

1 PRESTON DUFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
Deputy Commissioner
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4 Corporations Counsel
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7 Attorneys for Complainant

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

11
12 In the Matter of the Accusation of THE) File No.: 963-1969
CALIFORNIA CORPORATIONS)
13 COMMISSIONER,)
14 Complainant,) **SETTLEMENT AGREEMENT**
15 vs.)
16 DIAMOND QUALITY ESCROW, INC.,)
17 Respondent.)
18

19 This Settlement Agreement is entered into between DIAMOND QUALITY ESCROW, INC.
20 (“Diamond”), and the California Corporations Commissioner (“Commissioner”) (together, the
21 “Parties”), and is made with respect to the following facts:

22
23 **RECITALS**

24
25 A. Diamond is an escrow agent licensed by the Complainant pursuant to the Escrow Law
26 of the State of California, California Financial Code Section 17000 *et seq.* (“California Escrow
27 Law”);

28 B. Pursuant to Financial Code section 17406, all licensees under the Escrow Law are

1 required to file an annual audit report containing audited financial statements (“Annual Report”)
2 within one hundred and five (105) days after the close of their fiscal year. Diamond’s fiscal year end
3 is January 31, 2009. Accordingly, Diamond was required to file its Annual Report on or before May
4 15, 2009;

5 C. On or about December 3, 2008, Complainant notified Diamond in writing that its
6 Annual Report was due on or before May 15, 2009. Respondent failed to file the Annual Report by
7 May 15, 2009;

8 D. On or about June 24, 2009, a follow up letter was sent to Diamond concerning its
9 failure to file the Annual Report. Diamond was notified in the letter that failure to file to the Annual
10 Report could result in assessment of penalties, a special examination and/or administrative action;

11 E. Diamond did not file the Annual Report as required by Financial Code section 17406;

12 F. On November 17, 2009, the Commissioner issued to Diamond a Notice of Intention to
13 Issue Order to Suspend Escrow License; Accusation and accompanying documents (collectively, the
14 “Notice”). Copies of the Notice are attached and incorporated herein as “Exhibit 1”;

15 G. Pursuant to Financial Code section 17408, penalties were requested by the
16 Commissioner in the Notice. Penalties, pursuant to California Escrow Law, may be assessed up to
17 \$100.00 per day, for the first five days, and a maximum of \$500.00 per day thereafter, each day when
18 the Annual Report is delinquent. As of the date of the Notice, a total of at least \$56,500.00 in
19 penalties was accrued by Diamond.

20 H. Diamond issued a timely written administrative hearing request to the Commissioner
21 in or about November 2009.

22 I. Diamond submitted the Annual Report to the Commissioner in or about February 1,
23 2010; and

24 J. It is the intention of the Parties to resolve this matter without the necessity of an
25 administrative hearing or any other litigation.

26 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set
27 forth herein, the Parties agree as follows:
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TERMS AND CONDITIONS

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1. This Agreement is entered into for the purpose of judicial economy and expediency.

2. Diamond acknowledges its right to a hearing under the California Escrow Law in connection with the Commissioner’s Notice referenced herein, and it hereby waives the right to any appeal, or other right to review, if any, which may be afforded pursuant to the California Escrow Law, the California Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law, and by waiving such rights, it consents to the Agreement as final.

3. Each Party represents, warrants, and agrees that it has received or been advised to seek independent legal advice from an attorney with respect to the advisability of executing this Agreement.

4. Licensees under the Escrow Law are required to file their Annual Report within one hundred and five (105) days after the close of their fiscal year. Diamond hereby acknowledges that Diamond was and is responsible for filing the Annual Report to the Commissioner, regardless of whether a third – party, including, but not limited to, a certified public accountant, acting on their behalf fails to file the Annual Report.

5. The Parties hereby agree that, in complete and final resolution of the matters set forth in the Notice, penalties owed as referenced in Paragraph “G” herein, Diamond shall remit to the Commissioner \$1000.00. The \$1000.00 penalty for failure to submit the Annual Report shall settle all of Diamonds financial obligations with the Commissioner with regard to the Annual Report, and shall be due and payable upon the execution of this Agreement.

