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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. 963-1053
12 THE COMMISSIONER OF BUSINESS)
13 OVERSIGHT,) AMENDED ACCUSATION
14 Complainant,)
15 v.)
16 THE HERITAGE ESCROW COMPANY,)
17 Respondent.)
18

19 This Amended Accusation partially amends and supersedes the Accusation dated June 10,
20 2020.

21
22 The Complainant is informed and believes, and based upon such information and belief,
23 alleges and charges Respondent as follows:

24 **I.**

25 **Jurisdiction**

26 1. The Commissioner has jurisdiction over the licensing and regulation of persons and
27 entities engaged in the business of receiving escrows for deposit or delivery under the Escrow Law
28 (Fin. Code, § 17000 et seq.) (Escrow Law). The Commissioner is authorized to administer and

1 enforce the Escrow Law and the rules and regulations promulgated in title 10 of the California Code
2 of Regulations (CCR).

3 2. The Commissioner brings this action to suspend The Heritage Escrow Company's
4 escrow agent's license under Financial Code section 17608.

5 **II.**

6 **Statement of Facts**

7 3. The Heritage Escrow Company (HEC), is a California corporation and an escrow
8 agent licensed by the Commissioner under license number 963-1053. HEC's principal place of
9 business is located at 2855 Michelle Drive, Suite 270, Irvine, California 92606. HEC maintains 10
10 branch locations in California.

11 4. HEC is wholly owned by Heritage Closing Services, Inc.; a California corporation.
12 Heritage Closing Services, Inc. is wholly owned by First American Financial Corporation, a
13 Delaware corporation.

14 5. Kris Kartoizian is the current president of HEC.

15 6. On July 5, 2017, the Commissioner commenced a regulatory examination of the
16 books and records of HEC at its principal place of business at 2855 Michelle Drive, Suite 270,
17 Irvine, California 92606 (2017 Examination).

18 7. Financial Code section 17409.1 requires escrow agents to deposit all escrow funds
19 into a non-interest bearing checking account (trust account) and maintain those escrow funds
20 separate, distinct, and apart from the funds belonging to the escrow agent (i.e., monies held in the
21 escrow agent's general account).

22 8. The 2017 Examination disclosed that HEC engaged in unlawful escrow business by
23 repeatedly transferring escrow trust funds from HEC's main trust accounts into HEC's master
24 holding trust account held in a separate bank in violation of Financial Code section 17409.1

25 9. During the 2017 Examination, the Commissioner's Examiner (Examiner) noted that
26 trust fund balance for each branch did not agree with trust fund balance at the bank for the same
27 branch office. Ending escrow trial balance noted on the trust account bank reconciliation as of
28

1 06/30/2017 for each branch office did not agree with ending bank statement balance for the same
 2 branch office as of the same period.

3 10. The 2017 Examination disclosed that HEC maintains a master trust account with US
 4 Bank, account no. xxxx-19808 and separate trust bank accounts for each licensed branch location
 5 with First American Trust Bank (FATB) with the following account numbers:

6	Branch Name	FATB Trust Account No.
7	Escondido	xxxx-80000
8	Rancho Santa Fe	xxxx-90000
9	San Diego	xxxx-300000
10	Temecula	xxxx-10000
11	Irvine	xxxx-20000
12	Irvine/Dormant	xxxx-4000
13	Carlsbad	xxxx-90000
14	Los Angeles	xxxx-300000
15	Glendale	xxxx-10000

16
 17 11. HEC implemented a process wherein it would systematically transfer trust funds
 18 electronically from each of its branch offices maintained at FATB into a single holding master trust
 19 account maintained at its US Bank account no. xxxx-9808. Thereafter, HEC would transfer funds
 20 electronically from its US Bank account no. xxxx-9808 back into the individual FATB trust branch
 21 account as funds are required for HEC's daily disbursements.

22 Trust Funds Deposited into HEC's Trust Account.

23 12. The 2017 Examination revealed the following bank balances in HEC's FATB trust
 24 account and US Bank account no. xxxx-9808 consolidated bank balance as of 06/30/2017:

25	Branch Name	Branch Trust Account Balance	USB Balance	Amount HEC Should Have Maintained in its Bank Trust Account
27	Escondido	\$25,015.00	\$3,077,186.89	\$3,102,201.89
28	Rancho Santa Fe	\$85,000.00	\$8,476,625.06	\$8,561,625.06

