

1 ALAN S. WEINGER
Deputy Commissioner
2 SOPHIA C. KIM (CA BAR NO. 265649)
3 Corporations Counsel
Department of Corporations
4 320 West 4th Street, Suite 750
Los Angeles, California 90013
5 Telephone: (213) 576-7594
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

8
9 BEFORE THE DEPARTMENT OF CORPORATIONS
10 OF THE STATE OF CALIFORNIA

11 In the Matter of THE CALIFORNIA) File No.: 963-2053
CORPORATIONS COMMISSIONER,)
12) 1) ACCUSATION; and
Complainant,) 2) ORDER IMPOSING PENALTIES
13)
14 vs.)
ALTERNATIVE ESCROW,)
15 Respondent.)
16)

17
18 The Complainant is informed and believes and based upon such information and belief,
19 alleges and charges as follows:

20 **I.**

21 ALTERNATIVE ESCROW (“Respondent” or “Alternative”) is an escrow agent licensed by
22 the California Corporations Commissioner ("Commissioner" or "Complainant") pursuant to the
23 Escrow Law of the State of California (California Financial Code Section 17000 et seq.).

24 **II.**

25 Pursuant to Financial Code Section 17406, all licensees under the Escrow Law are required
26 to file an annual audit report containing audited financial statements (“Annual Report”) within one
27 hundred and five (105) days after the close of their fiscal year. Alternative’s fiscal year end is June
28 30, 2011. Accordingly, Respondent was required to file its Annual Report on or before October 15,

1 2011.

2 On or about May 5, 2011, Complainant notified Respondent in writing that its Annual Report
3 was due on or before October 15, 2011. Respondent failed to file the Annual Report by October 15,
4 2011.

5 On or about October 21, 2011, a follow-up letter was sent to Respondent concerning its
6 failure to file the Annual Report. Respondent was notified in the letter that failure to file the Annual
7 Report could result in assessment of penalties, a special examination and/or administrative action.
8 Respondent has yet to file the Annual Report as required by Financial Code Section 17406.

9
10 **III.**

11 Financial Code Section 17602.5 provides, in relevant part:

12 If any licensed escrow agent fails to make any reports required by law
13 or by the commissioner within ten (10) days from the day designated
14 for the making of the reports, or within any extension of time granted
15 by the commissioner, . . . such failure shall constitute grounds for
the suspension or revocation of the license held by such escrow agent.

16 Financial Code Section 17608 provides, in relevant part:

17 The commissioner may, after notice and a reasonable opportunity to
18 be heard, suspend or revoke any license if he finds that: . . .

19 (b) The licensee has violated any provision of this division or any
20 rule made by the commissioner under and within the authority of this
division.

21 Financial Code Section 17408 provides, in relevant part:

22 (b) The commissioner may impose, by order, a penalty on any person
23 who fails, within the time specified in any written demand of the
24 commissioner, (1) to make and file with the commissioner any report
25 required by law or requested by the commissioner, or (2) to furnish
26 any material information required by the commissioner to be included
27 in the report. The amount of the penalty may not exceed one hundred
dollars (\$100) for each day for the first five days the report or
28 information is overdue, and thereafter may not exceed five hundred
dollars (\$500) for each day the report or information is overdue.

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ORDER IMPOSING PENALTIES

PURSUANT TO FINANCIAL CODE SECTION 17408

NOW, THEREFORE, ALTERNATIVE ESCROW is hereby ordered to pay the Commissioner a total of twenty-four thousand dollars (\$24,000), accruing at a rate of two hundred and fifty dollars (\$250) per day from the date of this Order until paid, pursuant to Financial Code Section 17408.

V.

Complainant finds that, by reason of the foregoing, Alternative has violated Financial Code Section 17406, which constitutes grounds for the suspension of its escrow agent’s license under Financial Code Section 17602.5.

WHEREFORE, IT IS PRAYED that ALTERNATIVE ESCROW’s escrow agent’s license be suspended, pursuant to Financial Code Section 17608, until such time as it files its Annual Report for the fiscal year end June 30, 2011, or for a period of one month, whichever period is greater.

