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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.: 963-2696
12)
13 THE COMMISSIONER OF BUSINESS) ACCUSATION
OVERSIGHT,)
14)
15 Complainant,)
16)
17 v.)
18)
MODEL ESCROW, INC.,)
19)
Respondent.)
20)
21)

22 The Commissioner of Business Oversight (Commissioner) is informed and believes, and
23 based upon such information and belief, alleges and charges Respondent Model Escrow, Inc. (Model)
24 as follows:

25 **I.**

26 **Jurisdiction**

27 1. The Commissioner has jurisdiction over the licensing and regulation of persons and
28 entities engaged in the business of receiving escrows for deposit or delivery under the Escrow Law

1 (Fin. Code, § 17000 et seq.) (Escrow Law). The Commissioner is authorized to administer and
2 enforce the Escrow Law and the rules and regulations promulgated in title 10 of the California Code
3 of Regulations (CCR).

4 2. The Commissioner brings this action to suspend Model’s escrow agent’s license under
5 Financial Code section 17608.

6 **II.**

7 **Statement of Facts**

8 3. Model, a California corporation, is an escrow agent licensed by the Commissioner
9 under license number 963-2696, with its principal place of business located at 1211 Center Court
10 Drive, Suite 209, Covina, California.

11 4. On September 6, 2017, the Commissioner began a regulatory examination of Model’s
12 business.

13 5. Based on the examination, the Commissioner found multiple violations of the Escrow
14 Law stemming from Model’s failure to properly reconcile its trust account. As described in more
15 detail below, during the period from approximately May 10, 2017 through September 5, 2017, Model
16 staff deposited trust funds into Model’s general account on nine occasions. Model failed to timely
17 identify the deposit error and did not return all of the trust funds it had deposited into its general
18 account for a period of approximately nine months. By depositing trust funds into its general account,
19 Model caused debit balances to occur in six escrow files and disbursed trust funds without sufficient
20 credit balances to cover the disbursements it made from the escrows.

21 **Trust Funds Deposited Into General Account**

22 6. During the period May 10, 2017 through September 5, 2017, Model staff made nine
23 deposits into the company’s general account of trust funds totaling \$203,120.00 in violation of
24 Financial Code section 17409. Section 17409 requires escrow agents deposit all escrow funds into a
25 non-interest bearing checking account (trust account), and maintain those escrow funds separate,
26 distinct, and apart from the funds belonging to the escrow agent (*i.e.*, monies held in the escrow
27 agent’s general account).

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1 7. The Commissioner began an examination of the business on September 6, 2017.
2 During the exam, it came to the examiner’s attention that Model had deposited trust funds into its
3 general account in violation of Financial Code section 17409.

4 8. On September 11, 2017, Model transferred \$60,100.00 in customer trust funds from
5 the company’s general account to the trust account.

6 9. But between September 11, 2017 and March 12, 2018, Model continued to hold
7 \$143,020.00 in customer trust funds in its general account.

8 10. Model’s CPA identified the trust funds held in the company’s general account in the
9 licensee’s December 31, 2017 annual audit report and provided the following comment:

10 Two deposits totaling \$143,000.00 intended for the company’s trust
11 account were credited to the company’s general account in error during
12 March [sic] and May 2017.¹ The company transferred \$143,000.00
13 from its general account to its trust account on March 12, 2018. This
14 adjustment did not cause an overdrawn balance. These funds were not
15 used at any time for the company’s operations while on deposit in the
16 general account.

17 11. But the Commissioner’s examiner’s review of Model’s general account bank
18 statements showed that during the period of approximately January 22, 2018 through February 16,
19 2018, Model did not have enough money in its general account to cover its daily operating expenses
20 and that the licensee relied on the trust funds it had deposited into its general account to cover
21 company expenses.

22 12. For example, on February 15, 2018, the examiner identified a hypothetical \$24,442.83
23 shortage in Model’s general account. Stated another way, but for the trust funds deposited into
24 Model’s general account, the licensee would not have had sufficient funds in its general account to
25 cover the company’s operating expenses on February 15, 2018.

26 13. On February 20, Model transferred earned escrow fees from the trust account to the
27 general account, which corrected the general account shortage identified by the Commissioner’s
28 examiner.

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¹ Model made the two deposits into the general account (as referenced in the CPA’s note) in May and *June* of 2017.

