

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

BEFORE THE DEPARTMENT OF CORPORATIONS  
OF THE STATE OF CALIFORNIA

CALIFORNIA CORPORATIONS	)	OAH Case No. 2009120305
COMMISSIONER,	)	
	)	
Complainant,	)	SETTLEMENT AGREEMENT
	)	
vs.	)	
	)	
AMERICAN LIBERTY ESCROW, INC.,	)	
	)	HEARING DATE: March 26, 2010
Respondent.	)	TIME: 9:00 a.m.
	)	LOCATION: OAH, Los Angeles
	)	

This Settlement Agreement (“Agreement”) is entered into between American Liberty Escrow, Inc. (“American Liberty Escrow”) and the California Corporations Commissioner (“Commissioner”) with respect to the following facts:

**RECITALS**

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

B. American Liberty Escrow is an escrow agent licensed by the Commissioner pursuant to the Escrow Law of the State of California, Financial Code section 17000 *et seq.* American Liberty Escrow’s license number is 963-2272. Its principal place of business is located at 18231 Irvine Blvd., #203, Tustin, CA 92780.

C. Gilbert Pino (“Pino”) is American Liberty Escrow’s president. Pino is authorized to

1 enter into this Agreement on behalf of American Liberty Escrow.

2 D. On or about October 27, 2009, the Commissioner issued his Notice of Intention to  
3 Issue Order Revoking Escrow Agent’s License and Accusation to American Liberty Escrow  
4 (collectively, “Notice of Intention”) pursuant to section 17608 of the Financial Code. The  
5 Commissioner’s Notice of Intention sought to revoke American Liberty Escrow’s license pursuant to  
6 Financial Code section 17602.5. The reason for the revocation was American Liberty Escrow’s  
7 failure to timely file its annual audit reports for its 2007 and 2008 fiscal years, pursuant to Financial  
8 Code section 17406.

9 E. On or about October 27, 2009, the Commissioner also issued an Order Imposing  
10 Penalties Pursuant to California Financial Code Section 17408 (“Order”). The Order imposed  
11 penalties in the amount of \$11,300.00, plus an additional \$100.00 a day for each day after October  
12 27, 2009 that the 2008 annual audit report was not filed. The reason for the Order was American  
13 Liberty Escrow’s failure to timely file its annual audit report for the 2008 fiscal year, as required by  
14 Financial Code section 17406.

15 F. The Notice of Intention and Order were served on American Liberty Escrow via  
16 certified mail, return receipt requested, at its address of record on file with the Department on or  
17 about October 28, 2009. American Liberty Escrow filed its request for hearing on or about  
18 November 12, 2009.

19 G. On January 6, 2010, American Liberty Escrow filed its annual audit reports for 2007  
20 and 2008. American Escrow therefore filed the 2007 annual audit report 631 days late and the 2008  
21 annual audit report 266 days late, as provided by Financial Code section 17406.

22 H. The Office of Administrative Hearings (“OAH”) set this matter to commence hearing  
23 on March 26, 2010, at 9:00 a.m.

24 I. It is the intention and the desire of the parties to resolve this matter without the  
25 necessity of a hearing and/or other litigation.

26 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set  
27 forth herein, the parties agree as follows:  
28

**TERMS AND CONDITIONS**

1  
2 1. This Agreement is entered into for the purposes of judicial economy and expediency,  
3 and to avoid the time and expense of a hearing and possible further court proceedings.

4 2. American Liberty Escrow hereby admits the allegations contained in the Notice of  
5 Intention and Order. The admissions of American Liberty Escrow are solely for the limited purposes  
6 of these proceedings and any future proceeding(s) that may be initiated by or brought before the  
7 Commissioner against American Liberty Escrow. It is the intent and understanding of the parties  
8 that this Agreement, and the admissions of American Liberty Escrow contained herein, shall not be  
9 binding or admissible against American Liberty Escrow in any action(s) brought against American  
10 Liberty Escrow by third parties.