Dated: February 7, 2012
Los Angeles, California

JAN LYNN OWEN
California Corporations Commissioner

By _____
Alan S. Weinger
Deputy Commissioner

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BEFORE THE DEPARTMENT OF CORPORATIONS
OF THE STATE OF CALIFORNIA

In the matter of) File No.: 963 2053
)
)
ALTERNATIVE ESCROW)
)
a licensee under the Escrow Law)
)

ORDER TO DISCONTINUE ESCROW ACTIVITIES PURSUANT
TO SECTION 17415, CALIFORNIA FINANCIAL CODE

TO: ALTERNATIVE ESCROW
2572 TAPO STREET
SIMI VALLEY, CA 93063

THE CALIFORNIA CORPORATIONS COMMISSIONER FINDS THAT:

ALTERNATIVE ESCROW has failed to comply with the bonding requirements of the
Escrow Law (California Financial Code, Section 17202) in that effective February 17, 2011 No.
0373447 issued by INTERNATIONAL FIDELITY INSURANCE COMPANY in favor of
ALTERNATIVE ESCROW expired and no replacement bond has been obtained.

1 Based upon the foregoing, ALTERNATIVE ESCROW is conducting escrow business in
2 violation of Section 17202 of the Financial Code and is conducting business in an unsafe and
3 injurious manner as to render further operations hazardous to the public or to customers.

4 NOW, BASED ON THE FOREGOING, AND GOOD CAUSE APPEARING
5 THEREFORE, it is hereby ORDERED, under the provisions of Section 17415 of the California
6 Financial Code, that ALTERNATIVE ESCROW immediately discontinue acceptance of any new
7 escrow or joint control business, and of money, documents or other property in connection
8 therewith.

9 THIS ORDER is to remain in full force and effect until further order of the Commissioner.

10 Section 17415 of the Financial Code provides as follows:

11 (a) If the commissioner, as a result of any examination or from
12 any report made to him or her, shall find that any person subject to this
13 division is in an insolvent condition, is conducting business in such an
14 unsafe or injurious manner as to render further operations hazardous to the
15 public or to customers, has failed to comply with the provisions of Section
16 17212.1 or 17414.1, has permitted its tangible net worth to be lower than
17 the minimum required by law, has failed to maintain its liquid assets in
18 excess of current liabilities as set forth in Section 17210, or has failed to
19 comply with the bonding requirements of Chapter 2 (commencing with
20 Section 17200) of this division, the commissioner may, by an order
21 addressed to and served by registered or certified mail or by personal
22 service on such person and on any other person having in his or her
23 possession or control any escrowed funds, trust funds or other property
24 deposited in escrow with said person, direct discontinuance of the
25 disbursement of trust funds by the parties or any of them, the receipt of
26 trust funds, the delivery or recording of documents received in escrow, or
27 other business operations. No person having in his or her possession any of
28 these funds or documents shall be liable for failure to comply with the
order unless he or she has written notice of the order. Subject to
subdivision (b), the order shall remain in effect until set aside by the
commissioner in whole or in part, the person has been adjudged bankrupt,
or pursuant to Chapter 6 (commencing with Section 17621) of this division
the commissioner has assumed possession of the escrow agent.

(b) Within 15 days from the date of any order pursuant to
Subdivision (a), the person may request a hearing under the Administrative
Procedure Act, Chapter 5 (commencing with Section 11500) of Division 3
or Title 2 of the Government Code. Upon receipt of a request, the matter
shall be set for hearing to commence within 30 days after such receipt
unless the person subject to this division consents to a later date. If no

1 hearing is requested 15 days after the mailing or service of such notice and
2 none is ordered by the commissioner, the failure to request a hearing shall
3 constitute a waiver of the right to a hearing. Neither the request for a
4 hearing nor the hearing itself shall stay the order issued by the
5 commissioner under subdivision (a).

6 Dated: February 17, 2011
7 Los Angeles, California

8 Preston DuFauchard
9 California Corporations Commissioner

10 By _____
11 Kathleen R. Partin
12 Special Administrator
13 (213) 576-7595
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BEFORE THE DEPARTMENT OF CORPORATIONS
OF THE STATE OF CALIFORNIA

In the Matter of THE COMMISSIONER OF)	Case No.: 963-2053
CORPORATIONS OF THE STATE OF)	
CALIFORNIA,)	ORDER SETTING ASIDE ORDER TO
)	DISCONTINUE ESCROW ACTIVITIES
Complainant,)	PURSUANT TO CALIFORNIA FINANCIAL
)	CODE SECTION 17415
vs.)	
)	
ALTERNATIVE ESCROW)	
)	
)	
Respondent)	
)	

TO: ALTERNATIVE ESCROW
2572 Tapo Street
Simi Valley, CA 93063

NOW, THEREFORE, the California Corporations Commissioner having found
ALTERNATIVE ESCROW as complied with bonding requirements of the Escrow Law, Financial
Code Section 17202 as of February 25, 2011, the Order to Discontinue Escrow Activities Pursuant to
Financial Code Section 17415 issued on February 17, 2011 is hereby set aside as of February 25,
2011.

