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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES  
10

11 THE PEOPLE OF THE STATE OF ) Case No.  
CALIFORNIA, by and through the California )  
12 Corporations Commissioner, )  
13 ) **PETITION FOR LIMITED RECEIVER**  
Petitioner, ) (Financial Code section 17636)  
14 )  
vs. )  
15 )  
16 DIVERSITY ESCROW, INC., a California )  
Corporation, )  
17 )  
Respondent. )  
18 )  
19 )

20 Petitioner, the People of the State of California, by and through the California Corporations  
21 Commissioner (“Commissioner” or “Petitioner”), administers the provisions of the California  
22 Escrow Law (Fin. Code<sup>1</sup>, § 17000 et seq.) (“Escrow Law”), and the regulations issued pursuant  
23 thereto (Cal. Code Regs., tit. 10<sup>2</sup>, § 1700 et seq.), which regulate the business and activities of  
24 independent escrow agents.

25 The Petitioner having issued an Order Taking Possession of the Trust Funds and Escrow  
26

27 <sup>1</sup> Hereinafter, “Code,” unless otherwise noted.

28 <sup>2</sup> Hereinafter, “CCR.”

1 Records of Diversity Escrow, Inc. pursuant to Code section 17621, respectfully states:

2 1. On or about January 28, 2010, Petitioner issued an escrow agent's license to Diversity  
3 Escrow, Inc., a California corporation, ("Diversity Escrow" or "Respondent") pursuant to the Escrow  
4 Law. Petitioner authorized Diversity Escrow to engage in business as an escrow agent within the  
5 State of California under that license. The license is currently valid and unrevoked. Respondent's  
6 principal place of business was 17037 Chatsworth Street, Suite 101, Granada Hills, California.

7 2. David Z. Jimenez ("Jimenez") is, and was at all times relevant herein, Diversity  
8 Escrow's president, vice president, chief executive officer, chief financial officer, treasurer,  
9 secretary, director, sole shareholder, and agent for service of process.

10 3. L.D.T. Investments, Inc., doing business as L.D.T. Escrow Division a Non  
11 Independent Escrow Division ("L.D.T. Investments"), is a suspended California corporation,  
12 formerly located at 17037 Chatsworth Street, Suite 206, Granada Hills, California. L.D.T.  
13 Investments held a California Department of Real Estate broker's license, which was revoked on or  
14 about October 6, 2011. Diana J. Lopez ("Lopez") is or was L.D.T. Investments owner and president.  
15 Lopez' father is Diversity's principal, Jimenez. On or about August 23, 2011, the California  
16 Department of Real Estate issued an Order to Desist and Refrain against L.D.T. Investments and  
17 Lopez pursuant to Business and Professions Code section 10086. The California Department of  
18 Real Estate's Order to Desist and Refrain is now final.

19 4. On or about January 28, 2011, Diversity Escrow's bank, City National Bank, notified  
20 the Commissioner in writing, in accordance with Financial Code section 17409, subdivisions (c)(1)  
21 and (2), that Respondent's trust account was overdrawn as of January 26, 2011. As a result of the  
22 bank's written notice, the Commissioner commenced a special examination of the books and records  
23 of Diversity Escrow at its licensed location.

24 5. The special examination disclosed the following violations of the Escrow Law:

25 (a) Diversity Escrow issued two post-dated checks in the amounts of \$300,000.00 and  
26 \$5,000.00 in violation of CCR 1738. Check number 1537 in the amount of \$300,000.00 and dated  
27 January 27, 2011, was actually issued on January 25, 2011. The bank returned check number 1537,  
28 unpaid, on January 26, 2011, due to non-sufficient funds. Check number 1538 in the amount of

1 \$5,000.00 and dated January 27, 2011, was actually issued on January 25, 2011. Christina Espitia  
2 (“Espitia”), Respondent’s escrow manager, told the Commissioner’s examiner that the checks in  
3 question were issued out-of-sequence, blank and pre-signed by Jimenez in violation of CCR 1732.  
4 Furthermore, check numbers 1537 and 1538 were disbursed early to the buyer in the escrow without  
5 written authorization in violation of Code section 17414, subdivision (a)(1) and CCR section 1732.

