

1 PRESTON DuFAUCHARD  
California Corporations Commissioner  
2 ALAN S. WEINGER  
Deputy Commissioner  
3 JUDY L. HARTLEY (CA BAR NO. 110628)  
Senior Corporations Counsel  
4 Department of Corporations  
320 West 4<sup>th</sup> Street, Ste. 750  
5 Los Angeles, California 90013-2344  
Telephone: (213) 576-7604 Fax: (213) 576-7181

6 Attorneys for Complainant  
7

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

11 In the Matter of the Statement of ) OAH NO.: L-2009091516  
Issues/Accusation of THE CALIFORNIA )  
12 CORPORATIONS COMMISSIONER, ) File No.: 963-2557  
13 )  
Complainant, ) SETTLEMENT AGREEMENT  
14 )  
15 vs. ) TRIAL DATE: May 18 & 19, 2010  
16 CHANNEL 1 ESCROW, INC. and KENOLA ) ASSIGNED TO:  
D. TONEY, )  
17 )  
18 Respondents. )

19 This Settlement Agreement is entered into between Channel 1 Escrow, Inc. (“Channel 1”) and Kenola D. Toney (“Toney”), on the one hand, and the California Corporations Commissioner (“Commissioner”), on the other hand, and is made with respect to the following facts:

22 **RECITALS**

23 A. Channel 1 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.

24 B. On August 22, 2008, Channel 1 filed an application for an escrow agent’s license (file no. 963-2557 hereinafter "application") with the Commissioner pursuant to the Escrow Law, in particular, Financial Code Section 17209. The proposed location for Channel 1 was 15705 Hawthorne Boulevard, Suite K, Lawndale, California 90260. The application identified Toney as

1 the president, secretary, treasurer, sole director, sole shareholder and escrow manager. Toney  
2 verified the application as president of Channel 1.

3 C. Toney is, and was at all times relevant herein, the president and sole shareholder of  
4 Channel 1.

5 D. On August 3, 2009, Channel 1 and Toney were personally served by the  
6 Commissioner with a Notice of Intention to Issue Order Denying Escrow Agent License Application  
7 and To Issue an Order Pursuant to Section 17423 (Bar from Employment, Management or Control of  
8 an Escrow Agent), Accusation and accompanying documents dated July 28, 2009 (“Accusation”).  
9 Channel 1 and Toney have filed Notices of Defense with the Commissioner and a two-day hearing  
10 before the Office of Administrative Hearings is scheduled to commence on May 18, 2010.

11 E. It is the intention and desire of the parties to resolve this matter without the necessity  
12 of a hearing and/or other litigation.

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

15 **TERMS AND CONDITIONS**

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

18 2. Channel 1 and Toney admit the allegations contained in the Accusation. The  
19 admissions of Channel 1 and Toney are solely for the limited purposes of this proceeding and any  
20 future proceeding(s) that may be initiated by or brought before the Commissioner against Channel 1  
21 and Toney. It is the intent and understanding between the parties that this Settlement Agreement and  
22 particularly the admissions of Channel 1 and Toney herein, shall not be binding or admissible  
23 against Channel 1 and Toney in any action(s) brought against Channel 1 and Toney by third parties.

24 3. Channel 1 hereby agrees to the issuance by the Commissioner of an order denying its  
25 application for an escrow agent’s license. Channel 1 further agrees that it will not apply for an  
26 escrow agent’s license at any time in the future. A copy of the denial order is attached and  
27 incorporated as Exhibit A.  
28

1           4.       Channel 1 acknowledges its right to an administrative hearing under Financial Code  
2 section 17209 in connection with the denial described in paragraph 3 above, and hereby waives its  
3 right to a hearing, and to any reconsideration, appeal, or other rights which may be afforded pursuant  
4 to the Escrow Law, the California Administrative Procedure Act, the California Code of Civil  
5 Procedure, or any other provision of law in connection with this matter herein.

6           5.       Toney hereby agrees to the issuance by the Commissioner of an order (i) barring  
7 Toney from any position of management or control of any escrow agent, and (ii) barring Toney from  
8 any position of employment with any escrow agent for a period of three years. Toney acknowledges  
9 and understands that her agreement to be barred from employment for a definitive period of time  
10 constitutes a waiver of California Government Code section 11522, which provides for the  
11 opportunity to apply for reinstatement or reduction of penalty after a period of not less than one year  
12 has elapsed from the effective date of the decision or from the date of the denial of a similar petition.  
13 A copy of the bar order is attached and incorporated as Exhibit B.