11 3. American Liberty Escrow agrees to the following conditions:

- 12 a. American Liberty Escrow agrees to pay the Commissioner the sum of \$1,000.00  
13 in penalties, which shall be payable in two installments. The first installment of  
14 \$500.00 shall be due on April 5, 2010 and the second installment of \$500.00 shall  
15 be due on May 3, 2010. American Liberty Escrow’s penalty payments must be  
16 forwarded to counsel for the Commissioner, Joyce Tsai, at her address of record,  
17 within the time provided.
- 18 b. The immediate issuance by the Commissioner of an order suspending American  
19 Liberty Escrow’s escrow agent’s license for two periods of seven (7) calendar  
20 days each, during which period American Liberty Escrow shall not accept any  
21 new escrow business, but may continue to service prior and open escrows, in  
22 accordance with Financial Code section 17609. The two suspension periods shall  
23 take place from April 5, 2010 through April 11, 2010, and from May 3, 2010  
24 through May 9, 2010. In connection with the suspensions, American Liberty  
25 Escrow shall file with the Department of Corporations (“Department”) at the  
26 close of business on April 4, 2010 and on May 2, 2010, a list of all open escrows  
27 with escrow numbers and escrow party names along with a copy of the signed  
28 escrow instructions and signed deposit receipt(s) for the last opened escrow,

1 signed by the president of American Liberty Escrow under penalty of perjury.  
2 For purposes of this Agreement, open escrow shall mean an escrow wherein the  
3 parties to such escrow have already entered into a binding agreement and monies  
4 and/or escrow instructions have been submitted to American Liberty Escrow  
5 regarding the transaction. Additionally, American Liberty Escrow will be  
6 required to immediately engage its certified public accountant (“CPA”) firm to  
7 review the records of American Liberty Escrow after the suspensions have been  
8 completed and report its findings regarding compliance with the suspensions  
9 (“CPA Report”) to the Department by June 9, 2010. American Liberty Escrow’s  
10 CPA shall file its CPA Report with the Department directly. The Commissioner  
11 reserves the right to audit American Liberty Escrow for compliance with the  
12 suspensions notwithstanding the findings of the CPA review. A copy of the  
13 suspension order is attached and incorporated hereto as Exhibit A.

14 4. The parties hereby acknowledge and agree that this Agreement is intended to  
15 constitute a final and complete resolution of the matters set forth herein, including the allegations set  
16 forth in the Notice of Intention and Order, and constitutes the entire agreement between the parties  
17 with respect thereto. This Agreement supersedes any and all prior or contemporaneous agreements  
18 between the parties hereto.

19 5. Notwithstanding any other provision contained herein, nothing in this Agreement  
20 shall operate to limit the Commissioner’s ability to investigate and prosecute violations of the  
21 Escrow Law not addressed herein, or to assist any other agency (county, state, or federal) with any  
22 prosecution, administrative, civil or criminal, brought by such agency against American Liberty  
23 Escrow.

24 6. American Liberty Escrow acknowledges its right to an administrative hearing under  
25 California Financial Code sections 17408 and 17608 in connection with the penalties, revocation,  
26 and/or suspensions and hereby waives its right to a hearing, and to any reconsideration, appeal, or  
27 other rights which may be afforded pursuant to the Escrow Law, the California Administrative  
28 Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection

1 with this matter. Within five (5) business days after the execution of this Agreement, the  
2 Commissioner shall request that OAH take the hearing scheduled for March 26, 2010 off calendar.

3 7. Each party hereto represents and warrants that it has received independent advice  
4 from its attorney(s) and/or other representatives prior to entering into this Agreement, and in  
5 executing this Agreement relied solely on the statements set forth herein and the advice of its own  
6 counsel and/or representative.

7 8. In that the parties have had the opportunity to draft, review and edit the language of  
8 this Agreement, no presumption for or against any party arising out of drafting all or part of this  
9 Agreement will be applied in any action relating to or arising out of this Agreement. Accordingly,  
10 the parties hereby waive the benefit of California Civil Code section 1654 and any successor statute.

11 9. The waiver of any provision of this Agreement shall not operate to waive any other  
12 provision set forth herein, and any waiver, amendment and/or change to the terms of this Agreement  
13 must be in writing signed by the parties hereto.

14 10. Each signatory hereto represents and warrants that he/she possesses the necessary  
15 capacity and authority to execute this Agreement and bind the parties hereto.

16 11. This Agreement may be executed in one or more counterparts, each of which shall be  
17 an original but all of which, together, shall be deemed to constitute a single document. A fax  
18 signature shall be deemed the same as an original signature.

19  
20 Dated: 3/23/10

PRESTON DuFAUCHARD  
California Corporations Commissioner

21  
22 By: \_\_\_\_\_  
23 Alan S. Weinger  
24 Deputy Commissioner

25 Dated: 3-23-2010

AMERICAN LIBERTY ESCROW, INC.

26  
27 By: \_\_\_\_\_  
28 Gilbert Pino  
President