

VIRGINIA:

Before the Virginia State Bar Disciplinary Board

In the Matter of

Gregory Dean Foster

VSB Docket Nos. 12-000-090861 and 12-031-090545

Attorney at Law

On January 2, 2013, came Gregory Dean Foster and presented to the Board an Affidavit Declaring Consent to Revocation of his license to practice law in the courts of this Commonwealth. By tendering his Consent to Revocation at a time when disciplinary charges are pending, he admits that the charges in the attached Affidavit Declaring Consent to Revocation document are true.

The Board having considered the said Affidavit Declaring Consent to Revocation, and Bar Counsel having no objection, the Board accepts his Consent to Revocation. Accordingly, it is ordered that the license to practice law in the courts of this Commonwealth heretofore issued to the said Gregory Dean Foster be and the same hereby is revoked, and that the name of the said Gregory Dean Foster be stricken from the Roll of Attorneys of this Commonwealth.

Entered this 2nd day of January 2013
For the Virginia State Bar Disciplinary Board

By Barbara S. Lanier
Barbara Sayers Lanier, Clerk of the Disciplinary System

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VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
GREGORY DEAN FOSTER

VSB Docket No. 12-031-090545
12-000-090861

RECEIVED
DEC 28 2012
VIRGINIA STATE BAR

AFFIDAVIT DECLARING CONSENT TO REVOCATION

Gregory Dean Foster, after being duly sworn, states as follows:

1. That Gregory Dean Foster (hereinafter, "Foster,") was licensed to practice law in the Commonwealth of Virginia on October 2, 1984;
2. That Foster submits this Affidavit Declaring Consent to Revocation pursuant to Rule of Court, Part 6, Section IV, Paragraph 13-28.
3. That Foster's consent to revocation is freely and voluntarily rendered, that Foster is not being subjected to coercion or duress, and that Foster is fully aware of the implications of consenting to the revocation of his license to practice law in the Commonwealth of Virginia;
4. Foster is aware that there is currently pending a complaint, an investigation into, and/or a proceeding involving, allegations of misconduct, the docket numbers for which are set forth above, and the specific nature of which is here set forth:
 - a. That Foster has been a real estate attorney with a high volume practice. He also owned and operated Premier Title Agency of Richmond ("Premier.")
 - b. That in order to provide escrow, closing, or settlement services as a settlement agent in transactions involving the purchase of or lending on the security of real estate in Virginia containing not more than four residential dwelling units, Foster was required under the Virginia Consumer Real Estate Settlement Protection Act ("CRESPA") and the regulations issued pursuant thereto to have been registered as a settlement agent with the Virginia State Bar.

- c. That Foster knowingly allowed the CRESPA registration to lapse for several years, from May 2009 to January 2012. During that time, he continued to conduct real estate closings, escrow, and settlement services for properties in Virginia containing not more than four residential dwelling units.
 - d. That Foster did not maintain a surety bond as required by 15 VAC 5-80-50(A), during the period in which his CRESPA registration lapsed.
 - e. That Foster did not regularly reconcile his trust account at First Community Bank from 2005 until 2012. In 2004 or 2005, an employee embezzled approximately \$38,000 from Foster's accounts. Foster's failure to perform the required reconciliations during that time period resulted in a failure to discover the embezzlement until well after the fact.
 - f. That an internal review of the accounts after the embezzlement revealed errors that totaled approximately \$176,000 over the course of several years. Foster borrowed money to cover the cost of fixing those errors.
 - g. That in 2006, Foster conducted the closing of a refinance of his own residence. He deposited the money received at closing into his firm trust account. He did not use the money to pay off two outstanding loans, despite the fact that the HUD ledger he prepared indicated payoffs to two lenders. He prepared two payoff checks and later voided them. Instead, he continued to make the monthly payments to the two lenders and has now paid off one of the two outstanding loans.
5. At a minimum, such conduct by Gregory Dean Foster constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.15 Safekeeping Property (as to conduct prior to July 1, 2011)

- (a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

- (1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or
- (2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(c) A lawyer shall:

- (1) promptly notify a client of the receipt of the client's funds, securities, or other properties;
- (2) identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;
- (3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them; and
- (4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