6 (b) Diversity Escrow failed to maintain its books and records in accordance with the  
7 Escrow Law as follows:

8 (i) Diversity Escrow failed to prepare its daily banking and trust reconciliations in  
9 violation of Code section 17404 and CCR section 1732.2. Diversity Escrow’s last prepared daily  
10 banking report was on or about February 2, 2011, and the last prepared trust banking reconciliation  
11 was in or about July 2010.

12 (c) Diversity Escrow caused an overdraft to occur in the trust account in the amount of  
13 \$131,048.56 in violation of Code section 17414, subdivision (a)(1) and CCR sections 1738 and  
14 1738.1. Diversity Escrow issued escrow receipt number 282, dated January 18, 2011, in the amount  
15 of \$230,000.00 without any corresponding deposit at the bank. Thereafter, on or about January 18,  
16 2011, Diversity Escrow made a wire transfer in the amount of \$230,000.00 without any funds having  
17 been deposited into the escrow. The wire transfer (disbursement) to the sellers was made without  
18 written authorization from the parties. As a result, a shortage occurred in the trust account in the  
19 amount of \$230,000.00 from January 18, 2011 until February 24, 2011, thereby causing the trust  
20 account overdraft in the amount of \$131,048.56.

21 (d) Pursuant to Code section 17210, all licensees under the Escrow Law are required to  
22 maintain, at all times, liquid assets in the amount of at least \$25,000.00 and a tangible net worth of at  
23 least \$50,000.00. The special examination disclosed that as of January 31, 2011, Diversity Escrow  
24 had a liquid asset deficiency in the amount of at least \$12,008.77 and a tangible net worth deficiency  
25 of at least \$19,354.71 in violation of Code section 17210.

26 (e) Respondent falsified escrow instructions in violation of Code section 17414,  
27 subdivision (a)(2). One set of escrow instructions contained in Diversity Escrow file number 10315-  
28 CE were signed only by the seller, dated January 13, 2011, and stated that the escrow was to be an

1 “all cash transaction.” A second set of escrow instructions, dated January 25, 2011, and signed only  
2 by the buyer, failed to state that the escrow was to be an all cash transaction.

3 (f) Respondent disbursed \$306,500.00 to L.D.T. Investments in escrow number 10346-  
4 CE without any written authorization in violation of Code section 17414, subdivision (a)(1).  
5 According to the seller, he did not authorize and/or sign the amended escrow instructions.

6 (g) Respondent caused a shortage to occur in the trust account from February 2, 2011 to  
7 February 3, 2011 in violation of Code section 17414, subdivision (a)(1) and CCR sections 1738 and  
8 1738.1. A review of escrow file number 10334 disclosed that receipt number 304 was issued in the  
9 amount of \$100,000.00 on February 2, 2011; however, the corresponding funds were not wired into  
10 escrow number 10334 until February 3, 2011. Thus, Respondent issued receipt number 304 at least  
11 one day before the funds were received in escrow. Receipt number 304 showed that the funds were  
12 received from L.D.T. Investments, the purported seller in the escrow. Two days before the funds  
13 were wired into the trust account, and a day before the receipt was issued, on February 1, 2011,  
14 Respondent issued trust account check number 1539 to L.D.T. Investments in the amount of  
15 \$100,000.00. Check number 1539 was cashed by L.D.T. Investments on February 2, 2011, thereby  
16 creating a shortage in the trust account from February 2, 2011 to February 3, 2011. No  
17 corresponding escrow instruction or explanation was received from Respondent as to why L.D.T.  
18 Investments received the \$100,000.00 disbursement from escrow number 10334.

19 (h) Respondent caused a shortage to occur in the trust account from November 24, 2010  
20 to November 30, 2010, in the amount of \$5,000.00 in violation of CCR 1738.1. On or about  
21 November 24, 2010, Respondent issued receipt number 246 in escrow number 10259-CE concerning  
22 an L.D.T. Investments deposit of \$5,000.00; however, there was no corresponding deposit made at  
23 the bank until November 30, 2010, six days after the receipt was issued. Although there were no  
24 funds in the bank, Diversity disbursed \$5,000.00 on November 24, 2010 thereby creating a  
25 \$5,000.00 trust account shortage until November 30, 2011.