14           6.       Toney acknowledges her right to an administrative hearing under Financial Code  
15 section 17423 in connection with the bar described in paragraph 5 above and hereby waives her right  
16 to a hearing, and to any reconsideration, appeal, or other rights which may be afforded pursuant to  
17 the Escrow Law, the California Administrative Procedure Act, the California Code of Civil  
18 Procedure, or any other provision of law in connection with this matter herein.

19           7.       Toney further agrees to an automatic bar from any position of employment (and  
20 management and control if that bar is no longer in effect), if it is found, after a hearing to be held  
21 before an Administrative Law Judge in accordance with the Administrative Procedure Act,  
22 California Government Code Sections 11500 et seq., that Toney has at any time during the two-year  
23 period following the expiration of her three year bar from any position of employment, violated any  
24 of the statutes and/or rules set forth in the Accusation.

25           8.       Toney hereby waives her right to any reconsideration, appeal or other right to review  
26 of any finding by the Commissioner pursuant to paragraph 7 above which may be afforded pursuant  
27 to the Escrow Law, the California Administrative Procedure Act, the California Code of Civil  
28 Procedure, or any other provision of law in connection therewith.

1           9.       Toney acknowledges and agrees that the bar provided for in paragraph 7 above shall  
2 not be the exclusive remedy available to the Commissioner in pursuing future violations but may be  
3 sought and employed in addition to any other remedy available pursuant to the Escrow Law.

4           10.       The parties hereby acknowledge and agree that this Settlement Agreement is intended  
5 to constitute a full, final and complete resolution of the Accusation. The parties further acknowledge  
6 and agree that nothing contained in this Settlement Agreement shall operate to limit the  
7 Commissioner's ability to assist any other agency, (city, county, state or federal) with any  
8 prosecution, administrative, civil or criminal, brought by any such agency against Channel 1 and/or  
9 Toney based upon any of the activities alleged in this matter or otherwise.

10          11.       The Commissioner shall cause this Settlement Agreement to be filed with the Office  
11 of Administrative Hearings within five business days of its execution by all parties hereto, but no  
12 later than May 18, 2010.

13          12.       Each of the parties represents, warrants, and agrees that it has received independent  
14 advice from its attorney(s) and/or representative(s) with respect to the advisability of executing this  
15 Settlement Agreement.

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

26          14.       This Settlement Agreement is the final written expression and the complete and  
27 exclusive statement of all the agreements, conditions, promises, representations, and covenants  
28 between the Parties with respect to the subject matter hereof, and supercedes all prior or

1 contemporaneous agreements, negotiations, representations, understandings, and discussions  
2 between and among the Parties, their respective representatives, and any other person or entity, with  
3 respect to the subject matter covered hereby.

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

11 16. This Settlement Agreement shall not become effective until signed and delivered by  
12 all Parties.

13 17. This Settlement Agreement may be executed in one or more counterparts, each of  
14 which shall be an original but all of which, together, shall be deemed to constitute a single  
15 document. This Settlement Agreement may be executed by facsimile signature, and any such  
16 facsimile signature by any party hereto shall be deemed to be an original signature and shall be  
17 binding on such party to the same extent as if such facsimile signature were an original signature.

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

20 Dated: 4/27/10

PRESTON DuFAUCHARD  
California Corporations Commissioner

21  
22 By \_\_\_\_\_  
23 ALAN S. WEINGER  
24 Deputy Commissioner

25 Dated: 4/22/10

CHANNEL 1 ESCROW, INC.

26  
27 By \_\_\_\_\_  
28 KENOLA D. TONEY, President

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

Dated: 4/22/10 By KENOLA D. TONEY, an individual

APPROVED AS TO FORM:  
DAVIS & DAVIS, LLP

By \_\_\_\_\_  
M. STEPHEN DAVIS, ESQ., Attorneys for  
CHANNEL 1 ESCROW, INC. and KENOLA D. TONEY

PRESTON DuFAUCHARD  
California Corporations Commissioner

By \_\_\_\_\_  
JUDY L. HARTLEY  
Senior Corporations Counsel