(d) Funds, securities or other properties held by a lawyer or law firm as a fiduciary shall be maintained in separate fiduciary accounts, and the lawyer or law firm shall not commingle the assets of such fiduciary accounts in a common account (including a book-entry custody account), except in the following cases:

- (1) funds may be maintained in a common escrow account subject to the provisions of Rule 1.15(a) and (c) in the following cases:
 - (i) funds that will likely be disbursed or distributed within thirty (30) days of deposit or receipt;
 - (ii) funds of \$5,000.00 or less with respect to each trust or other fiduciary relationship;
 - (iii) funds held temporarily for the purposes of paying insurance premiums or held for appropriate administration of trusts otherwise funded solely by life insurance policies; or
 - (iv) trusts established pursuant to deeds of trust to which the provisions of *Code of Virginia* Section 55-58 through 55-67 are applicable;
- (2) funds, securities, or other properties may be maintained in a common account:
 - (i) where a common account is authorized by a will or trust instrument;
 - (ii) where authorized by applicable state or federal laws or regulations or by order of a supervising court of competent jurisdiction; or
 - (iii) where
 - (a) a computerized or manual accounting system is established with record-keeping, accounting, clerical and administrative procedures to compute and credit or charge to each fiduciary interest its pro-rata share of common account income, expenses, receipts and disbursements and investment activities (requiring monthly balancing and reconciliation of

such common accounts),

(b) the fiduciary at all times shows upon its records the interests of each separate fiduciary interest in each fund, security or other property held in the common account, the totals of which assets reconcile with the totals of the common account,

(c) all the assets comprising the common account are titled or held in the name of the common account, and

(d) no funds or property of the lawyer or law firm or funds or property held by the lawyer or the law firm other than as a fiduciary are held in the common account.

For purposes of this Rule, the term "fiduciary" includes only personal representative, trustee, receiver, guardian, committee, custodian and attorney-in-fact.

(e) Record-Keeping Requirements, Required Books and Records. As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called "lawyer," shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1.15(a) and (c).

Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.

(1) In the case of funds held in an escrow account subject to this Rule, the required books and records include:

(i) a cash receipts journal or journals listing all funds received, the sources of the receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for escrow and non-escrow funds, then the consolidated cash receipts journal shall contain separate columns for escrow and non-escrow receipts;

(ii) a cash disbursements journal listing and identifying all disbursements from the escrow account. Checkbook entries of disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for escrow and non-escrow disbursements then the consolidated disbursements journal shall contain separate columns for escrow and non-escrow disbursements;

(iii) subsidiary ledger. A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise clearly identify escrow funds disbursed, and escrow funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts;

(iv) reconciliations and supporting records required under this Rule;

(v) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.

(2) in the case of funds or property held by a lawyer or law firm as a fiduciary subject to Rule 1.15(d), the required books and records include:

- (i) an annual summary of all receipts and disbursements and changes in assets comparable to an accounting that would be required of a court supervised fiduciary in the same or similar capacity. Such annual summary shall be in sufficient detail as to allow a reasonable person to determine whether the lawyer is properly discharging the obligations of the fiduciary relationship;
- (ii) original source documents sufficient to substantiate and, when necessary, to explain the annual summary required under (i), above;
- (iii) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.

(f) Required Escrow Accounting Procedures. The following minimum escrow accounting procedures are applicable to all escrow accounts subject to Rule 1.15(a) and (c) by lawyers practicing in Virginia.

(3) Deposit of mixed escrow and non-escrow funds other than fees and retainers. Mixed escrow and non-escrow funds shall be deposited intact to the escrow account. The non-escrow portion shall be withdrawn upon the clearing of the mixed fund deposit instrument;

(4) Periodic trial balance. A regular periodic trial balance of the subsidiary ledger shall be made at least quarter annually, within 30 days after the close of the period and shall show the escrow account balance of the client or other person at the end of each period.

(i) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in escrow for the period and deducting the total of escrow monies disbursed for the period; and

(ii) The trial balance shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.

(5) Reconciliations.

(i) A monthly reconciliation shall be made at month end of the cash balance derived from the cash receipts journal and cash disbursements journal total, the escrow account checkbook balance, and the escrow account bank statement balance;

(ii) A periodic reconciliation shall be made at least quarter annually, within 30 days after the close of the period, reconciling cash balances to the subsidiary ledger trial balance;

(iii) Reconciliations shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.