26 (i) Respondent caused a shortage to occur in the trust account from January 5, 2011  
27 through February 25, 2011, in the amount of \$120,000.00 in violation of Code section 17414,  
28 subdivision (a)(1) and CCR sections 1738 and 1738.1. On or about January 5, 2011, Respondent

1 disbursed \$120,000.00 to L.D.T. Investments without any corresponding escrow. A wire  
2 confirmation showed that Respondent wired \$120,000.00 from Diversity Escrow's trust account to  
3 L.D.T. Investments on January 5, 2011.

4 (j) Respondent caused a shortage to occur in the trust account from November 16, 2010  
5 through December 31, 2011, in the amount of \$52,000.00, in addition to other violations of the  
6 Escrow Law, in Diversity Escrow file number 10203-CE. A review of the escrow books and records  
7 revealed that there were five sales affiliated with this escrow file. All five escrows concerned  
8 different buyers and different properties:

9 (i) On or about November 16, 2010, Respondent disbursed \$52,000.00 from escrow  
10 number 10203-CE to the lender without any corresponding deposit by L.D.T. Investments, the  
11 purported seller in this escrow in violation of Code section 17414, subdivision (a)(1) and CCR  
12 sections 1738 and 1738.1. Thereafter, on or about December 30, 2010, L.D.T. Investments  
13 deposited \$52,000.00 into escrow number 10203-CE to cover the disbursement to the lender. Only  
14 the seller authorized the disbursal of the funds, the buyer failed to sign the escrow instructions;

15 (ii) On or about November 19, 2010, Respondent disbursed \$72,000.00 from escrow  
16 number 10203-CE to the lender in the escrow without having received any signed escrow instruction  
17 from the buyer in violation of Code section 17414, subdivision (a)(1) and CCR 1738; and

18 (iii) On or about October 29, 2010, L.D.T. Investments deposited \$459,000.00 into escrow  
19 number 10203-CE. That same day \$459,000.00 was disbursed to the lender without any signed  
20 escrow instructions having been received from the buyer in violation of Code section 17414,  
21 subdivision (a)(1) and CCR 1738.

22 (k) Respondent failed to report employees to the Commissioner, in that it employed  
23 several individuals in its escrow business without having first notified the Petitioner of their  
24 employment in violation of Code section 17419 and CCR 1726.

25 (l) In connection with the trust account shortages described above, Diversity Escrow  
26 falsified escrow records by creating false receipts during the period November 2010 to February  
27 2011.

28 (m) Diversity Escrow has abandoned its business.

1           6.       In that Respondent has abandoned its escrow business, Petitioner has been unable to  
2 make a demand upon Diversity Escrow to cure the trust account shortages and Petitioner is not  
3 aware of any assets of Diversity Escrow available to cure the trust account shortages.

4           7.       Petitioner determined that the manner in which Diversity Escrow was conducting its  
5 business was unsafe and injurious, and on July 5, 2011, issued Diversity Escrow an Order to  
6 Discontinue Escrow Activities Pursuant to Financial Code Section 17415.

7           8.       The inability of Diversity Escrow to cure the aforementioned defects caused  
8 Petitioner, on or about July 19, 2011, to issue a Demand For and Order Taking Possession of the  
9 Trust Account and Escrow Records of Diversity Escrow Pursuant to Financial Code Section 17621  
10 and an Order Appointing Conservator pursuant to Financial Code section 17630. The Orders were  
11 necessary to offer any possible protection to the escrow customers of Diversity Escrow.

12           9.       Pursuant to the Order Appointing Conservator, Peter A. Davidson of the law firm  
13 Ervin, Cohen & Jessup, LLP (“Conservator”) took possession of the trust account and escrow  
14 records of Diversity Escrow on or about July 19, 2011.

15           10.      Pursuant to Code section 17622, Diversity Escrow had ten (10) days after the taking  
16 to apply to the superior court for an order to enjoin further proceedings by Petitioner. The ten (10)  
17 days provided by Code section 17622 have expired, and there has been no action commenced by  
18 Diversity Escrow to contest the actions of the Commissioner described in paragraph 8., above.