1 14. Model's failure to properly reconcile its trust account and identify the erroneous
 2 deposit issue violated CCR section 1732.2, which requires licensees to reconcile the trust account on
 3 a monthly basis. The deposit errors the examiner identified were reflected in Model's trust account
 4 bank reconciliations as reconciling items from about May 2017 to February 2018, but the
 5 reconciliations were not completely corrected for approximately eight to nine months. Had Model
 6 properly reconciled its trust account, the trust funds deposited into the company's general account
 7 would have been discovered and corrected in a timely fashion. In failing to properly reconcile the
 8 trust account, Model placed consumers at risk of a trust loss.

9 **Escrow Transaction Violations**

10 Escrow File No. 001089 -DG

11 15. On June 27, 2017, Model received a check in the amount of \$20.00 from a title
 12 company for a buyer refund. That same day, Model staff mistakenly issued a "wire-in" receipt
 13 (receipt number 622) for the \$20.00 check the licensee received from the title company.

14 16. On October 30, 2017, Model cancelled receipt number 622 and issued receipt number
 15 377 in its place (correctly representing receipt of the \$20.00 check on June 27).

16 17. On June 27, 2017, Model issued the \$20.00 title refund to the buyer, but Model
 17 mistakenly deposited the \$20 title refund check into the licensee's general account on June 28, 2017.
 18 As a result of that deposit error, Model disbursed trust funds without a sufficient credit balance in
 19 escrow to cover the disbursement in violation of CCR 1741.2.

20 18. In addition, as a result of the deposit error, Model caused a \$20.00 debit balance to
 21 occur in its trust account from June 27, 2017 to March 11, 2018, in violation of CCR 1738.1.

22 19. Model transferred the \$20.00 deposit from the general account to the trust account on
 23 March 12, 2018, thus correcting the debit balance it had caused to occur in the escrow file.

24 Escrow File No. 001091-DG

25 20. On May 9, 2017, Model issued receipt number 361 in the amount of \$30,000.00 for a
 26 buyer's deposit.

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1 21. But on May 10, Model deposited the buyer’s deposit into the licensee’s general
2 account in error, and Model did not transfer the \$30,000.00 to the trust account until September 11,
3 2017.

4 22. The buyer cancelled the escrow on or about June 29, 2017. Model refunded the
5 buyer’s \$30,000.00 deposit on June 29 without a sufficient credit balance in the escrow to cover the
6 disbursement in violation of CCR 1741.2.

7 23. Model’s refund of the buyer’s deposit on or about June 29 caused a debit balance to
8 occur in the trust account from June 29, 2017 (the date Model returned the buyer’s deposit) until
9 September 10, 2017 in violation of CCR 1738.1.

10 24. Model corrected the debit balance on September 11, when it transferred the
11 \$30,000.00 in trust funds from the general account to the trust account.

12 Escrow File No. 001093-DG

13 25. On or about May 19, 2017, Model issued receipt numbers 362 and 363 for buyer
14 deposits in the amounts of \$1,000.00 and \$2,000.00.

15 26. But on or about May 26, Model deposited the buyer’s deposits into the general
16 account in error, and Model did not transfer the buyer’s funds to its trust account until March 12,
17 2018.

18 27. On or about June 21, 2017, Model disbursed the seller’s proceeds from escrow without
19 a sufficient credit balance in escrow to cover the disbursement in violation of CCR section 1741.2.

20 28. Model’s disbursement of the seller’s proceeds caused a debit balance of \$3,000.00 to
21 occur in the trust account from June 21, 2017 until March 11, 2018 in violation of CCR 1738.1.

22 Escrow File No. 001094-DG

23 29. On June 6, 2017, Model issued receipt number 365 in the amount of \$140,000.00 after
24 receiving the borrower’s proceeds from a private lender, but that same day Model deposited the
25 borrower’s proceeds into the general account in error.

26 30. Model did not transfer the borrower’s funds from the general account to the trust
27 account until on or about March 12, 2018.

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1 31. As a result of the deposit error, Model maintained an insufficient credit balance in the
2 escrow to cover the \$140,000.00 disbursement it had issued when the escrow closed on June 7, 2017,
3 in violation of CCR 1741.2.

4 32. Model caused a true debit balance in the trust account from June 7, 2017 until March
5 11, 2018 in violation of CCR 1738.1.

6 Escrow File No. 001103-DG

7 33. On July 31, 2017, Model issued receipt number 367 for the buyer's deposit of
8 \$15,000.00.

9 34. Model deposited the buyer's deposit into the general account on August 1, 2017 in
10 error and did not transfer the funds to the trust account until September 11, 2017.

11 35. Model did not have a sufficient credit balance to cover the \$15,000.00 disbursement it
12 made on August 29, 2017, when Model disbursed funds from escrow, in violation of CCR section
13 1741.2.

