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California Corporations Commissioner  
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9  
10 BEFORE THE DEPARTMENT OF CORPORATIONS  
11 OF THE STATE OF CALIFORNIA  
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13 )  
In the Matter of the Accusation of THE ) File No.: 9632589  
14 CALIFORNIA CORPORATIONS )  
COMMISSIONER, )  
15 ) STATEMENT OF ISSUES FOR THE DENIAL  
16 Complainant, ) OF CALIFORNIA ESCROW LICENSE AND  
vs. ) BAR  
17 )  
18 )  
CHRISTOPHER LEWIS DURLING and )  
19 DIRECT ESCROW, )  
20 Respondents. )  
21 )  
22 )

23 The Complainant is informed and believes, and based upon such information and belief, alleges  
24 and charges Respondent as follows:

25 I.  
26 **INTRODUCTION**

27 The proposed orders seek to deny the issuance of an escrow agent's license to DIRECT  
28 ESCROW ("DIRECT"), pursuant to section 17209.3 of the California Escrow Law (California

1 Financial Code Section 17000 *et seq.*) and to bar CHRISTOPHER LEWIS DURLING  
2 ("DURLING") from any position of escrow employment, escrow management, or control of any  
3 escrow agent, pursuant to section 17423 of the California Escrow Law. The California Corporations  
4 Commissioner, Preston DuFauchard (herein "Commissioner") believes it is in the best interests of  
5 the public to deny DIRECT and DURLINGs' application for escrow license and to bar DURLING  
6 from any position of escrow employment, escrow management or control of any escrow agent in  
7 California.

## 8 II.

### 9 FACTUAL BACKGROUND

10 The California Department of Corporations (herein the "Department") is responsible for  
11 enforcing the provisions of the California Escrow Law and is authorized to pursue administrative  
12 actions and remedies against applicants and licensees who engage in violations of the California  
13 Escrow Law.

14 In or about October 13, 2009, DIRECT and DURLING (collectively, "Respondents"), filed  
15 its application for an escrow agent's license file number 9632589 ("Application") with the  
16 Department, pursuant to section 17209 of the California Escrow Law. The Application identified  
17 DURLING as proposed president of DIRECT.

18 Question 4 of the Application states "*Have you ever been refused a license to engage in any*  
19 *business in this state or any other state, or has any such license ever been suspended or revoked*".  
20 Under penalty of perjury, and in a notarized statement, DURLING answered: "*The State of*  
21 *Nebraska and I agreed to a consent order where I would surrender my title license due to an over*  
22 *charge that was refunded to the client.*"

23 Upon further investigation, the Department discovered that the State of Nebraska Department  
24 of Insurance issued a Consent Order against DURLING and his then title insurance business "Direct  
25 Title Insurance Agency, Inc." on April 23, 2009, a true and correct copy attached hereto as  
26 "EXHIBIT A" ("Consent Order"). The State of Nebraska Department of Insurance regulates  
27 insurance companies, escrow services, title insurers, liability carriers, and related operations doing  
28 business in Nebraska.

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

44-319	<p><b>44-319. Insurance producer or surplus lines licensee; fiduciary duties.</b></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>
44-1997	<p><b>44-1997. Premium rate filings and standards.</b></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>
44-19,109(3)	<p><b>44-19,109. Licensing requirements.</b></p> <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>
44-4061	<p><b>44-4061. Appointed agent; requirements; fees.</b></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</p>

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	fee in the amount set forth in section 44-4064.
<b>44-4059(1)(b)</b>	<p><b>44-4059. Disciplinary actions; administrative fine; procedure.</b></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>
<b>44-4059(1)(h)</b>	<p><b>44-4059. Disciplinary actions; administrative fine; procedure.</b></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>
<b>44-4061</b>	<p><b>44-4061. Appointed agent; requirements; fees.</b></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>

Second, it was discovered that more than one customer was charged fees in violation of Nebraska State law. There were many different “files” signifying different consumers, each with different transactions, as stated in the Consent Order.

Third, it was discovered that the Nebraska State Director of Insurance ordered the revocation, not surrender, of DURLINGS’ insurance and that DURLING and Direct Title Insurance Agency issue checks refunding all overcharges of premium and or fees related to Nebraska title insurance policies, including but not limited to, those in the Consent Order.

Finally, it was discovered that DURLING acknowledged the findings in the Consent Order and agreed to the above Consent Order which ordered the revocation of his license on April 22, 2009.