19           11.      On review of Diversity Escrow’s books and records and assets, Petitioner has  
20 concluded that it would be futile to proceed under a conservatorship with the conduct of the business  
21 of Diversity Escrow, as there are no assets from which to pursue the avenues necessary to ascertain  
22 the exact amount of the trust account shortage, identify all of the trust fund claimants, restore the  
23 trust account to the extent feasible, and thereby make the trust fund claimants as whole as possible.

24           12.      Pursuant to Code section 17636, the Petitioner is authorized to petition the superior  
25 court for the appointment of a receiver to wind up the affairs of a licensee after having taken  
26 possession of the licensee.

27           13.      The Petitioner submits that the appointment of a receiver by this Court over Diversity  
28 Escrow is necessary to properly wind up the trust account affairs of Diversity Escrow and to provide

1 the greatest protection possible to the customers of Diversity Escrow. Furthermore, a situation exists  
2 wherein irreparable harm will be suffered by the public unless and until a receiver is appointed over  
3 Diversity Escrow in order to wind up its trust account affairs.

4 14. Pursuant to section 11180 of the Government Code, the Commissioner, as head of the  
5 Department of Corporations, may make investigations and prosecute actions concerning all matters  
6 relating to the business activities and subjects under the jurisdiction of the Department and violations  
7 of any law or rule or order of the Department. (Govt. Code, § 11180, subd. (a)-(b).) As stated  
8 previously, Diversity Escrow is a licensee of the Commissioner, the head of the Department of  
9 Corporations. Pursuant to Code section 17636 the Commissioner may petition for the appointment  
10 of a receiver to liquidate the affairs of a licensee once he has taken possession of the business.

11 Wherefore, the Petitioner prays:

12 A. This Court issue an order naming Peter A. Davidson of the law firm of Ervin, Cohen  
13 & Jessup, LLP as the receiver over the escrow trust funds of Diversity Escrow, including, but not  
14 limited to, the escrow trust account(s) and any indemnity funds paid by Escrow Agents' Fidelity  
15 Corporation pursuant to an anticipated proof of claim filing, any bond or insurance policy  
16 maintained by Diversity Escrow or which it is a beneficiary of, and all bank and escrow records  
17 pertinent thereto (collectively "trust property"), whether directly or indirectly, owned beneficially or  
18 otherwise by, or in the possession, custody or control of Diversity Escrow or Jimenez, or to which  
19 Diversity Escrow or Jimenez, have any right of possession, custody or control, irrespective of  
20 whomsoever holds such property, in order to obtain an adequate accounting of the trust property and  
21 trust liabilities; secure a marshaling of such property; and to forthwith begin winding up and  
22 liquidating the trust property affairs of Diversity Escrow in accord with the provisions of the Escrow  
23 Law, and for said order appointing such receiver to further provide that:

24 (1) The receiver prior to entry upon the duties described herein, take an oath to faithfully  
25 perform the duties of a receiver and to observe all of the instructions of this Court;

26 (2) The receiver is authorized, empowered and directed:

27 (a) To review, observe, discover and make notes regarding all the trust property of, or in  
28 the possession of Diversity Escrow, wherever situated, including all trust account of Diversity

1 Escrow in financial depository institutions and of any other trust property in which Diversity Escrow  
2 has an interest regardless by whom it may be held on an ongoing basis pursuant to this Court's order;

3 (b) To undertake an independent review into the financial condition of the trust property  
4 and escrow transactions of Diversity Escrow and render a report within ninety (90) days reflecting  
5 the existence and value of all trust property subject to the review, observation and/or discovery by  
6 the receiver and of the extent of the trust liabilities, both those claimed by others to exist and those  
7 which the receiver believes to be the legal trust obligations of Diversity Escrow, and any further  
8 information the receiver believes may assist in an equitable disposition of this matter, and to include  
9 in its report the receiver's opinion regarding the ability of Diversity Escrow to meet its trust  
10 obligations, and his recommendation regarding the best method of distributing the trust property to  
11 the owners thereof;

