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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)
12 CALIFORNIA CORPORATIONS) **PETITION FOR LIMITED RECEIVER**
COMMISSIONER,)
13)
14 Petitioner,)
15 vs.)
16 WEST ESCROW, INC., a California)
17 Corporation, and WEST EXCHANGE, INC., a)
California Corporation,)
18)
19 Respondents.)

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. Code¹, § 17000 et seq.)(“Escrow Law”), and the regulations issued pursuant
23 thereto (Cal. Code Regs., tit. 10, §§ 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 Records of West Escrow, Inc. pursuant to Code section 17621, respectfully states:
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28 _____

¹ All further statutory references are to the Financial Code ("Code"), unless otherwise indicated.

1 1. On June 3, 2002, Petitioner issued an escrow agent's license to West Escrow, Inc., a
2 California corporation, ("West Escrow" or "Respondent") pursuant to the Escrow Law. Petitioner
3 authorized West Escrow to engage in business as an escrow agent within the State of California
4 under that license. The license is currently valid and unrevoked. Respondent's principal place of
5 business was 315 S. Beverly Drive, Suite 515, Beverly Hills, California.

6 2. Angie West ("Ms. West") is, and was at all times relevant herein, the president,
7 director, escrow manager, and sole shareholder of West Escrow.

8 3. West Exchange, Inc. ("West Exchange" or "accommodator") is a wholly-owned
9 company of Ms. West and was the accommodator employed by West Escrow in all Internal Revenue
10 Code section 1031 exchange transactions for West Escrow customers. On or about March 2, 2009,
11 the California Secretary of State suspended West Exchange for its failure to pay state taxes.

12 4. On or about November 14, 2008, Petitioner, by and through his staff, began a special
13 examination of the books and records of West Escrow. The special examination commenced after
14 the Department of Corporations ("Department") learned that Ms. West had passed away from a
15 possible drug overdose, which left West Escrow without any control person or escrow manager. The
16 special examination revealed that West Escrow and West Exchange, by and through Ms. West, had
17 caused a trust account shortage of at least \$528,934.38 for the period ending November 17, 2008, in
18 violation of California Code of Regulations, title 10, section 1738.1.

19 5. The special examination further revealed that West Escrow, by and through Ms.
20 West, had wrongfully transferred trust funds in the amount of \$39,300.00 from the trust account of
21 West Escrow into the general account and/or payroll accounts of West Escrow between March 2008
22 and August 2008 in violation of Code section 17409. The commingling of trust funds is prohibited
23 because of the serious risk of misuse and loss. Thereafter, the wrongfully transferred trust funds
24 were used to pay the operating and/or payroll expenses of West Escrow in violation of Code section
25 17414, subdivision (a)(1), and California Code of Regulations, title 10, sections 1738 and 1738.2.

26 6. Furthermore, in connection with the trust account shortages, West Escrow, by and
27 through Ms. West, falsified escrow records by creating false receipts during the period July 2007
28 through July 2008 in violation of Code section 17414, subdivision (a)(2).

- 1 7. In addition, the Petitioner discovered that West Escrow had failed:
- 2 (a) to perform its monthly bank reconciliations on the trust account since at least April
- 3 30, 2008, in violation of Code section 17404 and California Code of Regulations, title 10, section
- 4 1732.2;
- 5 (b) to comply with the bonding requirements of Code section 17202 in that effective
- 6 October 19, 2008, Bond Number 1006155 issued by Accredited Surety and Casualty Company in
- 7 favor of West Escrow had expired and no replacement bond was obtained in violation of section
- 8 17202 of the Code;
- 9 (c) to pay its annual assessment as was required by Code section 17207;
- 10 (d) to employ an escrow manager, in that on or about November 12, 2008, Ms. West,
- 11 West Escrow's president, director, escrow manager, and sole shareholder, passed away leaving West
- 12 Escrow without any escrow manager in violation of Code section 17200.8; and
- 13 (e) to report employees to the Commissioner, in that it employed several individuals in
- 14 its escrow business without having first notified the Petitioner of their employment in violation of
- 15 Code section 17419 and California Code of Regulations, title 10, section 1726.
- 16 8. During the course of the Department's special examination it was also discovered, in
- 17 connection with the trust account shortage described above in paragraph 4., that on or about July 10,
- 18 2007, West Escrow, by and through Ms. West, disbursed, without authorization, \$440,132.03 in trust
- 19 account funds for a West Exchange Internal Revenue Code section 1031 exchange transaction. The
- 20 disbursement should have been made from West Exchange's general account. As of October 31,
- 21 2008, West Exchange's general account held a balance of \$19,252.22. West Exchange has failed to
- 22 return all trust funds and other monies to West Escrow.
- 23 (a) On or about October 26, 2007, West Escrow, by and through Ms. West, disbursed,
- 24 without authorization, \$18,825.00 in trust account funds to the West Exchange general account. The
- 25 disbursement was unauthorized because there was no signed escrow instruction authorizing the
- 26 disbursement. The disbursal of West Escrow trust account funds caused a shortage in the trust
- 27 account of \$18,825.00.
- 28 (b) Finally, on or about August 28, 2008, West Escrow, by and through Olivia Pena,

1 West Escrow's senior escrow officer, deposited a buyer's check, check number 1994, into West
2 Exchange's general account. Check number 1994 should have been deposited into West Escrow's
3 trust account, creating a trust shortage of \$36,000.00.