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Dated: Los Angeles, California
February 25, 2011

Preston DuFauchard
California Corporations Commissioner

By _____
Kathleen R. Partin
Special Administrator

1 kALAN S. WEINGER
Deputy Commissioner
2 SOPHIA C. KIM (CA BAR NO. 265649)
3 Corporations Counsel
Department of Corporations
4 320 West 4th Street, Suite 750
Los Angeles, California 90013
5 Telephone: (213) 576-7594
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

8
9 BEFORE THE DEPARTMENT OF CORPORATIONS
10 OF THE STATE OF CALIFORNIA

11 In the Matter of THE CALIFORNIA) File No.: 963-2053
12 CORPORATIONS COMMISSIONER,)
) SUSPENSION ORDER
13 Complainant,)
)
14 vs.)
)
15 ALTERNATIVE ESCROW,)
16 Respondent.)
17 _____)

18
19 The California Corporations Commissioner (the “Commissioner”) issued an Accusation for
20 Suspension and Order Imposing Penalties to Alternative Escrow on February 7, 2012 (the
21 “Accusation”). The Accusation was properly served upon the Respondent and a request to be heard
22 has not been received after reasonable opportunity. The Accusation is incorporated herein by
23 reference.

24 Financial Code Section 17608 provides, in relevant part:

25 The commissioner may, after notice and a reasonable opportunity to be
26 heard, suspend or revoke any license if he finds that:

27 (b) The licensee has violated any provision of this division or any rule made by the
28 commissioner under and within the authority of this division.

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Pursuant to Section 17608 of the California Financial Code, and the facts and law described in the Accusation, it is hereby ordered that the escrow agent’s license issued to Alternative Escrow is suspended until it has filed the audited financial reports required under California Financial Code Section 17406. This suspension commences on the date this Order is served but not later than March 21, 2012. During this period, Alternative Escrow shall not accept any new escrow business, but may continue to service prior and open escrows, in accordance with California Financial Code Section 17609.

It is further ordered that Alternative Escrow shall, within five (5) days of receipt of this suspension Order, provide the Commissioner a list of all open escrows with escrow numbers and escrow party names, along with a copy of the signed escrow instructions and signed deposit receipt(s), for the last opened escrow as of the close of business on the day this Order is served, or on March 20, 2012, whichever is sooner.

Open escrow means an escrow wherein the parties to such escrow have already entered into a binding agreement and monies and/or escrow instructions have been submitted to Alternative Escrow regarding the transaction. Alternative Escrow is additionally ordered to immediately engage its certified public accounting firm to review the records of Alternative Escrow after the suspension has been completed to determine Alternative Escrow’s compliance with this Order and report its findings to the Department within 30 days of completion of the suspension.

Dated: March 13, 2012
Los Angeles, CA

JAN LYNN OWEN
California Corporations Commissioner

By _____
Alan S. Weinger
Deputy Commissioner

1 ALAN S. WEINGER (CA BAR NO. 86717)
Deputy Commissioner
2 SOPHIA C. KIM (CA BAR NO. 265649)
3 Corporations Counsel
Department of Corporations
4 320 West 4th Street, Suite 750
Los Angeles, California 90013
5 Telephone: (213) 576-7594
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

8
9 BEFORE THE DEPARTMENT OF CORPORATIONS
10 OF THE STATE OF CALIFORNIA

11 In the Matter of the Accusation of) File No.: 963-2053
12 THE CALIFORNIA CORPORATIONS)
13 COMMISSIONER,) SETTLEMENT AGREEMENT
)
14 Complainant,)
)
15 vs.)
)
16 ALTERNATIVE ESCROW,)
17)
18 Respondent.)
_____)

19
20
21 This Settlement Agreement is entered into between Alternative Escrow and the California
22 Corporations Commissioner (“Commissioner”), and is made with respect to the following facts:

23 **RECITALS**

24 A. Alternative Escrow is a corporation in good standing, duly formed and existing
25 pursuant to the laws of the State of California, and authorized to conduct business in the State of
26 California.

27 B. Alternative Escrow currently holds escrow agent’s license number 963-2053 with its
28 principal place of business located at 2572 Tapo Street, Simi Valley, California 93063. Alternative

1 Escrow has been licensed by the Commissioner pursuant to the California Escrow Law since January
2 26, 2004.

3 C. Kristen Adrienne Whitmer (“Whitmer”) is the president of Alternative Escrow and is
4 authorized to enter into this Settlement Agreement on behalf of Alternative Escrow.