12 (c) To file within thirty (30) days of his qualification and appointment hereunder, a  
13 preliminary inventory of all trust property of which he shall then have reviewed, observed and/or  
14 discovered pursuant to this Court's order. Additionally, the receiver is to file one or more  
15 supplemental inventories when and if he shall subsequently come into knowledge of additional items  
16 appropriate to said inventory;

17 (d) To retain and employ such attorney(s) to assist, advise and represent the receiver in  
18 the performance of his duties and responsibilities as the Court may approve upon written application  
19 of the receiver;

20 (e) To retain and employ LoBuglio & Sigman as his accountants, and such other such  
21 persons, clerical and professional, to perform such tasks as may be necessary to aid the receiver in  
22 the performance of his duties and responsibilities;

23 (f) To be the sole signator on all trust bank accounts and bank accounts of Diversity  
24 Escrow;

25 (g) To bring such proceedings as are necessary to enforce the provisions hereof;

26 (h) To bring such actions as are necessary to modify the provisions hereof;

27 (i) To make such payments and disbursements from the trust property so taken into  
28 custody, control, and possession of the receiver or otherwise received by him, as may be necessary



1 and advisable in discharging his duties as receiver;

2 (j) To preserve trust property;

3 (k) To institute, prosecute, defend, compromise, intervene and become a party either in  
4 his own name or in the name of Diversity Escrow to such suits, actions, or proceedings as may be  
5 necessary for the protection, maintenance, recoupment or preservation of the trust property of  
6 Diversity Escrow and their escrow parties, with prior court approval; and

7 (l) To divert, take possession of and secure all mail of Diversity Escrow and in order to  
8 screen such mail for correspondence relating to the trust property, returning non-property mail to  
9 Jimenez, the president, vice president, chief executive officer, chief financial officer, treasurer,  
10 secretary, director, sole shareholder and agent for service of process of Diversity Escrow, and to  
11 effect a change in the rights to use any and all post office boxes and other mail collection facilities  
12 used by Diversity Escrow.

13 B. The receiver is hereby vested with, and is authorized, directed, and empowered to  
14 exercise, all of the powers of Diversity Escrow's officers and directors or persons who exercise  
15 similar powers and perform similar duties, with respect to the trust property, whose authority is  
16 hereby suspended; and Diversity Escrow's officers, agents, employees, representatives, directors,  
17 successors in interest, attorneys in fact and all persons acting in the concert or participating with  
18 them, are hereby divested of, restrained and barred from exercising any of the powers herein vested  
19 in this receiver.

20 C. Any local, state or federal law enforcement and regulatory agency having jurisdiction  
21 over matters relating to Diversity Escrow's business shall be entitled to review, without exception,  
22 all reports of the receiver and all books, records, and files on Diversity Escrow in the possession of  
23 the receiver at any time during normal business hours, and to make any abstract or copies of said  
24 documents as it desires.

25 D. Diversity Escrow and their respective officers, directors, agents, servants, employees,  
26 successors, assigns, affiliates, and other persons or entities under their control and all persons or  
27 entities in active concert or participation with them, and each of them, to turn over to the receiver  
28 records, documentation, charts and/or descriptive material, which relate, directly or indirectly, to the

1 trust property of Diversity Escrow or otherwise belonging to their escrow transaction parties, now  
2 held by Diversity Escrow or any of them.

3 E. This Court will retain jurisdiction of this action in order to implement and carry out  
4 the terms of all orders and decrees that may be entered herein or to entertain any suitable application  
5 or motion by Petitioner and/or receiver for additional relief or modification of any order made herein  
6 within the jurisdiction of this Court.

