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Attorneys for the Department of Insurance

**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE STATE AUDITOR
STATE OF MONTANA**

)	
)	CASE NO. INS-2009-1616
IN THE MATTER OF THE PROPOSED)	
AGENCY ACTION REGARDING THE)	NOTICE OF PROPOSED
INSURANCE PRODUCER LICENSE)	AGENCY ACTION AND
OF STACEY M. HEBUCK,)	OPPORTUNITY FOR HEARING
LICENSE # 680678.)	(LICENSE REVOCATION AND
)	ADMINISTRATIVE FINE)

TO: STACEY M. HEBUCK
5804 Jones Road
Florence, MT 59833

PLEASE TAKE NOTICE:

The Office of the Commissioner of Securities and Insurance (Commissioner), Montana State Auditor's Office, and the Department of Insurance (Department), pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*, is proposing that the Commissioner take disciplinary action against the insurance producer license of Stacey M. Hebuck (Hebuck) for violating the Montana Insurance Code. Specifically, the Department is proposing that the Commissioner revoke Hebuck's license and impose an administrative fine not to exceed \$5,000 per violation, pursuant to Mont. Code Ann. § 33-1-317.

The Commissioner has authority to take such action under the provisions of Mont. Code Ann. §§ 33-1-311, 33-1-314, 33-1-317, and 33-17-1001.

REASONS FOR ACTION

There is reasonable cause to believe that the following facts will be proven true and justify disciplinary action against the insurance producer license of Hebuck.

ALLEGATIONS OF FACT

1. On August 1, 2005, Hebuck began working for Pinnacle Title and Escrow, which was owned by Ed Janecek (“Janecek”) and Clayton Christian (“Christian”).
2. On January 19, 2007, Hebuck obtained her insurance producer license from the Department.
3. In the middle of 2007, Hebuck felt that Janecek and Christian did not care about her as she felt they continually tried to cut her pay.
4. Soon thereafter, Hebuck began embezzling an unknown amount of money from Pinnacle Title and Escrow.
5. In August of 2008, Hebuck bought Pinnacle Title and Escrow from Janecek and Christian.
6. Since Hebuck had a felony conviction on her record for Welfare Fraud in California, which disqualified her from purchasing Pinnacle Title and Escrow, the business was purchased in the name of Hebuck’s sister, Jennifer Durgan.
7. The business was renamed New Pinnacle Title, LLC, (License # 703440) although Hebuck failed to disclose to the Department in her application for a business entity license that she had been previously convicted of a felony.

8. Hebuck also failed to disclose that she had a previous felony conviction on her individual title producer license application.

9. In June of 2008, in order to make the \$200,000 down payment due in August, Hebuck took \$239,172.52, which was supposed to be paid to PHH Mortgage Services for purposes of paying off a prior mortgage, and deposited it into her personal checking account at First Interstate Bank.

10. Hebuck paid Janecek and Christian \$200,000 and began paying \$1,860.37 per month using electronic transfers from her personal checking account to maintain the monthly mortgage payments related to that transaction.

11. In November of 2008, Hebuck took \$81,982.78, which was to be used to pay off a prior mortgage, and deposited it in her personal checking account.

12. Hebuck subsequently paid off the \$81,982.78 by taking money from another closing.

13. On January 21, 2009, Hebuck took \$157,443.45, which was supposed to be paid to Countrywide for purposes of paying off a prior mortgage, and deposited it into her personal checking account.

14. Hebuck began making the monthly mortgage payments to Countrywide from her personal checking account.

15. Sometime between August of 2008 and January of 2009, Hebuck also took \$269,543.89, which was supposed to pay off a prior mortgage, and deposited it into her personal checking account.

16. As of February of 2009, Hebuck was also making the monthly mortgage payments to the mortgagee from her personal checking account.

17. In total, Hebuck diverted \$666,109.86 in payoff funds from the Pinnacle Title escrow accounts and deposited those funds into accounts that she managed or controlled.

18. Hebuck used \$90,000 of the embezzled money to pay off land owned by her parents.

19. Hebuck's other purchases with funds taken from the escrow account include a \$31,000 truck, a \$41,000 horse trailer, a vacation to Cancun, Mexico, monthly payments on a 10-acre parcel of land in Stevensville, and credit card debt.

20. After learning about the misappropriation of funds, National Land Title Insurance Company, which had an underwriting agreement with New Pinnacle Title, initiated an investigation and ultimately terminated the appointment of New Pinnacle Title as an insurance producer.

21. As of February 23, 2009, National Land Title Insurance Company assumed control of the business accounts of New Pinnacle Title, LLC, and is now operating the business under Pinnacle Title and Escrow.

22. As of May 19, 2009, the business license of New Pinnacle Title, LLC, was revoked by the Department because the two people named on the license were no longer employed by New Pinnacle Title, LLC.