4 9. The transfers of trust funds between West Escrow's and West Exchange's accounts
5 are of such nature and duration that it is impossible to complete a reconciliation of West Escrow's
6 trust account and obtain the exact shortage therein without complete access and control over West
7 Exchange's books, records, and accounts.

8 10. In that Ms. West has passed away, Petitioner has been unable to make a demand upon
9 West Escrow to cure the trust account shortage and Petitioner is not aware of any assets of West
10 Escrow available to cure the trust account shortage.

11 11. Petitioner determined that the manner in which West Escrow was conducting its
12 business was unsafe and injurious, and on November 19, 2008, issued West Escrow an Order to
13 Discontinue Escrow Activities Pursuant to Financial Code Section 17415.

14 12. The inability of West Escrow to cure the aforementioned defects caused Petitioner, on
15 March 19, 2009, to issue a Demand For and Order Taking Possession of the Trust Accounts and
16 Escrow Records of West Escrow Pursuant to Financial Code Section 17621. The Order was
17 necessary to offer any possible protection to the escrow customers of West Escrow.

18 13. Pursuant to the Order, the Commissioner took possession of the trust accounts and
19 existing escrow records of West Escrow on March 19, 2009.

20 14. Pursuant to Code section 17622, West Escrow had ten (10) days after the taking to
21 apply to the superior court for an order to enjoin further proceedings by Petitioner. The ten (10)
22 days provided by Code section 17622 have expired, and there has been no action commenced by
23 West Escrow to contest the actions of the Commissioner described in paragraph 13., above.

24 15. The Petitioner believes that a receivership is the only feasible manner in which to
25 further pursue the avenues necessary to identify all trust claimants and thereafter distribute trust
26 monies given that insufficient West Escrow assets exist from which to otherwise pursue the
27 necessary avenues.

28 16. Pursuant to Code section 17636, the Petitioner is authorized to petition the superior

1 court for the appointment of a receiver to wind up the affairs of a licensee after having taken
2 possession of the licensee.

3 17. The Petitioner submits that the appointment of a receiver by this Court over West
4 Escrow is necessary to properly wind up the trust account affairs of West Escrow and to provide the
5 greatest protection possible to the customers of West Escrow. Furthermore, a situation exists
6 wherein irreparable harm will be suffered by the public unless and until a receiver is appointed over
7 West Escrow in order to wind up its trust account affairs.

8 18. Pursuant to section 11180 of the Government Code, the Commissioner, as head of the
9 Department of Corporations, may make investigations and prosecute actions concerning all matters
10 relating to the business activities and subjects under the jurisdiction of the Department; and
11 violations of any law or rule or order of the Department. (Govt. Code, § 11180, subd. (a)-(b).) As
12 stated previously, West Escrow is a licensee of the Commissioner; the head of the Department of
13 Corporations. Pursuant to Code section 17636 the Commissioner may petition for the appointment
14 of a receiver to liquidate the affairs of a licensee once she has taken possession of the business.
15 Further, West Escrow, with the aid, assistance, and benefit to West Exchange, has committed serious
16 violations of the Escrow Law that have resulted in a shortage to the escrow trust account. Pursuant
17 to Government Code section 11180, this is sufficient cause for the Commissioner to bring an action
18 against both West Escrow and West Exchange.

19 19. Moreover, as stated above in paragraph 3., West Exchange is wholly owned by West
20 Escrow's president, director, escrow manager, and sole shareholder, Ms. West, and was used
21 exclusively to handle all Internal Revenue Code section 1031 exchange transactions for West
22 Escrow customers. Accordingly, the Commissioner finds that West Escrow and West Exchange
23 have completely ignored their separate corporate existence in accomplishing their wrongdoing.
24 West Escrow has been called upon to fulfill the obligations of West Exchange to its customers by
25 using West Escrow's trust account funds. Thus, West Escrow and West Exchange are alter egos of
26 one another. (*See First Western Bank and Trust Co. v. Bookasta* (1968) 267 Cal.App.2d 910, 915.)
27 The doctrine of alter ego is an equitable one. California courts frequently use it to achieve a just and
28 equitable result. (*NEC Electronics v. Hurt* (1989) 208 Cal.App.3d 772, 777.) Courts will disregard

1 the corporate form and "pierce the corporate veil" whenever necessary to prevent fraud and achieve
2 equity. (*Lyons v. Stevenson* (1977) 65 Cal.App.3d 595, 606.)