7 F. During the pendency of this receivership, except by leave of court, all parties to  
8 escrows held by Diversity Escrow and any other persons seeking relief of any kind, in law or in  
9 equity, from Diversity Escrow relating to the trust property, and all others acting on behalf of any  
10 such parties or other persons including sheriffs, marshals, servants, agents and employees are  
11 restrained from:

- 12 (1) Commencing, prosecuting, continuing or enforcing any suit or proceeding;
- 13 (2) Executing or issuing or causing the execution or issuance of any court attachment,  
14 subpoena, replevin, execution or other process for the purpose of impounding or taking possession of  
15 or interfering with or creating or enforcing a lien upon any trust property owned or in the possession  
16 of Diversity Escrow or its affiliates, or the receiver appointed herein, wherever situated;
- 17 (3) Taking, retaining, retaking or attempting to retake possession of any trust property;
- 18 (4) Withholding or diverting any trust property obligation;
- 19 (5) Doing any act or other thing whatsoever to interfere with the possession of or  
20 management by the receiver herein and of the trust property, controlled by or in the possession of  
21 Diversity Escrow or to in any way interfere with said receiver or to interfere in any manner during  
22 the pendency of this proceeding with the exclusive jurisdiction of this Court over the Diversity  
23 Escrow trust property.

24 G. At such time as the financial condition of the property has been ascertained by the  
25 receiver and at such time as the trust property has been marshaled and all trust liabilities have been  
26 determined, the receiver shall file an application with the Court for disposition of such trust property.  
27 The application shall propose in detail the winding up and the distribution of trust funds. If  
28 necessary, the receiver shall be authorized to propose and carry out a partial distribution, retaining

1 such funds pending final distribution as are necessary to finance any pertinent litigation or the  
2 remaining operation of the receivership.

3 H. The receiver shall be paid an hourly rate of \$475.00 for his services and shall be  
4 entitled to reimbursement for usual and customary expenses, including out-of-pocket expenditures  
5 on behalf of the receivership estate, which shall be paid from the trust funds of Diversity Escrow,  
6 and that the State of California shall have no liability whatsoever for any costs, fees and/or out-of-  
7 pocket expenses that may result from such receivership. The receiver and any professional hired by  
8 him shall make application to this Court on a monthly basis for payment of reasonable fees and  
9 expenses incurred by the receiver or such professional, and shall be entitled to payment of said fees  
10 and expenses on account as hereinafter provided. Copies of such applications to the Court shall be  
11 promptly served on all attorneys of record for parties in this action, who shall have ten (10) calendar  
12 days following the filing and service of such application to file any objections thereto with the Court,  
13 and serve any such objections by facsimile and mail on the receiver. If no objections are filed with  
14 the Court and served within the ten (10) calendar day period, the receiver shall thereupon draw funds  
15 from the receivership estate sufficient to pay one-hundred percent (100%) of out-of-pocket expenses  
16 and seventy-five percent (75%) of such fees, including all professional fees, and other expenses such  
17 as in office copying and facsimile charges, without further order of the Court. If any objections are  
18 filed, the receiver may draw funds from the receivership estate sufficient to pay any amounts as to  
19 which there is no objection, and the Court will conduct a hearing on any objections upon motion of  
20 the receiver or the objecting party. At such hearing, the compensation of the receiver or other  
21 professional making application, as well as allowable disbursements and expenses, will be  
22 determined by the Court, and the receiver will be directed to draw funds from the receivership estate  
23 to pay one hundred percent (100%) and seventy-five percent (75%), respectively, of the amounts so  
24 determined by the Court. Notwithstanding such interim monthly payments of fees and expenses, all  
25 fees and expenses shall be submitted to the Court for its approval by a properly noticed request for  
26 fees, stipulation of all parties or the receiver's Final Account and Report. Upon approval of the fees  
27 and expenses of the receiver or other professional, any hold back amounts still due and owing to the  
28 receiver or other professional shall be paid from the receivership estate.

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I. The disbursement of Diversity Escrow's trust account funds is prohibited until a reconciliation of Diversity Escrow's account has been completed and Petitioner has approved the reconciliation of which said approval shall not be unreasonably withheld, except to pay the costs and expenses of the receivership as provided for in paragraph H., above.

J. For an order that the receiver shall not be required to file a bond with the Court in this matter.

Dated: November 10, 2011  
Los Angeles, California

PRESTON DuFAUCHARD  
California Corporations Commissioner

By \_\_\_\_\_  
BLAINE A. NOBLETT,  
Attorney for Petitioner  
California Corporations Commissioner