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10 BEFORE THE DEPARTMENT OF CORPORATIONS
11 OF THE STATE OF CALIFORNIA

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13)
14 In the Matter of the Statement of Issues of THE) File No.: 9632589
15 CALIFORNIA CORPORATIONS)
16 COMMISSIONER,)
17 Complainant,) ORDER DENYING APPLICATION AND
18 vs.) ORDER BARRING CHRISTOPHER LEWIS
19 CHRISTOPHER LEWIS DURLING and) DURLING FROM EMPLOYMENT,
20 DIRECT ESCROW,) MANAGEMENT OR CONTROL OF ANY
21 Respondents.) ESCROW AGENT

22 The California Corporations Commissioner, (herein "Commissioner") finds:

23 1. In or about October 13, 2009, DIRECT ESCROW ("DIRECT") and CHRISTOPHER
24 LEWIS DURLING ("DURLING") (collectively, "Respondents"), filed its application for an escrow
25 agent's license file number 9632589 ("Application") with the Department, pursuant to section 17209
26 of the California Escrow Law. The Application identified DURLING as proposed president of
27 DIRECT. Notifications issued by the Department to DIRECT were made by giving notice to
28 DURLING.

1 2. Question 4 of the Application states “*Have you ever been refused a license to engage in*
 2 *any business in this state or any other state, or has any such license ever been suspended or*
 3 *revoked*”. Under penalty of perjury, and in a notarized statement, DURLING answered: “*The State*
 4 *of Nebraska and I agreed to a consent order where I would surrender my title license due to an over*
 5 *charge that was refunded to the client.*” Upon further investigation, the Department discovered that
 6 the State of Nebraska Department of Insurance issued a Consent Order against DURLING and his
 7 then title insurance business “Direct Title Insurance Agency, Inc.” on April 23, 2009, a true and
 8 correct copy attached hereto as “EXHIBIT A” (“Consent Order”). The State of Nebraska
 9 Department of Insurance regulates insurance companies, escrow services, title insurers, liability
 10 carriers, and related operations doing business in Nebraska.

11 3. First, it was discovered that the State of Nebraska Department of Insurance issued the
 12 Consent Order for all of the following violations of Nebraska law, not merely one violation for fees
 13 charged:

<p>14 44-319</p>	<p>44-319. Insurance producer or surplus lines licensee; fiduciary duties.</p> <p>Every person acting as an insurance producer or surplus lines licensee in this state shall be responsible in a fiduciary capacity for all funds received or collected as an insurance producer or surplus lines licensee. Nothing in this section shall be construed to require any person to maintain a separate bank deposit if the funds of each principal are clearly ascertainable from the books of accounts and records of that person.</p>
<p>15 16 17 18 19 20 21 22 23 24 25 26 27</p> <p>44-1997</p>	<p>44-1997. Premium rate filings and standards.</p> <p>(1) No title insurer may charge any rates regulated by the state after September 13, 1997, except in accordance with the premium rate schedule and manual filed with and approved by the director in accordance with applicable statutes and rules and regulations governing rate filings.</p> <p>(2) The director may adopt and promulgate rules and regulations, including rules and regulations providing statistical plans, for use by all title insurers and title insurance agents in the recording and reporting of revenue, loss, and expense experience in such form and detail as is necessary to aid him or her in the establishment of rates and fees.</p> <p>(3) The director may require that the information provided under this section be verified by oath of the title insurer's or title insurance agent's president, vice president, secretary, or actuary, as applicable. The director may further require that the information required under this section be subject to an audit conducted by an independent certified public accountant. The director shall have the authority to establish a minimum threshold level at which an audit would be required.</p> <p>(4) Information filed with the director relating to the experience of a particular title insurance agent shall be kept confidential unless the director finds it in the public interest to disclose the information required of title insurers or title insurance agents under this section.</p>
<p>28 44-19,109(3)</p>	<p>44-19,109. Licensing requirements.</p>

