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9
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:) ESCROW LICENSE NOS.: 963-2541,
13) 96DBO-49449
14 THE COMMISSIONER OF BUSINESS)
15 OVERSIGHT,) CONSENT ORDER
16)
17 Complainant,)
18)
19 v.)
20)
21 CAPITAL ESCROW INC.,)
22)
23 Respondent.)
24)

25 This Consent Order (Consent Order) is entered between the Commissioner of Business
26 Oversight (Commissioner) and Capital Escrow Inc. (Capital Escrow) (collectively, the parties), and
27 is made with respect to the following facts:

28
I.
Recitals

29 A. Capital Escrow is an escrow agent licensed by the Commissioner pursuant to the
30 California Escrow Law (Fin. Code, § 17000 et seq.)¹ (Escrow Law). Capital Escrow has its principal

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¹ All subsequent statutory references are to the Financial Code unless otherwise noted.

1 place of business located at 16250 Ventura Boulevard, Suite 115A, Encino, California 91436 and a
2 branch office at 1000 Town Center Drive, Third Floor #300-48, Oxnard, California 93036.

3 B. The Commissioner licenses and regulates the activities of escrow agents in California.

4 C. Section 17210 requires all escrow agent licensees to maintain a tangible net worth of
5 at least \$50,000.00 for their main office and at least \$25,000.00 more for an additional branch office.

6 D. Capital Escrow’s combined tangible net worth requirement is \$75,000.00, because it
7 operates a main office and a branch office.

8 E. Section 17210 also requires all escrow agent licensees to maintain liquid assets of at
9 least \$25,000.00.

10 F. Pursuant to section 17602.5, licensed escrow agents must make any reports required
11 by law or by the commissioner within 10 days from the date designated for making of such reports.

12 G. On March 6, 2017, the Commissioner commenced a regulatory examination of
13 Capital Escrow.

14 H. During the examination, the Commissioner’s review of Capital Escrow’s February
15 28, 2017 financial statements found that Capital Escrow’s tangible net worth was \$9,865.74 short of
16 its \$75,000.00 requirement, and its liquid assets were \$16,822.39 short of its \$25,000.00
17 requirement.

18 I. In a letter sent by certified mail on March 30, 2017, the Commissioner directed
19 Capital Escrow to submit proof that it had corrected the above-described deficiencies by April 29,
20 2017. Capital Escrow received the letter on April 3, 2017.

21 J. Capital Escrow failed to submit proof that it had corrected the deficiencies by the
22 April 29, 2017 deadline.

23 K. In a letter sent by certified mail on May 19, 2017, the Commissioner again directed
24 Capital Escrow to submit proof that it had corrected its tangible net worth and liquid asset
25 deficiencies, setting a new deadline of May 30, 2017. Capital Escrow received this letter on May 22,
26 2017.

1 L. Capital Escrow again failed to submit proof to the Commissioner that it had corrected
2 the deficiencies by the May 30, 2017 deadline.

3 M. Both the March 30, 2017 and May 19, 2017 letters informed Capital Escrow that if it
4 failed to respond, the Commissioner could move to suspend Capital Escrow’s license.

5 N. On June 8, 2017, Capital Escrow provided a deposit slip indicating that it had
6 deposited \$30,000.00 into its bank account to cure the deficiencies from its February 28, 2017
7 financial statements. At the same time, Capital Escrow provided its May 31, 2017 financial
8 statements.

9 O. Capital Escrow’s May 31, 2017 financial statements indicated that Capital Escrow
10 was \$18,239.08 short of its \$75,000.00 tangible net worth requirement and \$23,536.68 short of its
11 \$25,000.00 liquid asset requirement.

12 P. Capital Escrow later provided its June 30, 2017 financial statements showing that its
13 \$30,000 deposit had corrected its tangible net worth and liquid asset deficiencies.

14 Q. At the direction of the Commissioner, Capital Escrow later provided its July 31, 2017
15 and August 31, 2017 financial statements.

16 R. Capital Escrow’s July 31, 2017 financial statements indicated that Capital Escrow
17 was \$17,536.29 short of its \$75,000.00 tangible net worth requirement and \$21,156.09 short of its
18 \$25,000.00 liquid asset requirement.

19 S. Capital Escrow’s August 31, 2017 financial statements indicated that it had corrected
20 its net worth and liquid asset deficiencies.

21 T. On January 25, 2018, the Commissioner issued an Accusation to Suspend Escrow
22 Agent License Pursuant to Financial Code Section 17608; and Notice of Intention to Issue Order
23 Suspending Escrow Agent’s License (collectively, “Accusation”).

24 U. The Accusation was served on Capital Escrow by personal delivery on January 30,
25 2018 at its licensed 16750 Ventura Boulevard location.

26 V. The Commissioner did not receive a request for a hearing from Capital Escrow.

27 W. On March 15, 2017, the Commissioner issued a final order suspending Capital
28 Escrow’s license (Suspension Order).

1 X. The Commissioner finds that this action is appropriate, in the public interest, and
2 consistent with the purposes fairly intended by the policies and provisions of this law.

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

5 **I.**
6 **Recitals**

7 1. **Purpose.**

8 The purpose of this Consent Order is to resolve the Commissioner’s investigation into the
9 violations discovered during her examination of Capital Escrow in a manner that is in the public
10 interest, protects consumers, and is consistent with the purposes, policies, and provisions of the
11 Escrow Law.

12 2. **Finality of Consent Order.**

13 Capital Escrow hereby agrees to comply with this Consent Order and, further, stipulates
14 that this Consent Order is hereby deemed a final and enforceable order issued pursuant to the
15 Commissioner’s authority under Financial Code section 17608.