14 36. As a result of the deposit error, Model caused a debit balance of \$15,000.00 to occur
15 in the trust account between August 29, 2017 and September 10, 2017 in violation of CCR 1738.1.

16 Escrow File No. 001108-DG

17 37. On August 24, 2017, Model issued receipt number 369 for the buyer's deposit of
18 \$3,000.00.

19 38. Model deposited the buyer's deposit into the general account in error on August 25,
20 2017 and did not transfer the buyer's deposit to Model's trust account until September 11, 2017.

21 39. As a result of Model's deposit error, when the buyer cancelled escrow and Model
22 returned the buyer's \$3,000.00 deposit on September 1, 2017, Model did not have a sufficient credit
23 balance in the escrow to cover the disbursement in violation of CCR 1742.1.

24 40. The \$3,000.00 disbursement Model made on September 1 caused a debit balance to
25 occur in the trust account from September 1, 2017 to September 10, 2017, in violation of CCR
26 1738.1.

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III.

Applicable Statutes

41. Financial Code section 17400 provides “The commissioner may from time to time make, amend, and rescind the rules, forms, and orders that are necessary to carry out the provisions of this division[.]”

42. Financial Code section 17409 provides in pertinent part:

All moneys deposited in escrow to be delivered upon the close of the escrow or upon any other contingency shall be deposited and maintained in a noninterest-bearing demand or checking account in a bank, a state or federal savings bank, or a state or federal savings association or in a noninterest-bearing account subject to immediate withdrawal in an industrial loan company insured by the Federal Deposit Insurance Corporation and approved to receive those moneys by the commissioner. Thereafter, these moneys may be deposited in an interest-bearing account in a bank, a state or federal savings bank, a state or federal savings association, an industrial loan company approved to receive those moneys by the commissioner, or a state or federal credit union, if the depositor is qualified for membership under the bylaws of that credit union, and the moneys are maintained separate, distinct, and apart from funds belonging to the escrow agent. Those funds, when deposited, are to be designated as “trust funds,” “escrow accounts,” or under some other appropriate name indicating that the funds are not the funds of the escrow agent[.]

43. Financial Code section 17608 provides in pertinent part:

The commissioner may, after notice and a reasonable opportunity to be heard, suspend . . . any license if he finds that:

(b) The licensee has violated any provision of this division or any rule made by the commissioner under and within the authority of this division.

(c) Any fact or condition exists which, if it had existed at the time of the original application for such license, reasonably would have warranted the commissioner in refusing originally to issue such license.

44. CCR section 1732.2 provides in pertinent part:

(a) An escrow agent shall establish and maintain currently the following books with reference to its escrow accounts:

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(1) Escrow ledger containing a separate ledger sheet for each escrow;
(2) Escrow liability controlling account;
(3) Cash receipt and disbursement journal or a file containing copies of all receipts and checks and/or check stubs of checks issued by the escrow agent as a medium of posting to the records referred to in subsections (1) and (2) in which case adding machine tapes of totals of receipts and checks shall be retained. The records referred to in subsections (1) and (2) shall be reconciled at least once each month with the bank statements of the "trust" or "escrow" account. The records referred to in subsection (1) shall be reconciled at least once each week with the escrow liability controlling account referred to in subsection (2)[.]

45. CCR section 1738.1 provides:

An escrow agent shall not withdraw, pay out, or transfer monies from any particular escrow account in excess of the amount to the credit of such account at the time of such withdrawal, payment, or transfer.

46. CCR section 1741.2 provides:

A check shall not be drawn, executed or dated prior to the existence, in the particular escrow account against which it is drawn, executed or dated, of a sufficient credit balance to cover said check.

IV.

Prayer

The Commissioner finds that, by reason of the foregoing, Model violated Financial Code section 17409 by depositing trust funds into its general account, failing to properly reconcile the trust account in violation of 1732.2, causing debit balances to occur in the trust account in violation of CCR section 1738.1, and issuing checks drawn on the trust account without sufficient credit balance in violation of CCR section 1741.2. Based on Model's violations of the Escrow Law, grounds exist to suspend the company's escrow agent's license for a period of up to three months.

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1 WHEREFORE, IT IS PRAYED that:

2 Under Financial Code section 17608, Model's escrow agent's license be suspended for a
3 period of up to three months.

4 Dated: July 11, 2019
5 Los Angeles, California

MANUEL P. ALVAREZ
Commissioner of Business Oversight

6 By: _____
7 BLAINE A. NOBLETT
8 Senior Counsel
9 Enforcement Division
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