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

10
11 In the Matter of THE CALIFORNIA) Case No.: 963-1870
CORPORATIONS COMMISSIONER,)
12)
13 Complainant,) NOTICE AND SUMMARY OF FINDINGS
14 vs.) PURSUANT TO CALIFORNIA FINANCIAL
15 DAY & NITE ESCROW, INC.,) CODE SECTION 17621
16 Respondent.)
17)
18)

19 TO: DAY & NITE ESCROW, INC.
20 c/o Doris A. Morrow, President
21 161 E. Orangethorpe, Space 22
Placentia, California 92870-6415

22 EAST WEST BANK
23 1900 Avenue of the Stars
24 Los Angeles, California 90067

25 Please take notice that the California Corporations Commissioner finds:

26 1. DAY & NITE ESCROW, INC., a California corporation ("DAY & NITE" or
27 "Respondent") is an escrow agent holding a valid and unrevoked license issued by the California
28 Corporations Commissioner ("Commissioner"), pursuant to the Escrow Law of the State of
California (California Financial Code sections 17000).

1 2. On or about December 21, 2001, DAY & NITE applied to the Commissioner to surrender
2 its escrow agent’s license.

3 3. On or about December 27, 2002, the Commissioner commenced proceedings to
4 impose conditions on the surrender of the escrow agent’s license of DAY & NITE. One such
5 condition was that DAY & NITE file with the Commissioner within 105 days from the date of the
6 surrender application a closing audit prepared by a certified public accountant that is acceptable to
7 the Commissioner. DAY & NITE was served with the proceedings in accordance with Government
8 Code section 11505. DAY & NITE did not request a hearing within the time period allowed by
9 statute, or otherwise.

10 4. On or about April 10, 2002, an Order Imposing Conditions Upon Surrender of
11 Escrow Agent’s License was issued by the Commissioner against DAY & NITE.

12 5. The closing audit from DAY & NITE required pursuant to Financial Code section
13 17406(c) has never been received by the Commissioner despite its due date of April 8, 2002.
14 Written demands from the Commissioner to DAY & NITE for submission of the closing audit have
15 gone unanswered.

16 6. In April 2002, the Commissioner began receiving numerous complaints from
17 principals to escrows handled by DAY & NITE, or their representatives, regarding their need for
18 copies of documents and/or re-issuance of checks. In a written communication to the Commissioner
19 dated May 17, 2002, DAY & NITE refused to handle any of these matters claiming that Fidelity
20 National Title (“Fidelity”) was now responsible for all open and closed files pursuant to a December
21 2001 Letter of Understanding. DAY & NITE has since ceased all communications with the
22 Commissioner on these matters or otherwise. The Letter of Understanding between DAY & NITE
23 and Fidelity clearly provides that DAY & NITE, not Fidelity, will be responsible for responding to
24 all closed file inquiries and/or handling any uncashed checks or outstanding balances involving
25 closed files.

26 7. On or about December 21, 2001, DAY & NITE caused the sum of \$2,580,290.50 to
27 be wired to Fidelity to cover all outstanding balances on the open escrow files transferred by DAY &
28 NITE to Fidelity for handling pursuant to the December 2001 Letter of Understanding.

1 8. On or about April 17, 2002, DAY & NITE closed its trust account at East West Bank
2 by having a cashier’s check in the amount of \$142,417.03 issued to Fidelity. This cashier’s check,
3 which the Commissioner believes comprises trust monies for closed escrow file balances and/or
4 outstanding checks, has never been tendered to Fidelity, and according to East West Bank, remains
5 outstanding to this date. No principal to an escrow at DAY & NITE has authorized this
6 disbursement. The Commissioner has attempted to contact DAY & NITE regarding this cashier’s
7 check to no avail.

8 9. The unauthorized disbursement of \$142,418.03 may have caused a shortage to exist
9 in the trust account in violation of California Code of Regulations, title 10, section 1738.1.

10 10. For purposes of attempting to ascertain the status of the trust account, the
11 Commissioner, on May 21, 2002, made written demand to DAY & NITE pursuant to Financial Code
12 section 17406 (e) to submit its trust account bank reconciliations for December 2001, and January,
13 February, March, and April 2002 along with copies of the bank statements. DAY & NITE has failed
14 to submit these reports to the Commissioner, and continues to this date in its failure to submit these
15 reports to the Commissioner.

16 11. California Financial Code section 17621 provides in pertinent part:

17 Whenever it appears to the Commissioner that any escrow agent subject
18 to this division:

19 ...

20 (b) Is conducting escrow business in an unsafe and unauthorized manner;

21 (c) Has violated its charter or any law of the State of California;

22 ...

23 the commissioner shall dispatch a written notice and summary of findings,
24 as referred to in Section 17415, to the principal officer of the escrow agent
25 involved or to its manager of record; and such escrow agent shall be afforded
26 a reasonable opportunity to comply or otherwise effect such remedy as the
27 commissioner may deem acceptable. However, should the escrow agent so
28 notified fail to comply within five days of receipt of the notice, or as soon as
it appears to the commissioner that no compliance is possible, or in the event
prompt delivery of the prescribed written notice is impossible, the commissioner
may forthwith take possession of the property and business of such escrow agent
and retain possession until such escrow agent resumes business or its affairs be
finally liquidated as provided in this chapter. The escrow agent, with the consent
of the commissioner, may resume business upon such conditions as the
commissioner may prescribe.

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12. Based upon the foregoing, the Commissioner finds that DAY & NITE has violated Financial Code sections 17406 (c), 17406 (e), and 17414 (a)(1) and California Code of Regulations, title 10, sections 1738, 1738.1 and 1738.2, is conducting escrow business in an unsafe and unauthorized manner, and that no compliance is possible.

13. Pursuant to Financial Code sections 17621 and 17630, it is also necessary that a conservator be appointed as specified in the accompanying Order Appointing Luhmen Tesoro Pursuant to Financial Code section 17630.

Dated: June 11, 2002
Los Angeles, CA

DEMETRIOS A. BOUTRIS
California Corporations Commissioner

By _____
Steven C. Thompson
Special Administrator, Escrow Law