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**III.**

**ARGUMENT**

**A. The Department May Bar DURLING in California Because the State of Nebraska Revoked DURLING’s License.**

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

The Consent Order is promulgated and approved by the administrative court in the State of Nebraska and thus an administrative judgment. Also, the Consent Order was adopted and enforced by the State of Nebraska Department of Insurance, a public agency. Further, DURLING was held liable by the State of Nebraska Department of Insurance which resulted in the revocation of his license. DURLING was held liable to the consumers of Nebraska for fees collected in violation of Nebraska law.

Moreover, the offenses found to have been committed by DURLING outlined in the Consent Order, involved offenses reasonably related to the qualifications, functions, fiduciary duties or general duties of a person engaged in the business of an escrow agent. Such offenses include violation of Nebraska Revised Statutes §§ 44-19,109(3); 44-4059(1) (b) committed in association with the handling of escrow, deposit security funds or cash. The responsibilities of a State of Nebraska Department of Insurance licensee are similar to the responsibilities of an individual in the management or control of an escrow agent.

Therefore good cause exists to bar DURLING from any position of employment, management or control of any escrow agent.

**B. The Department May Deny Respondents’ Application for Escrow License Because The State of Nebraska Issued A Consent Order Against DURLING Which Revoked DURLING’s License.**

Pursuant to California Financial Code section 17209.3(f), the Commissioner may refuse

1 to issue any license being applied for if the applicant has violated the rules or regulations of any  
2 similar regulatory scheme of the State of California or a foreign jurisdiction.

3 The State of Nebraska is a foreign jurisdiction. The regulatory scheme of the State of  
4 Nebraska is similar to that of California and the Department. The Nebraska State Department of  
5 Insurance, a public agency, has jurisdiction in Nebraska over escrow and insurance matters  
6 relating to a similar regulatory scheme as in California and the Department. The Nebraska State  
7 Department of Insurance also has similar powers as the Department, as it may grant or deny  
8 licenses and enforce laws which regulate such licenses. Moreover, it is clear that DURLING  
9 violated the regulations of a foreign jurisdiction with a similar regulatory scheme as the Consent  
10 Order was issued on April 23, 2009 in Nebraska for such violations.

11 As such, the Commissioner may refuse to issue a license to Respondents thus denying the  
12 Application, pursuant to California Financial Code section 17209.3(f).

13 **C. The Department May Deny Respondent's Application for Escrow License**  
14 **Because DURLING Made A False Statement Of Material Fact In the**  
15 **Application.**

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

19 DURLING statements on the Application are false. Question 4 of the Application states  
20 “*Have you ever been refused a license to engage in any business in this state or any other state, or*  
21 *has any such license ever been suspended or revoked*”. Applicants are requested to respond in full  
22 and in detail, as noted by the instructions.

23 Under penalty of perjury and in a notarized statement, DURLING answered: “*The State of*  
24 *Nebraska and I agreed to a consent order where I would surrender my title license due to an over*  
25 *charge that was refunded to the client.*”

26 However, in truth, the State of Nebraska issued a Consent Order which mandated the  
27 revocation, not surrender of DURLINGS’ license. Also, the Consent Order was not issued “due to  
28 an over charge that was refunded to the client”. There was more than one charge made to more than  
one client or file. Moreover, there were many other violations that the Consent Order was based

1 upon which were omitted as the basis for the Consent Order. Specifically, the State of Nebraska  
2 based the Consent Order on seven (7) different violations, as noted in Section 1 of this Statement of  
3 Issues. As such, DURLING's statement is false.

4 Also, the Commissioner finds the following to be material facts and relevant in deciding  
5 whether or not to grant Respondents' an escrow license: (1) the State of Nebraska Department of  
6 Insurance revocation (not surrender) of DURLING's license; (2) the multitude of other violations  
7 committed that were not disclosed in the Application; and (3) more than one charge was made to  
8 more than one customer.

9 Accordingly, and by reason of the foregoing, Respondents made false statements of material  
10 facts in its Application, and therefore good cause exists to deny Respondent's Application.

11 **D. The Department May Deny Respondent's Application for Escrow License and**  
12 **Bar DURLING Because Respondents Violated California Escrow Law By**  
13 **Making False Statements Of Material Facts.**

14 Pursuant to California Financial Code section 17702, it is unlawful for any person to  
15 willfully make any untrue statement of a material fact in any application filed with the  
16 Commissioner or to willfully omit any material fact which is required to be stated in any application.