(6) Receipts and disbursements explained. The purpose of all receipts and disbursements of escrow funds reported in the escrow journals and subsidiary ledgers shall be fully explained and supported by adequate records.

RULE 1.15 Safekeeping Property (As to conduct after July 1, 2011)

(a) Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts or placed in a safe deposit box or other place of safekeeping as soon as practicable.

(2) For lawyers or law firms located in Virginia, a lawyer trust account shall be maintained only at a financial institution approved by the Virginia State Bar, unless otherwise expressly directed in writing by the client for whom the funds are being held.

(3) No funds belonging to the lawyer or law firm shall be deposited or maintained therein except as follows:

(i) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution or to maintain a required minimum balance to avoid the imposition of service fees, provided the funds deposited are no more than necessary to do so; or

(ii) funds in which two or more persons (one of whom may be the lawyer) claim an interest shall be held in the trust account until the dispute is resolved and there is an accounting and severance of their interests. Any portion finally determined to belong to the lawyer or law firm shall be withdrawn promptly from the trust account.

(b) Specific Duties. A lawyer shall:

(1) promptly notify a client of the receipt of the client's funds, securities, or other properties;

(2) identify and label securities and properties of a client, or those held by a lawyer as a fiduciary, promptly upon receipt;

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them;

(4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer that such person is entitled to receive; and

(5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Cash receipts and disbursements journals for each trust account, including entries for receipts, disbursements, and transfers, and also including, at a minimum: an identification of the client matter; the date of the transaction; the

name of the payor or payee; and the manner in which trust funds were received, disbursed, or transferred from an account.

(2) A subsidiary ledger containing a separate entry for each client, other person, or entity from whom money has been received in trust.

The ledger should clearly identify:

(i) the client or matter, including the date of the transaction and the payor or payee and the means or methods by which trust funds were received, disbursed or transferred; and

(ii) any unexpended balance.

(3) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and changes in assets comparable in detail to an accounting that would be required of a court supervised fiduciary in the same or similar capacity; including all source documents sufficient to substantiate the annual summary.

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

(1) Insufficient Fund Reporting. All accounts are subject to the requirements governing insufficient fund check reporting as set forth in the Virginia State Bar Approved Financial Institution Agreement.

(2) Deposits. All trust funds received shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion shall be withdrawn upon the clearing of the mixed fund deposit instrument. All such deposits should include a detailed deposit slip or record that sufficiently identifies each item.

(3) Reconciliations.

(i) At least quarterly a reconciliation shall be made that reflects the trust account balance for each client, person or other entity.

(ii) A monthly reconciliation shall be made of the cash balance that is derived from the cash receipts journal, cash disbursements journal, the trust account checkbook balance and the trust account bank statement balance.

(iii) At least quarterly, a reconciliation shall be made that reconciles the cash balance from (d)(3)(ii) above and the subsidiary ledger balance from (d)(3)(i).

(iv) Reconciliations must be approved by a lawyer in the law firm.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records.

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

- 6. Such conduct by Foster also constitutes misconduct in violation of the following provisions of CRESPA and the Regulations issued pursuant thereto:

§ 6.1-2.21. Licensing requirements, standards and financial responsibility.

C. A settlement agent shall exercise reasonable care and comply with all applicable requirements of this chapter and its licensing authority regarding licensing, financial responsibility, errors and omissions or malpractice insurance policies, fidelity bonds, employee dishonesty insurance policies, audits, escrow account analyses and record retention.

15 VAC 5-80-30. Registration; Reregistration; Required Fee.

Every licensed attorney, title insurance company, title insurance agent or real estate broker, as well as every financial institution authorized to do business in Virginia under any of the provisions of Title 6.1, Code of Virginia, or under federal law, and every subsidiary or affiliate of any such financial institution, now providing or offering, or

intending to provide or offer, escrow, closing or settlement services as a settlement agent with respect to real estate transactions in Virginia shall register with the Bar on or before September 29, 1997, using the registration form available from the Bar for that purpose.

Settlement agents beginning to provide or offer such services after July 1, 1997, shall register with the Bar prior to doing so. The registration requirement in this paragraph shall not apply to attorney settlement agents unless they provide or offer to provide escrow, settlement and closing services for real estate subject to CRESPA, i.e., real estate containing not more than four residential dwelling units. Thus, for example, attorneys who handle only commercial real estate transactions are not subject to these Regulations.