CONCLUSIONS OF LAW

1. The State Auditor is the Commissioner of Insurance (Commissioner) pursuant to Mont. Code Ann. § 2-15-1903.

2. The Department of Insurance (Department) is under the control and supervision of the Commissioner pursuant to Mont. Code Ann. §§ 2-15-1902 and 33-1-301.

3. The Commissioner shall administer the Department to protect insurance consumers. Mont. Code Ann. § 33-1-311(3).

4. The Commissioner and the Department have jurisdiction over this matter. Mont. Code Ann. § 33-1-311.

5. Pursuant to Mont. Code Ann. § 33-1-102(1), a person or entity may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*

6. Pursuant to Mont. Code Ann. § 33-25-301(1)(a), the Commissioner may, after providing notice and an opportunity for a hearing, suspend or revoke a title insurance producer's license or may fine a title insurance producer if the Commissioner finds that the licensee made a material misstatement in an application for a title insurance producer license.

7. Pursuant to Mont. Code Ann. § 33-17-1001(1)(d), the Commissioner may revoke an insurance producer's license when an insurance producer has improperly withheld, misappropriated, or converted to the licensee's own use money or property belonging to policyholders, insurers, beneficiaries, or others and received in conduct of business under the license.

8. Pursuant to Mont. Code Ann. § 33-1-317, the Commissioner may impose a fine not to exceed the sum of \$25,000 upon a person found to have violated a provision

of this code or regulation promulgated by the Commissioner, except that the fine imposed upon insurance producers or adjusters may not exceed \$5,000 per violation.

9. Hebuck violated Mont. Code Ann. § 33-25-301(1)(a) by failing to disclose that she had been previously convicted of a felony.

10. Hebuck violated Mont. Code Ann. § 33-17-1001(1)(e) by having been previously convicted of a felony.

11. Hebuck violated Mont. Code Ann. § 33-17-1001(1)(d) by misappropriating money on at least five different occasions for her own personal use, totaling approximately \$666,000, all of which belonged to others.

RELIEF REQUESTED

For violating provisions of the Montana Insurance Code, the Department seeks to impose an administrative fine against Hebuck not to exceed \$5,000 for each violation of the Montana Insurance Code, in addition to all other penalties imposed by the laws of Montana. Mont. Code Ann. § 33-1-317. The Department also seeks revocation of Hebuck's title insurance producer license for her violation of Mont. Code Ann. §§ 33-25-301, 33-17-1001(1)(d)-(e).

STATEMENT OF RIGHTS

You, STACEY M. HEBUCK, are entitled to a hearing and to respond to this Notice of Proposed Agency Action and to present evidence and arguments on all issues involved in this case. You may have a formal hearing before a hearing examiner appointed by the Commissioner as provided in the Montana Administrative Procedure Act. Mont. Code Ann. § 2-4-601, *et seq.*

You have a right to be represented by an attorney at any and all stages of this proceeding. If you wish to contest the allegations herein, you must make a written request for a hearing within 15 days of receipt of this notice to Michael Winsor, Attorney, State Auditor's Office, 840 Helena Avenue, Helena, MT 59601. The hearing shall then be held within 45 days of the Commissioner's receipt of the hearing request, unless the time is extended by agreement of the parties or by order of the hearing examiner. While so advising Mr. Winsor, your written notice must clearly indicate whether you request a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for handling this case. Pursuant to Mont. Code Ann. § 2-4-603(2), you may not request to proceed informally if the action could result in suspension, revocation, or any other adverse action against a professional license. If you request a hearing, you will be given notice of the date, time, and place of the hearing.

Should you request a hearing, you have the right to be accompanied, represented and advised by an attorney. If the attorney you choose has not been admitted to the practice of law in the state of Montana, she or he must comply with the Montana State Bar requirements for appearing *pro hac vice*, *Application of American Smelting and Refining Co.*, 164 Mont. 139, 520 P.2d 103 (1973), and *Mont. Supreme Court Comm'n on the Unauthorized Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200 (2006).

CONTACT WITH THE COMMISSIONER'S OFFICE

If you have questions or wish to discuss this matter, please contact Michael Winsor, Attorney, State Auditor's Office, 840 Helena Ave, Helena, MT, 59601, (406)

444-2040. If you are represented by an attorney, please make any contacts with this office through your attorney.

POSSIBILITY OF DEFAULT

Failure to give written notice of your demand for a formal hearing or for informal procedure within 15 days will result in the entry of a default order imposing any sanctions available under Montana law without any additional notice to you pursuant to Mont. Admin. R. 6.6.101 and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

DATED this 8th day of March, 2010.



MICHAEL WINSOR
Attorney for the Department of Insurance

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 8th day of March, 2010, a true and correct copy of the foregoing Notice of Proposed Agency Action and Opportunity for Hearing was served upon the following by certified mail, with postage prepaid and return receipt requested:

Stacey M. Hebuck
5804 Jones Road
Florence, MT 59833