17 As previously established in Section III C herein, Respondents made false statements of  
18 material facts in its Application. Respondents also omitted material facts in its Application.  
19 Respondents willfully made such material omissions and false statements. Respondents knew the  
20 specific terms of the Consent Order which DURLING acknowledged, agreed to and duly executed  
21 on April 22, 2009. Specifically that (1) DURLING's Nebraska license was revoked, not surrendered;  
22 (2) DURLING was to issue checks refunding more than one charge made to more than one client or  
23 file; and (3) there were seven (7) violations, not one violation, that the Consent Order was based  
24 upon which were omitted in the Application. The Application also stated that Applicants were to  
25 answer in detail, giving DURLING opportunity to properly and completely disclose, accordingly.

26 The fact that DURLING made such material omissions and made material misrepresentations  
27 when possessing knowledge to the contrary and with opportunity to properly and completely  
28 disclose establishes that DURLING willfully made such material omissions and misrepresentations.  
Therefore, Respondents are in violation of California Financial Code section 17702.

1 Pursuant to California Financial Code section 17209.3(b), the Commissioner may deny the  
2 Application based on a violation of California Escrow Law. Further, pursuant to California  
3 Financial Code section 17423(a)(1), the Commissioner may also bar any person from any  
4 position of employment, management or control of any escrow agent based on a violation of  
5 California Escrow Law. As Respondents are in violation of California Financial Code section  
6 17702, good cause exists to deny the Application and bar DURLING.

7 **IV.**

8 **COMMISSIONER’S AUTHORITY**

9 **A. California Escrow Law Grants The Commissioner The Authority To Deny License**  
10 **Applications.**

11 California Financial Code section 17209.3 states the grounds for denial of a California  
12 Escrow Law license application:

13 The commissioner may refuse to issue any license being  
14 applied for, and shall refuse to issue any license being applied for  
15 if upon the commissioner's examination and investigation, and after  
16 appropriate hearing, the commissioner finds any of the following:

17 (b) That any incorporator, officer, or director of the applicant  
18 has, within the last 10 years, been (1) convicted of or pleaded nolo  
19 contendere to a crime, or (2) committed any act involving dishonesty,  
20 fraud, or deceit, which crime or act is substantially related to the  
21 qualifications, functions, or duties of a person engaged in business  
22 in accordance with the provisions of this division.

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

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

**B. California Escrow Law Grants The Commissioner The Authority to Bar And**  
**Prohibit Persons From Participating In Any Business Activity Of A Licensed**



**Escrow Agent And From Engaging In Any Business Activity On The Premises Where A Licensed Escrow Agent Is Conducting Escrow Business.**

California Financial Code section 17423 grants the Commissioner the authority to issue the citations issued herein, states:

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

(1) That the censure, suspension, or bar is in the public interest and that the person has committed or caused a violation of this division or rule or order of the commissioner, which violation was either known or should have been known by the person committing or causing it or has caused material damage to the escrow agent or to the public.

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

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

**VIII.**

**CONCLUSION**

WHEREFORE, the Commissioner finds, by reason of the foregoing, that:

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

1 (2) CHRISTOPHER LEWIS DURLING and DIRECT ESCROW’s failure to completely  
2 and truthfully disclose the disciplinary actions taken by the State of Nebraska Department of  
3 Insurance on his escrow agent license application constitutes the misstatement of material facts;

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

7 (4) CHRISTOPHER LEWIS DURLING is incapable of properly being employed by or  
8 managing or controlling an escrow agent in compliance of the California Escrow Law, as  
9 demonstrated by CHRISTOPHER LEWIS DURLING’s continuous pattern of violations of  
10 Nebraska law. It is in the best interests of the public to bar CHRISTOPHER LEWIS DURLING  
11 from the employment, management or control of any escrow agent; and

12 (5) The Commissioner asserts that he is justified under California Financial Code Sections  
13 17209.3 and 17423 in denying DIRECT ESCROW and CHRISTOPHER LEWIS DURLING’S  
14 application for an escrow agent's license and barring CHRISTOPHER LEWIS DURLING from  
15 employment, management or control of any escrow agent.

16 WHEREFORE, Complainant, the California Corporations Commissioner prays that the  
17 application for California Escrow Law license file number 9632589 filed by Respondent,  
18 CHRISTOPHER LEWIS DURLING and DIRECT ESCROW be denied and CHRISTOPHER  
19 LEWIS DURLING be barred from any position of management or control of any escrow agent.  
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22 Dated: June 17, 2010  
23 Sacramento, California

PRESTON DuFAUCHARD  
California Corporations Commissioner

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By \_\_\_\_\_  
Marisa I. Urteaga-Watkins  
Corporations Counsel