5 D. Alternative Escrow failed to file an annual audit report containing audited financial
6 statements (“Annual Report”) by October 15, 2011, which is one hundred and five (105) days after
7 the close of its fiscal year, pursuant to California Financial Code Section 17406. The Department of
8 Corporations (“Department”) sent a demand letter for the Annual Report on October 21, 2011,
9 notifying Alternative Escrow that failure to file the Annual Report could result in the assessment of
10 penalties, a special examination and/or administrative action.

11 E. Having failed to file the Annual Report, on February 9, 2012, Whitmer, on behalf of
12 Alternative Escrow, was personally served with the Accusation for Suspension of Escrow License
13 and Order Imposing Penalties issued by the Commissioner on February 7, 2012 (“Penalty Order”).
14 Under the authority of Financial Code Section 17408, the Commissioner assessed penalties to
15 Alternative Escrow in the amount of twenty-four thousand dollars (\$24,000), accruing at a rate of
16 two hundred and fifty dollars (\$250) per day from the date of the Penalty Order until paid. As
17 Alternative Escrow did not timely request a hearing, the Penalty Order was deemed final 30 days
18 after service of the Penalty Order.

19 F. Having failed to request a hearing to contest the Accusation for Suspension of Escrow
20 License, on March 15, 2012, Whitmer, on behalf of Alternative Escrow, was personally served with
21 the Suspension Order issued by the Commissioner on March 13, 2012 (“Suspension Order”). Under
22 the authority of Financial Code Section 17608, the Commissioner ordered the suspension of
23 Alternative Escrow’s escrow agent’s license until it filed its Annual Report. Commencing on March
24 15, 2012, the Suspension Order further ordered Alternative Escrow to provide the Commissioner
25 with a list of all open escrows with escrow numbers and escrow party names, along with a copy of
26 the signed escrow instructions and signed deposit receipt(s), for the last opened escrow as of the
27 close of business on the day the Suspension Order was served.

28 G. Having failed to comply with the Suspension Order by providing the Commissioner

1 with a list of all open escrows with escrow numbers and escrow party names, along with a copy of
2 the signed escrow instructions and signed deposit receipt(s), for the last opened escrow as of the
3 close of business on the day the Suspension Order was served, on April 20, 2012, Whitmer, on
4 behalf of Alternative Escrow, submitted said documents to the Department’s examiner who visited
5 Alternative Escrow’s business location for the purpose of obtaining them.

6 H. On April 30, 2012, Alternative Escrow filed its Annual Report with the
7 Commissioner. As of that date, the Commissioner, under the authority of Financial Code Section
8 17408, assessed penalties to Alternative Escrow in the sum of \$44,750.00. The Annual Report
9 disclosed a deficiency of \$11,489.00 in Alternative Escrow’s tangible net worth.

10 H. It is the intention and desire of the parties to resolve these matters without the
11 necessity of a hearing and/or other litigation.

12 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
13 forth herein, the parties agree as follows:

14 **TERMS AND CONDITIONS**

15 1. This Settlement Agreement is entered into for the purpose of judicial economy and
16 expediency, and to avoid the expense of a hearing, and possible further court proceedings.

17 2. Alternative Escrow hereby admits the allegations contained in the Penalty Order and
18 Suspension Order. Alternative Escrow’s admissions herein are solely for the limited purposes of this
19 proceeding and any future proceeding that may be initiated by or brought before the Commissioner
20 against Alternative Escrow. It is the intent and understanding between the parties that this
21 Settlement Agreement, and particularly Alternative Escrow’s admissions herein, shall not be binding
22 or admissible against Alternative Escrow in any action(s) brought against Alternative Escrow by
23 third parties.

24 3. Alternative Escrow agrees that the penalties accrued pursuant to the Penalty Order for
25 the untimely filing of its Annual Report totaled \$44,750.00 as of April 30, 2012, the date the Annual
26 Report was filed. As full settlement of the Penalty Order, Alternative Escrow agrees to pay to the
27 Commissioner the sum of \$44,750.00 due upon execution of this Settlement Agreement.

28 4. Alternative Escrow agrees that its escrow agent’s license will remain suspended until

1 Alternative Escrow submits to the Department a plan to correct the deficiency of \$11,489.00 in its
2 tangible net worth. This plan shall be due within 30 days of the execution of this Settlement
3 Agreement, or by June 8, 2012, whichever is sooner. The Department’s receipt and acceptance of
4 this plan is a precondition to completion of the suspension.