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	<p>(3) The director shall require the title insurance agent and any bona fide employee of the title insurance agent handling escrow or security deposits to maintain a surety bond, letter of credit, certificate of deposit, or deposit of cash or securities in an amount not less than one hundred thousand dollars covering all of the title insurance agent's employees.</p>
<p>44-4061</p>	<p>44-4061. Appointed agent; requirements; fees.</p> <p>(1) An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.</p> <p>(2) To appoint an insurance producer as its agent, the appointing insurer shall file, in a format approved by the director, a notice of appointment within fifteen days from the date the agency contract is executed or the first insurance application is submitted. An insurer may also elect to appoint an insurance producer to all or some insurers within the insurer's holding company system or group by the filing of a single appointment request.</p> <p>(3) An insurer shall pay an appointment fee, in the amount and method of payment set forth in section 44-4064 for each insurance producer appointed by the insurer.</p> <p>(4) An insurer shall remit, in a manner prescribed by the director, a renewal appointment fee in the amount set forth in section 44-4064.</p>
<p>44-4059(1)(b)</p>	<p>44-4059. Disciplinary actions; administrative fine; procedure.</p> <p>(1) The director may suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy an administrative fine in accordance with subsection (4) of this section, or any combination of actions, for any one or more of the following causes:</p> <p>(b) Violating any insurance law or violating any rule, regulation, subpoena, or order of the director or of another state's insurance commissioner or director;</p>
<p>44-4059(1)(h)</p>	<p>44-4059. Disciplinary actions; administrative fine; procedure.</p> <p>(1) The director may suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy an administrative fine in accordance with subsection (4) of this section, or any combination of actions, for any one or more of the following causes:</p> <p>(h) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere;</p>
<p>44-4061</p>	<p>44-4061. Appointed agent; requirements; fees.</p> <p>(1) An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.</p> <p>(2) To appoint an insurance producer as its agent, the appointing insurer shall file, in a format approved by the director, a notice of appointment within fifteen days from the date the agency contract is executed or the first insurance application is submitted. An insurer may also elect to appoint an insurance producer to all or some insurers within the insurer's holding company system or group by the filing of a single appointment request.</p> <p>(3) An insurer shall pay an appointment fee, in the amount and method of payment set forth in section 44-4064, for each insurance producer appointed by the insurer.</p> <p>(4) An insurer shall remit, in a manner prescribed by the director, a renewal appointment fee in the amount set forth in section 44-4064.</p>

1 4. Second, it was discovered that more than one customer was charged fees in violation of
2 Nebraska State law. There were many different “files” signifying different consumers, each with
3 different transactions, as stated in the Consent Order. Third, it was discovered that the Nebraska
4 State Director of Insurance ordered the revocation, not surrender, of DURLINGS’ insurance and that
5 DURLING and Direct Title Insurance Agency issue checks refunding all overcharges of premium
6 and or fees related to Nebraska title insurance policies, including but not limited to, those in the
7 Consent Order. Finally, it was discovered that DURLING acknowledged the findings in the Consent
8 Order and agreed to the above Consent Order which ordered the revocation of his license on April
9 22, 2009.

10 5. On June 16, 2010, the Commissioner issued a Statement of Issues for the Denial of
11 California Escrow License and Barr and accompanying documents against Respondents based upon
12 the above. A true and correct copy attached hereto as “EXHIBIT B” (“Pleadings”). Respondents
13 were served with the Pleadings on or about June 26, 2010 by way of personal service and certified
14 mail. The Department has not received a request for hearing from either Respondent and the time to
15 request a hearing has expired.

16 6. Pursuant to California Financial Code section 17423(2), the Commissioner may bar from
17 any position of employment, management, or control any escrow agent, or any other person, if the
18 Commissioner finds that the person has been held liable in any administrative judgment by any
19 public agency, if that judgment involved another offense reasonably related to the qualifications,
20 functions, or duties of a person engaged in the business in accordance with the provisions of the
21 Department.

22 7. The Consent Order is promulgated and approved by the administrative court in the State of
23 Nebraska and thus an administrative judgment. Also, the Consent Order was adopted and enforced
24 by the State of Nebraska Department of Insurance, a public agency. Further, DURLING was held
25 liable to the State of Nebraska Department of Insurance which resulted in the revocation of his
26 license. DURLING was held liable to the consumers of Nebraska for fees collected in violation of
27 Nebraska law.
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1 8. Moreover, the offenses found to have been committed by DURLING outlined in the
2 Consent Order, involved offenses reasonably related to the qualifications, functions, or duties of a
3 person engaged in the business of an escrow agent. Such offenses include violation of Nebraska
4 Revised Statutes §§ 44-19,109(3); 44-4059(1) (b) committed in association with the handling of
5 escrow, deposit security funds or cash. The responsibilities of a State of Nebraska Department of
6 Insurance licensee are similar to the responsibilities of an individual in the management or control of
7 an escrow agent. Therefore good cause exists to bar DURLING from any position of management
8 or control of any escrow agent.

9 9. Pursuant to California Financial Code section 17209.3(f), the Commissioner may refuse to
10 issue any license being applied for if the applicant has violated the rules or regulations of any similar
11 regulatory scheme of the State of California or a foreign jurisdiction. The State of Nebraska is a
12 foreign jurisdiction. The regulatory scheme of the State of Nebraska is similar to that of California
13 and the Department. The Nebraska State Department of Insurance, a public agency, has jurisdiction
14 in Nebraska over escrow and insurance matters relating to a similar regulatory scheme as in
15 California and regulated the Department. The Nebraska State Department of Insurance also has
16 similar powers as the Department, as it may grant or deny licenses and enforce laws which regulate
17 such licenses. Moreover, it is clear that DURLING violated the regulations of a foreign jurisdiction
18 with a similar regulatory scheme as the Consent Order was issued on April 23, 2009 in Nebraska for
19 such violations. As such, the Commissioner may refuse to issue a license to DURLING thus
20 denying the Application, pursuant to California Financial Code section 17209.3(f).

21 10. Pursuant to California Financial Code section 17209.3(e), the Commissioner may and
22 shall refuse to issue any license being applied for if the Commissioner finds that a false statement of
23 a material fact has been made in the application for license.

