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8
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
10 OF THE STATE OF CALIFORNIA

11 In the Matter of:) ESCROW LICENSE NO.: 963-7017
12)
13 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,)
14)
15 Complainant,) CONSENT ORDER
16 v.)
17 TULARE COUNTY ESCROW CO.)
18 Respondent.)
19)
20)

21
22 The Commissioner of Business Oversight (Commissioner) and Tulare County Escrow Co.
23 (Tulare) (collectively, the Parties), enter into this Consent Order with respect to the following facts:

24 **I.**

25 **Recitals**

26 A. Tulare is a California corporation in good standing, duly formed and existing pursuant to the
27 laws of the State of California with a principal place of business at 308 West Oak Avenue, Visalia,
28 California.

1 B. Tulare is an escrow agent licensed by the Commissioner under the Escrow Law (Fin. Code, §
2 17000 et seq.) (Escrow Law), license number 963-7017. Tulare received its escrow agent’s license
3 on June 10, 1974.

4 C. On March 23, 2018, Tulare notified the Commissioner in writing that it was closing its
5 business and no longer desired to be licensed. Tulare tendered its license to the Commissioner on
6 that date.

7 D. Under Financial Code section 17600, Tulare was required to submit a closing audit to the
8 Commissioner by July 9, 2018. Tulare failed to timely submit its closing audit. The Commissioner
9 did not receive Tulare’s closing audit until December 13, 2018.

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

12 F. The Commissioner finds that this action is appropriate, in the public interest, and consistent
13 with the purposes fairly intended by the policies and provisions of this law.

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

16 **I.**

17 **Terms and Conditions**

18 1. Purpose. The purpose of this Consent Order is to resolve Tulare’s failure to timely file its
19 closing audit in a manner that avoids the expense of court proceedings and a hearing, is in the
20 public interest, protects consumers, and is consistent with the purposes, policies, and provisions of
21 the Escrow Law. This Consent Order is entered into for the purpose of judicial economy and
22 expediency, and to avoid the expense of a hearing, and possible further court proceedings.

23 2. Finality of Consent Order. Tulare hereby agrees to comply with this Consent Order and,
24 further, stipulates that this Consent Order is hereby deemed a final and enforceable order.

25 3. Waiver of Hearing Rights. Tulare acknowledges that the Commissioner is ready, willing,
26 and able to proceed with the filing of an administrative enforcement action to revoke Tulare’s
27 escrow agent license, and Tulare hereby waives the right to a hearing, and to any reconsideration,
28 appeal, or other right to review which may be afforded pursuant to the Escrow Law. Tulare further

1 expressly waives any requirement for the filing of an Accusation that may be afforded by
2 Government Code section 11415.60, subdivision (b); the California Administrative Procedure Act,
3 the California Code of Civil Procedure, or any other provision of law; and by waiving such rights,
4 Tulare effectively consents to this Consent Order becoming final.

5 4. License Surrender. Tulare notified the Commissioner in writing on or around March 23,
6 2018 that it desired to no longer be licensed and tendered its escrow agent's license and other
7 indicia of licensure to the Commissioner on that date (Notice of License Surrender). Tulare failed
8 to submit a closing audit to the Commissioner within 105-days of the Notice of License Surrender
9 as required under Financial Code section 17600. Tulare submitted a closing audit to the
10 Commissioner on December 13, 2018. Tulare agrees to comply with the Commissioner's request
11 for additional information (if needed) and cure any deficiencies in the closing audit (if any).

12 5. License Surrender Date. Tulare's license will not be surrendered until the Commissioner
13 accepts the surrender.

14 6. Full and Final Settlement. The Parties hereby acknowledge and agree that this Consent
15 Order is intended to constitute a full, final, and complete resolution of the 2018 license surrender
16 request and that no further proceedings or actions will be brought by the Commissioner in
17 connection with this matter either under the Escrow Law, or any other provision of law, excepting
18 therefrom any proceeding to enforce compliance with the terms of this Consent Order, or a
19 proceeding or action based upon discovery of new and further violations of the Escrow Law which
20 do not form the basis of this Consent Order or which Tulare knowingly concealed from the
21 Commissioner.

22 7. Binding. This Consent Order is binding on all the Parties' heirs, assigns, and/or successors
23 in interest.