5 5. Alternative Escrow will be required to immediately engage its certified public
6 accounting firm (“CPA”) to review the records of Alternative Escrow after the suspension has been
7 completed to report whether Alternative Escrow complied with the suspension. The CPA shall
8 report to the Department its findings within 30 days of completion of the suspension. A copy of the
9 Suspension Order is attached and incorporated as **Exhibit A**.

10 6. The Commissioner reserves the right to (1) audit Alternative Escrow for compliance
11 with the suspension notwithstanding the findings of the CPA review, and (2) take any action
12 afforded pursuant to the Escrow Law, the California Administrative Procedure Act, or any other
13 provision of law in connection with these matters if it is found that Alternative Escrow failed to
14 comply with the suspension.

15 7. Alternative Escrow further agrees to the immediate issuance by the Commissioner of
16 an Order to Discontinue Escrow Activities Pursuant to Financial Code Section 17415, for failure to
17 comply with the bonding requirements of Financial Code Section 17202 (“Order to Discontinue
18 Escrow Activities”). Effective May 3, 2012, Surety Bond No. 0373447 issued by International
19 Fidelity Insurance Company in favor of Alternative Escrow expired and no replacement bond has
20 been obtained. A copy of the Order to Discontinue Escrow Activities is attached and incorporated as
21 **Exhibit B**.

22 8. Alternative Escrow acknowledges that it has waived its right to an administrative
23 hearing under California Financial Code Sections 17608, 17408, and 17415 in connection with the
24 Penalty Order, Suspension Order, and Order to Discontinue Escrow Activities, and hereby waives its
25 right to a hearing, and to any reconsideration, appeal, or other rights which may be afforded pursuant
26 to the Escrow Law, the California Administrative Procedure Act, the California Code of Civil
27 Procedure, or any other provision of law in connection with these matters.

28 9. The parties hereby acknowledge and agree that this Settlement Agreement is intended

1 to constitute a full, final and complete resolution of the Penalty Order and Suspension Order. The
2 parties further acknowledge that notwithstanding the complete resolution of the Penalty Order and
3 Suspension Order, the Order to Discontinue Escrow Activities Pursuant to Financial Code Section
4 17415 shall remain in effect until Alternative Escrow has complied with the bonding requirements of
5 Financial Code Section 17202.

6 10. The parties further acknowledge and agree that nothing contained in this Settlement
7 Agreement shall operate to limit the Commissioner’s ability to assist any other agency (county, state
8 or federal) with any prosecution, administrative, civil or criminal, brought by any such agency
9 against Alternative Escrow based upon any of the activities alleged in these matters or otherwise.

10 11. Each of the parties represents, warrants, and agrees that it has received, or
11 acknowledges the right to seek, independent legal advice from its attorney(s) with respect to the
12 advisability of executing this Settlement Agreement.

13 12. Each of the parties represents, warrants, and agrees that in executing this Settlement
14 Agreement it has relied solely on the statements set forth herein and, if applicable, the advice of its
15 own counsel. Each of the parties further represents, warrants, and agrees that in executing this
16 Settlement Agreement it has placed no reliance on any statement, representation, or promise of any
17 other party, or any other person or entity not expressly set forth herein, or upon the failure of any
18 party or any other person or entity to make any statement, representation or disclosure of anything
19 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in
20 any way fraudulently induced to execute this Settlement Agreement; and (2) to preclude the
21 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
22 Settlement Agreement.

23 13. This Settlement Agreement is the final written expression and the complete and
24 exclusive statement of all the agreements, conditions, promises, representations, and covenants
25 between the Parties with respect to the subject matter hereof, and supercedes all prior or
26 contemporaneous agreements, negotiations, representations, understandings, and discussions
27 between and among the Parties, their respective representatives, and any other person or entity, with
28 respect to the subject matter covered hereby.

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14. In that the parties have had the opportunity to draft, review and edit the language of this Settlement Agreement, no presumption for or against any party arising out of drafting all or any part of this Settlement Agreement will be applied in any action relating to, connected to, or involving this Settlement Agreement. Accordingly, the parties waive the benefit of California Civil Code Section 1654 and any successor or amended statute providing that, in cases of uncertainty, language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist.

15. This Settlement Agreement may be executed in one or more counterparts, each of which shall be an original but all of which, together, shall be deemed to constitute a single document.

16. Each signator hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Settlement Agreement.

Dated: June 8, 2012
JAN LYNN OWEN
California Corporations Commissioner
By _____
ALAN S. WEINGER
Deputy Commissioner

Dated: May 31, 2012
ALTERNATIVE ESCROW
By _____
Kristen Adrienne Whitmer, President