24 11. DURLING statements on the Application are false. Question 4 of the Application states
25 “Have you ever been refused a license to engage in any business in this state or any other state, or
26 has any such license ever been suspended or revoked”. Applicants are requested to respond in full
27 and in detail, as noted by the instructions. Under penalty of perjury and in a notarized statement,
28 DURLING answered: “The State of Nebraska and I agreed to a consent order where I would

1 surrender my title license due to an over charge that was refunded to the client.” However, in truth,
2 the State of Nebraska issued a Consent Order which mandated the revocation, not surrender of
3 DURLINGS’ license. Also, the Consent Order was not issued “due to an over charge that was
4 refunded to the client”. There was more than one charge made to more than one client or file.
5 Moreover, there were many other violations that the Consent Order was based upon which were
6 omitted as the basis for the Consent Order. Specifically, the State of Nebraska based the Consent
7 Order on over five (5) different violations, as noted in Section 1 of this Statement of Issues. As
8 such, DURLING’s statement is false.

9 12. Also, the Commissioner finds the following to be material facts and relevant in deciding
10 whether or not to grant Respondents’ an escrow license: (1) the State of Nebraska Department of
11 Insurance revocation (not surrender) of DURLING’s license; (2) the multitude of other violations
12 committed that were not disclosed in the Application; and (3) more than one charge was made to
13 more than one customer. Accordingly, and by reason of the foregoing, DURLING made a false
14 statements of material fact in its application, and therefore good cause exists to deny Respondent’s
15 Application.

16 13. California Financial Code section 17209.3 states the grounds for denial of a California
17 Escrow Law license application:

18 The commissioner may refuse to issue any license being
19 applied for, and shall refuse to issue any license being applied for
20 if upon the commissioner's examination and investigation, and after
21 appropriate hearing, the commissioner finds any of the following:

22 (e) A false statement of a material fact has been made in the
23 application for license.

24 (f) The applicant, any officer, director, general partner, or
25 incorporator of the applicant, or any person owning or controlling,
26 directly or indirectly, 10 percent or more of the outstanding equity
27 securities of the applicant has violated any provision of this
28 division or the rules thereunder or any similar regulatory scheme of
the State of California or a foreign jurisdiction.

14. California Financial Code section 17423 grants the Commissioner the authority to bar
as follows:

1 (a) The commissioner may, after appropriate notice and
2 opportunity for hearing, by order, censure or suspend for a period
3 not exceeding 12 months, or bar from any position of employment,
4 management, or control any escrow agent, or any other person, if the
5 commissioner finds either of the following:

6 (2) That the person has been convicted of or pleaded nolo
7 contendere to any crime, or has been held liable in any civil action
8 by final judgment, or any administrative judgment by any public
9 agency, if that crime or civil or administrative judgment involved
10 any offense specified in subdivision (b) of Section 17414.1, or any
11 other offense reasonably related to the qualifications, functions, or
12 duties of a person engaged in the business in accordance with the
13 provisions of this division.

14 (e) Persons suspended or barred under this section are prohibited
15 from participating in any business activity of a licensed escrow
16 agent and from engaging in any business activity on the premises
17 where a licensed escrow agent is conducting escrow business. This
18 subdivision shall not be construed to prohibit suspended or barred
19 persons from having their personal escrow transactions processed by a
20 licensed escrow agent.

21 15. WHEREFORE, the Commissioner finds, by reason of the foregoing, that:

22 (a) CHRISTOPHER LEWIS DURLING, the president of DIRECT ESCROW, had his
23 insurance license revoked by the State of Nebraska Department of Insurance;

24 (b) CHRISTOPHER LEWIS DURLING's failure to completely and truthfully disclose the
25 disciplinary actions taken by the State of Nebraska Department of Insurance on his escrow agent
26 license application constitutes the misstatement of a material fact;

27 (c) DIRECT ESCROW is incapable of operating its escrow business in compliance with the
28 California Financial Code as demonstrated by CHRISTOPHER LEWIS DURLING's continuous
pattern of violations in the State of Nebraska;

(d) CHRISTOPHER LEWIS DURLING is incapable of properly managing or controlling an
escrow agent in compliance of the California Escrow Law, as demonstrated by CHRISTOPHER
LEWIS DURLING's continuous pattern of violations of Nebraska law. It is in the best interests of
the public to bar CHRISTOPHER LEWIS DURLING from the management or control of any
escrow agent; and

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(e) The Commissioner asserts that he is justified under California Financial Code Sections 17209.3 and 17423 in denying DIRECT ESCROW and CHRISTOPHER LEWIS DURLING’S application for an escrow agent's license and barring CHRISTOPHER LEWIS DURLING from management or control of any escrow agent.

NOW GOOD CAUSE APPEARING THEREFORE, it is hereby ordered that application for California Escrow Law license file number 9632589 filed by Respondent, CHRISTOPHER LEWIS DURLING and DIRECT ESCROW is hereby denied and CHRISTOPHER LEWIS DURLING is hereby barred from any position of management or control of any escrow agent. This order is effective as of the date hereof.

Dated: July 26, 2010
Sacramento, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____

Alan S. Weinger
Deputy Commissioner