3 20. In this instance, West Exchange was unjustly enriched by West Escrow's violations of
4 the Escrow Law by and through the assistance of West Exchange. The transference of funds
5 between West Escrow and West Exchange was according to the financial difficulties and necessities
6 of West Exchange. West Exchange was the beneficiary of the wrongdoing described herein at the
7 expense of West Escrow's escrow principals. Equity demands this situation be remedied. This can
8 only be accomplished by placing West Escrow and West Exchange under common receivership.

9 Wherefore, the Petitioner prays:

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

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

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

26 (a) To review, observe, discover and make notes regarding all the trust property of, or in
27 the possession of West Escrow and West Exchange, wherever situated, including all trust accounts
28 of West Escrow in financial depository institutions, all bank accounts of West Exchange in financial

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

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

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

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

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

24 (f) To be the sole signator on all trust bank accounts and bank accounts of West Escrow
25 and West Exchange;

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

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

28 (i) To make such payments and disbursements from the trust property so taken into

1 custody, control, and possession of the receiver or otherwise received by him, as may be necessary
2 and advisable in discharging his duties as receiver;

3 (j) To preserve trust property;

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

9 (l) To divert, take possession of and secure all mail of West Escrow and West Exchange,
10 in order to screen such mail for correspondence relating to the trust property, returning non-property
11 mail to the legal heirs of Ms. West, the president, director, escrow manager, and sole shareholder of
12 West Escrow and West Exchange, and to effect a change in the rights to use any and all post office
13 boxes and other mail collection facilities used by West Escrow and West Exchange.

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

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

26 D. West Escrow and West Exchange and their respective officers, directors, agents,
27 servants, employees, successors, assigns, affiliates, and other persons or entities under their control
28 and all persons or entities in active concert or participation with them, and each of them, to turn over

1 to the receiver records, documentation, charts and/or descriptive material, which relate, directly or
2 indirectly, to the trust property of West Escrow and West Exchange or otherwise belonging to their
3 escrow and accommodator transaction parties, now held by West Escrow and West Exchange or any
4 of them.

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

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

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

27 G. At such time as the financial condition of the property has been ascertained by the
28 receiver and at such time as the trust property has been marshaled and all trust liabilities have been

1 determined, the receiver shall file an application with the Court for disposition of such trust property.
2 The application shall propose in detail the winding up and the distribution of trust funds. If
3 necessary, the receiver shall be authorized to propose and carry out a partial distribution, retaining
4 such funds pending final distribution as are necessary to finance any pertinent litigation or the
5 remaining operation of the receivership.

6 H. The receiver shall be paid an hourly rate of \$460.00 for his services and shall be
7 entitled to reimbursement for usual and customary expenses, including out-of-pocket expenditures
8 on behalf of the receivership estate, which shall be paid from the trust and accommodator funds of
9 West Escrow and West Exchange, and that the State of California shall have no liability whatsoever
10 for any costs, fees and/or out pocket expenses that may result from such receivership. The receiver
11 and any professional hired by him shall make application to this Court on a monthly basis for
12 payment of reasonable fees and expenses incurred by the receiver or such professional, and shall be
13 entitled to payment of said fees and expenses on account as hereinafter provided. Copies of such
14 applications to the Court shall be promptly served on all attorneys of record for parties in this action,
15 who shall have ten (10) calendar days following the filing and service of such application to file any
16 objections thereto with the Court, and serve any such objections by facsimile and mail on the
17 receiver. If no objections are filed with the Court and served within the ten (10) calendar day period,
18 the receiver shall thereupon draw funds from the receivership estate sufficient to pay one-hundred
19 percent (100%) of out-of-pocket expenses and seventy-five percent (75%) of such fees, including all
20 professional fees, and other expenses such as in office copying and facsimile charges, without
21 further order of the Court. If any objections are filed, the receiver may draw funds from the
22 receivership estate sufficient to pay any amounts as to which there is no objection, and the Court will
23 conduct a hearing on any objections upon motion of the receiver or the objecting party. At such
24 hearing, the compensation of the receiver or other professional making application, as well as
25 allowable disbursements and expenses, will be determined by the Court, and the receiver will be
26 directed to draw funds from the receivership estate to pay one-hundred percent (100%) and seventy-
27 five percent (75%), respectively, of the amounts so determined by the Court. Notwithstanding such
28 interim monthly payments of fees and expenses, all fees and expenses shall be submitted to the

1 Court for its approval by a properly noticed request for fees, stipulation of all parties or the receiver's
2 Final Account and Report. Upon approval of the fees and expenses of the receiver or other
3 professional, any hold back amounts still due and owing to the receiver or other professional shall be
4 paid from the receivership estate.

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

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

12 Dated: April 16, 2009
13 Los Angeles, California

PRESTON DuFAUCHARD
California Corporations Commissioner

14 By _____
15 Blaine A. Noblett
16 Attorney for Petitioner
17 California Corporations Commissioner
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