6. The Parties also hereby agree that, also in complete and final resolution of the matters set forth in the Notice, Commissioner mandates the suspension of Diamond’s Escrow License for one (1) week and Diamond shall comply with a one (1) week suspension of Diamonds’ Escrow License. The suspension of Diamond’s Escrow License shall commence on Monday, May 17, 2010 until the end of Monday, May 24, 2010. A true and correct copy of the Order to Suspend Escrow License for one week are attached and incorporated herein as “Exhibit 2”.

7. The Commissioner reserves the right to bring any future actions against Diamond or any of its current and former officers, directors, employees, agents, affiliates, or successors for any

1 and all future violations of the California Escrow Law. This Agreement shall not serve to exculpate
2 Diamond or any of its current and former officers, directors, employees, agents, affiliates, or
3 successors for any and all future violations of the California Escrow Law.

4 8. The Parties hereby acknowledge and agree that this Agreement is intended to
5 constitute a full, final and complete resolution of the Commissioner's Notice referenced above. The
6 Parties further acknowledge and agree that nothing contained in this Agreement shall operate to limit
7 the Commissioner's ability to assist any other agencies with any administrative, civil or criminal
8 prosecution brought by any such agency against Diamond based upon any of the activities alleged in
9 this matter or otherwise. This Agreement shall not become effective until mutually executed by both
10 Parties. Each of the Parties represents, warrants, and agrees that in executing this Agreement it has
11 relied solely on the statements set forth herein and has placed no reliance on any statement,
12 representation, or promise of any other party, or any other person or entity not expressly set forth
13 herein, or upon the failure of any party or any other person or entity to make any statement,
14 representation or disclosure of anything whatsoever. The Parties have included this clause: (1) to
15 preclude any claim that any party was in any way fraudulently induced to execute this Agreement;
16 and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or contradict the
17 terms of this Agreement.

18 9. This Agreement, including the attached Exhibits, is the final written expression and
19 the complete and exclusive statement of all the Agreements, conditions, promises, representations,
20 and covenants between the Parties with respect to the subject matter hereof, and supercedes all prior
21 or contemporaneous Agreements, negotiations, representations, understandings, and discussions
22 between and among the Parties, their respective representatives, and any other person or entity.

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

1 11. The Commissioner shall file this Agreement with the Office of Administrative
2 Hearings five (5) business days after execution by all Parties.

3 12. This Agreement may be executed in any number of counterparts by the Parties and when
4 each party has signed and delivered at least one such counterpart to the other Party, each counterpart
5 shall be deemed an original and taken together shall constitute one and the same Agreement.

6 13. No amendment, change or modification of this Agreement shall be valid or binding to
7 any extent unless it is in writing and signed by all of the Parties affected by it.

8 14. The headings to the paragraphs of this Agreement are inserted for convenience only and
9 will not be deemed a part hereof or affect the construction or interpretation of the provisions hereof.
10 This Agreement shall be construed and enforced in accordance with and governed by California law.

11 15. Each party covenants that they possess all necessary capacity and authority to sign and
12 enter into this Agreement. Each party warrants and represents that such party is fully entitled and duly
13 authorized to enter into and deliver this Agreement. In particular, and without limiting the generality
14 of the foregoing, each party warrants and represents that it is fully entitled to enter into the covenants,
15 and undertake the obligations set forth herein.

16 16. Diamond Quality Escrow, Inc. acknowledges that this Agreement is a public record.

17 17. The Parties each represent and acknowledge that it is executing this Agreement
18 completely voluntarily and without any duress or undue influence of any kind from any source.

19 18. Notice shall be provided to each party at the following addresses:

20 If to Respondent to:

21 Ms. Lisa Price
22 President
23 Diamond Quality Escrow, Inc.
24 15325 Fairfield Ranch Road, Suite 160
25 Chino Hills, CA 91709

26 If to the Commissioner to:

27 Marisa I. Urteaga-Watkins, Esq.
28 Department of Corporations

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1515 K Street, Suite 200
Sacramento CA 95814

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

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Agreement on the dates set forth opposite their respective signatures.

Dated: 5/24/10

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____

ALAN S. WEINGER
Deputy Commissioner
Enforcement Division

DIAMOND QUALITY ESCROW, INC.

Dated: 5/13/10

By _____

LISA PRICE
President