Every settlement agent shall thereafter reregister after notice on a schedule established by the Bar, providing updated registration information. Every settlement agent shall have a continuing duty to advise the Bar of any change in name, address or other pertinent registration data that occurs between registrations.

...

Registration is subject to revocation or suspension if the Bar or other appropriate licensing authority finds the settlement agent out of compliance with CRESPA or Regulations issued thereunder.

15 VAC 5-80-50. Attorney Settlement Agent Compliance.

A. Attorney Settlement Agent Certification.

Each attorney settlement agent shall, at the time of initial registration and each subsequent reregistration, certify on the form available from the Bar for that purpose, that the attorney settlement agent has in full force and effect the following insurance and bond coverages, and that such coverages will be maintained in full force and effect throughout the time the attorney settlement agent acts, offers or intends to act in that capacity:

- a. A lawyer's professional liability insurance policy issued by a company authorized to write such insurance in Virginia providing first dollar coverage and limits of at least \$250,000 per claim covering the licensed attorney acting, offering or

intending to act as a settlement agent. The policy may also cover other attorneys practicing in the same firm or legal entity.

- b. A blanket fidelity bond or employee dishonesty insurance policy issued by a company authorized to write such bonds or insurance in Virginia providing limits of at least \$100,000 covering all other employees of the attorney settlement agent or the legal entity in which the attorney settlement agent practices.
- c. A surety bond issued by a company authorized to write such bonds in Virginia, on a form approved by the Virginia State Bar, providing limits of at least \$200,000 covering the licensed attorney acting, offering or intending to act as a settlement agent. A copy of the approved bond form is available from the Bar. The bond may also cover other attorney settlement agents practicing in the same firm or legal entity. The original surety bond must be attached to the attorney settlement agent's certification form and furnished to the Bar; a surety bond on which a law firm is named as principal may be furnished by the firm or any one attorney settlement agent in the firm, with other such attorney settlement agents in the same firm attaching a copy to their forms.

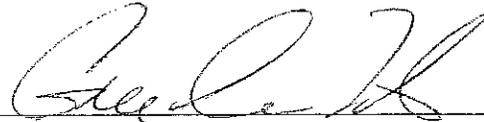
B. Separate Fiduciary Trust Account.

Each attorney settlement agent shall maintain one or more separate and distinct fiduciary trust account(s) used only for the purpose of handling funds received in connection with escrow, closing or settlement services. Funds received in connection with real estate transactions not covered by CRESPA may also be deposited in and disbursed from such account(s). All funds received by an attorney settlement agent in connection with escrow, closing or settlement services shall be deposited in and disbursed from the separate fiduciary account(s) in conformity with both the Bar's disciplinary rules and CRESPA. These separate fiduciary trust accounts shall be maintained in the same manner and subject to the same rules as those promulgated by the Bar for other lawyer trust accounts, as well as in conformity with CRESPA. One separate fiduciary trust account may be maintained and used by all attorney settlement agents practicing in the same firm or legal entity.

7. Gregory Dean Foster acknowledges that the material facts upon which the allegations of misconduct are predicated are true; and

8. Gregory Dean Foster submits this Affidavit and consents to the revocation of his license to practice law in the Commonwealth of Virginia because he knows that if the disciplinary proceedings based on the said alleged misconduct were brought or prosecuted to a conclusion, he could not successfully defend them.

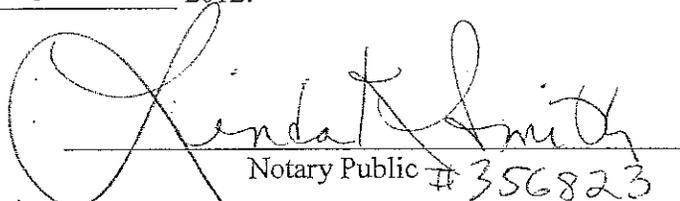
Executed and dated on 12-28-2012



Gregory Dean Foster
Respondent

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Chesterfield, to wit:

The foregoing Affidavit Declaring Consent to Revocation was subscribed and sworn to before me by Gregory Dean Foster on 12-28 2012.



Notary Public # 356823

My Commission expires: August 31, 2013