24 8. Commissioner's Duties. The Parties further acknowledge and agree that nothing contained in
25 this Consent Order shall operate to limit the Commissioner's ability to assist any other agency (city,
26 county, state, or federal) with any prosecution, administrative, civil or criminal, brought by any such
27 agency against Tulare or any other person based upon any of the activities alleged in these matters
28 or otherwise.

1 9. Future Actions by Commissioner. This Consent Order may be revoked, and the
2 Commissioner may pursue any and all remedies available under law against Tulare if the
3 Commissioner later discovers that Tulare knowingly or willfully withheld information used for and
4 relied upon in this Consent Order. Tulare agrees that this Consent Order does not resolve any
5 penalties that may be assessed by the Commissioner upon discovery of new and further violations
6 of the Escrow Law.

7 10. Failure to Comply with Consent Order. Tulare acknowledges that failure to comply with the
8 terms of this Consent Order shall be a breach of this Consent Order and shall be cause for the
9 Commissioner to take enforcement action under the Escrow Law, revoke Tulare’s escrow agent
10 license, and/or deny any pending application(s) of Tulare or its successors and assigns, by whatever
11 names they might be known until the terms are met. Tulare hereby waives any notice of hearing
12 rights to contest the immediate revocation of its escrow agent license which may be afforded under
13 the Escrow Law, the California Administrative Procedure Act, the Code of Civil Procedure, or any
14 other provision of law in connection therewith.

15 11. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that it has
16 had an opportunity to seek independent advice from its attorney(s) and/or representatives with
17 respect to the advisability of executing this Consent Order.

18 12. Counterparts. The Parties agree that this Consent Order may be executed in on or more
19 separate counterparts, each of which when so executed, shall be deemed an original. Such
20 counterparts shall together constitute and be one and the same instrument.

21 13. Waiver, Modifications and Qualified Integration. The waiver of any provision of this
22 Consent Order shall not operate to waive any other provision set forth herein. No waiver,
23 amendment, or modification of this Consent Order shall be valid or binding to any extent unless it
24 is in writing and signed by all of the Parties affected by it.

25 14. Headings and Governing Law. The headings to the paragraphs of this Consent Order are
26 inserted for convenience only and will not be deemed a part hereof or affect the construction or
27 interpretation of the provisions hereof. This Consent Order shall be construed and enforced in
28 accordance with and governed by California law.

1 15. Full Integration. Each of the Parties represents, warrants, and agrees that in executing this
2 Consent Order it has relied solely on the statements set forth herein and has had the opportunity to
3 seek the legal advice of its own counsel. Each of the Parties further represents, warrants, and
4 agrees that in executing this Consent Order it has placed no reliance on any statement,
5 representation, or promise of any other party, or any other person or entity not expressly set forth
6 herein, or upon the failure of any party or any other person or entity to make any statement,
7 representation or disclosure of anything whatsoever. The Parties have included this clause: (1) to
8 preclude any claim that any party was in any way fraudulently induced to execute this Consent
9 Order; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or
10 contradict the terms of this Consent Order.

11 16. Presumption From Drafting. In that the Parties have had the opportunity to draft, review
12 and edit the language of this Consent Order, no presumption for or against any party arising out of
13 drafting all or any part of this Consent Order will be applied in any action relating to, connected to,
14 or involving this Consent Order. Accordingly, the Parties waive the benefit of Civil Code section
15 1654 and any successor or amended statute, providing that in cases of uncertainty, language of a
16 contract should be interpreted most strongly against the party who caused the uncertainty to exist.

17 17. Voluntary Agreement. Tulare enters into this Consent Order voluntarily and without
18 coercion and acknowledges that no promises, threats, or assurances have been made by the
19 Commissioner or any officer, or agent thereof, about this Consent Order.

20 18. Effective Date. This Consent Order shall not become effective until signed by all Parties
21 and delivered by the Commissioner’s counsel by email to Tulare’s president, Karen Neiderreiter, at
22 karen@tularecountyescrow.com

23 19. Public Record. Tulare acknowledges that this Consent Order is a public record.

24 20. Signatures. A fax signature or e-mail scanned signature of this Consent Order shall be as
25 effective as an original ink signature.

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21. Authority to Execute. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order.

Dated: 1/30/19 JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 1/25/19 TULARE COUNTY ESCROW CO.

By _____
KAREN NIEDERREITER
President