16 3. **Payment of Penalty.**

17 Capital Escrow shall pay a penalty of \$3,500.00 for the violations discussed herein within
18 seven calendar days of the Effective Date of this Consent Order, as such date is defined in
19 Paragraph 17, made payable in the form of a cashier’s check or Automated Clearing House deposit
20 to the “Department of Business Oversight,” and mailed to the attention of: Accounting – Litigation,
21 at the Department of Business Oversight located at 1515 K Street, Suite 200, Sacramento,
22 California 95814. Notice of all payments shall be sent to Charles Carriere, Counsel, Enforcement
23 Division, at the Department of Business Oversight located at One Sansome Street, Suite 600, San
24 Francisco, California 94104.

25 4. **Amendment of Suspension Order.**

26 The Commissioner will amend the Suspension Order issued on March 15, 2018, to reflect a
27 suspension period lasting from Tuesday, April 3, 2018 through Thursday, April 5, 2018, inclusive.
28 Capital Escrow agrees to the three-day suspension as reflected in the attached Amended Order.

1 5. Suspension of License for Failure to Comply with Consent Order.

2 If Capital Escrow fails to meet any deadline or any requirement of this Consent Order, other
3 than inadvertent and isolated errors that are promptly corrected by Capital Escrow, the
4 Commissioner may immediately suspend Capital Escrow’s escrow agent’s license. Capital Escrow
5 hereby waives any further notice and hearing rights to contest an immediate suspension from
6 opening new escrows issued pursuant to the terms of this paragraph afforded under the Financial
7 Code, the Administrative Procedure Act, the Code of Civil Procedure, or any other legal
8 provisions.

9 6. Full and Final Settlement.

10 The parties hereby acknowledge and agree that this Consent Order is intended to constitute
11 a full, final, and complete resolution of the Commissioner’s investigation of Capital Escrow and for
12 violations discovered during its examination and that no further proceedings or actions will be
13 brought by the Commissioner in connection with these matters either under the Escrow Law, or
14 any other provision of law, excepting therefrom any proceeding to enforce compliance with the
15 terms of this Consent Order, or a proceeding or action based upon discovery of new and further
16 violations of the Escrow Law which do not form the basis for this Consent Order or which Capital
17 Escrow knowingly concealed from the Commissioner.

18 7. Binding.

19 This Consent Order is binding on all heirs, assigns, and/or successors in interest.

20 8. Commissioner’s Duties.

21 The parties further acknowledge and agree that nothing contained in this Consent Order
22 shall operate to limit the Commissioner’s ability to assist any other agency (city, county, state or
23 federal) with any prosecution, administrative, civil or criminal, brought by any such agency against
24 Capital Escrow or any other person based upon any of the activities alleged in these matters or
25 otherwise.

26 9. Future Actions by Commissioner.

27 This Consent Order may be revoked and the Commissioner may pursue all remedies
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1 available under the law against Capital Escrow if the Commissioner later discovers that Capital
2 Escrow knowingly or willfully withheld information used for and relied upon in this Consent
3 Order. Further, Capital Escrow agrees that this Consent Order does not resolve any penalties that
4 may be assessed by the Commissioner upon discovery of new and further violations of the Escrow
5 Law.

6 10. Independent Legal Advice.

7 Each of the parties represents, warrants, and agrees that it has received independent advice
8 from its attorney(s) and/or representatives with respect to the advisability of executing this Consent
9 Order.

10 11. Counterparts.

11 The parties agree that this Consent Order may be executed in one or more separate
12 counterparts, each of which when so executed, shall be deemed an original. Such counterparts
13 shall together constitute and be one and the same instrument.

14 12. Waiver, Modification, and Qualified Integration.

15 The waiver of any provision of this Consent Order shall not operate to waive any other
16 provision set forth herein. No waiver, amendment, or modification of this Consent Order shall be
17 valid or binding to any extent unless it is in writing and signed by all the parties affected by it.

18 13. Headings and Governing Law.

19 The headings to the paragraphs of this Consent Order are inserted for convenience only and
20 will not be deemed a part hereof or affect the construction or interpretation of the provisions
21 hereof. This Consent Order shall be construed and enforced in accordance with and governed by
22 California law.

23 14. Full Integration.

24 Each of the parties represents, warrants, and agrees that in executing this Consent Order it
25 has relied solely on the statements set forth herein and the advice of its own counsel. Each of the
26 parties further represents, warrants, and agrees that in executing this Consent Order it has placed no
27 reliance on any statement, representation, or promise of any other party, or any other person or
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1 entity not expressly set forth herein, or upon the failure of any party or any other person or entity to
2 make any statement, representation or disclosure of anything whatsoever. The parties have
3 included this clause: (1) to preclude any claim that any party was in any way fraudulently induced
4 to execute this Consent Order; and (2) to preclude the introduction of parol evidence to vary,
5 interpret, supplement, or contradict the terms of this Consent Order.

6 15. Presumption from Drafting.

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

13 16. Voluntary Agreement.

14 Capital Escrow enters this Consent Order voluntarily and without coercion and
15 acknowledges that no promises, threats or assurances have been made by the Commissioner or any
16 officer, or agent thereof, about this Consent Order.

17 17. Effective Date.

18 This Consent Order shall not become effective until signed by all parties and delivered by
19 the Commissioner’s counsel by email to David Albanese at Capital Escrow at
20 teamalbanese@gmail.com (“Effective Date”).

21 18. Public Record.

22 Respondent acknowledges that this Consent Order is a public record.

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19. Authority to Execute.

Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter this Consent Order.

Dated: 3/29/18

JAN LYNN OWEN
Commissioner of Business Oversight

By _____

MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 3/29/18

CAPITAL ESCROW INC.

By _____

DAVID ALBANESE
President