 Act by Respondents continues to date.

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

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

20 **2.2 Definition of Escrow Agent.** Pursuant to RCW 18.44.011(8) “Escrow Agent” means any
21 person engaged in the business of performing for compensation the duties of the third person referred
22 to in RCW 18.44.011(7).

23 **2.3 Requirement to Obtain and Maintain License.** Based on Factual Allegations set forth in
24 Section I above, Respondents are in apparent violation of RCW 18.44.021 for engaging in the

business of an escrow agent by performing escrows or any of the functions of an escrow agent within the state of Washington or with respect to transactions that involve personal property or real property located in the state of Washington without first obtaining a license.

2.4 Requirement to Comply with Director's Investigative Authority. Based on the Factual Allegations set forth in Section I above, Respondents are in apparent violation of RCW 18.44.420 for failing to comply with subpoenas issued by the Department in the course of its investigation.

2.5 Requirement to Maintain Records in the State of Washington. Based on the Factual Allegations set forth in Section I above, Respondents are in apparent violation of RCW 18.44.400 and WAC 208-680-530 for failing to maintain transaction records in the state of Washington for a period of six years from completion of the transaction.

III. AUTHORITY TO IMPOSE SANCTIONS

3.1 Authority to Issue an Order to Cease and Desist. Pursuant to RCW 18.44.440 and WAC 208-680-630, if the Director determines after notice and hearing that a person has violated any provision of the Act, the Director may issue an order requiring the person to cease and desist from the unlawful practice.

3.2 Authority to Impose Fine. Pursuant to RCW 18.44.430(3) and WAC 208-680-640(1), the Director may impose a fine up to \$100 per day for each day's violation of the Act.

3.3 Authority to Collect Investigation Fee. Pursuant to RCW 18.44.410 and WAC 208-680-650, the expense of an investigation pursuant to WAC 208-680-620 shall be borne by the entity which is the subject of the investigation.

//

//

//

//

IV. NOTICE OF INTENTION TO ENTER ORDER

Respondent's violations of the provisions of chapter 18.44 RCW as set forth in the above Factual Allegations and Grounds for Entry of Order constitute a basis for the entry of an Order under RCW 18.44.400, RCW 18.44.410, RCW 18.44.430, RCW 18.44.440 and WAC 208-680-630, 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 Performance Title, LLC and Perre Cabell cease and desist from performing escrow services in the state of Washington until such time as Respondent Performance Title 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.
- 4.2 Respondents Performance Title, LLC and Perre Cabell be prohibited from the participation in the conduct of the affairs of any escrow agent subject to licensure by the Director, in any manner, for a period of five years.
- 4.3 Respondents Performance Title, LLC and Perre Cabell pay a fine. As of the date of this Statement of Charges, the fine totals \$75,000.
- 4.4 Respondents Performance Title, LLC and Perre Cabell pay an investigation fee. As of the date of this Statement of Charges, the investigation fee totals \$3,862.50.
- 4.5 Respondent performance Title, LLC, its officers, employees, and 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.

//

//

//

//

//

//

//

//

1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges and Notice of Intention to Enter an Order to Cease and Desist,
3 Prohibit From Industry, Impose Fine, Collect Investigation Fee, and Maintain Records (Statement of
4 Charges) is entered pursuant to the provisions of RCW 18.44.410, RCW 18.44.430, and RCW
5 18.44.440, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure
6 Act). Respondents may make a written request for a hearing as set forth in the NOTICE OF
7 OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this
8 Statement of Charges.

9
10 Dated this 19th day of March, 2014.



11 [Redacted Signature]
12
13 DEBORAH BORTNER
14 Director
15 Division of Consumer Services
16 Department of Financial Institutions

16 Presented by:

17 [Redacted Signature]
18 SHANA L. OLIVER
19 Financial Legal Examiner

20 Approved by:

21 [Redacted Signature]
22 CHARLES CLARK
23 Enforcement Chief