1	San Diego	\$77,461.66	\$16,253,067.15	\$16,330,528.81
2	Temecula	\$30,000.00	\$3,811,582.36	\$3,841,582.36
3	Irvine	\$25,000.00	\$6,698,637.68	\$6,723,637.68
4	Irvine/Dormant	\$25,000.00	\$269,605.98	\$294,605.98
5	Carlsbad	\$460,943.91	\$3,772,526.96	\$4,233,470.87
6	Los Angeles	\$25,000.00	\$323,425.36	\$348,425.36
7	Glendale	\$25,000.00	\$712,010.71	\$737,010.71
8				
9	Total:	\$778,420.57	\$43,394,668.15	\$44,173,088.72
10				

11 13. As the chart in paragraph 12 reflects, HEC failed to properly reconcile its trust
12 accounts as of June 30, 2017. HEC deposited trust funds totaling \$43,394,668.15 into its US Bank
13 account no. account no xxx-9808 instead of depositing \$44173,088.72 into HEC's FATB trust
14 account.

15 14. During the July 2017 Examination, the Examiner discussed HEC's practice of
16 transferring escrow trust funds from its main FATB account into its holding master trust account
17 held with US Bank account no. xxxx-9808 with HEC's former president, JoAnn Lockard (Lockard).
18 Lockard informed the Examiner that due to allegedly banking regulations, FATB was prohibited
19 from retaining in its FATB bank an amount in excess of \$25,000.00 overnight for each individual
20 branch location trust bank. Lockard stated that as a result, HEC transfers trust funds over
21 \$25,000.00 from its trust account with FATB to its master trust account held with US Bank account
22 no. xxxx-9808.

23 15. In about September 18, 2017, the Examiner contacted HEC by telephone to discuss
24 the structure of HEC's individual trust accounts with FATB and its master trust account with US
25 Bank account no. xxxx-9808, as well as HEC's trust account bank reconciliations for HEC's branch
26 locations. The Examiner spoke with Lockard who stated that the structure of HEC's individual trust
27 accounts with FATB and master trust account with US Bank account no. xxx-9808 was originally set
28 up by HEC's parent company, First American Financial Corporation.

1 16. On September 19, 2017, Lockard sent an email to the Examiner requesting
2 clarification on the provisions of Financial Code section 17409.1. On September 18, 2017 and
3 September 19, 2017, the Examiner explained the requirements of Financial Code section 17409.1 to
4 Lockard and Kimberly Ray (Ray), HEC's escrow operations manager, respectively.

5 17. On September 10, 2018, the Examiner contacted HEC by email to enquire whether
6 HEC had made changes to its bank account structure and master trust account for HEC. HEC
7 responded to the Examiner's email stating that HEC was still using the same banking structures and
8 had not made any changes to its practice of sweeping escrow trust funds from its holding trust
9 account in FATB into its master trust account with US Bank account no. xxx-9808 and vice versa.

10 18. On or about November 26, 2018, the Examiner sent a Regulatory Report on
11 Examination dated November 26, 2018 (ROE) to HEC describing the violations noted during the
12 2017 Examination and directing HEC to discontinue the violations outlined in Report. The ROE
13 further directed HEC to provide to the Commissioner within 30 days from the date of the ROE, a
14 written report showing the corrective actions taken by HEC to correct the violations noted in the
15 ROE and avoid recurrence of those violations.

16 19. On December 21, 2018, the Examiner received a letter from Lockard in response to
17 the ROE stating that HEC was no longer sweeping its branch escrow trust accounts into one master
18 escrow trust sweep account held in US Bank account no. xxxx-9808. HEC stated that while it
19 disagrees with the Commissioner's findings in the ROE regarding its practice of sweeping trust
20 accounts, it will cease transferring funds from all branches into its master trust account but will
21 continue to use its master trust account with US Bank account for only its San Diego branch (aka:
22 Balboa Park Branch). HEC requested in its December 21, 2018 letter that the Department confirm if
23 it had objections to HEC using a master escrow trust sweep account for only its San Diego branch
24 location and if it did, to provide HEC an opportunity to demonstrate that its practice is does not
25 violate the CFL.

26 20. On March 29, 2019, the Examiner sent a letter dated March 29, 2019 in response to
27 HEC's December 21, 2018 letter reiterating the Department's position that HEC's practice of
28 transferring trust funds between its branch trust bank accounts into its holding master trust account is

1 improper and violates Financial Code 17409.1. The Department’s March 29, 2019 letter informed
2 HEC that the Department did not receive any evidence showing HEC has taken corrective action to
3 avoid further violations of the CFL as demanded in the ROE and therefore, the matter was being
4 referred to the Department’s Enforcement division for further review.

5 **III.**

6 **Applicable Statutes**

7 21. Financial Code section 17409.1 provides in pertinent part:

8 (a) Each person subject to this chapter shall maintain separate escrow trust
9 accounts for each licensed location. Transfers between accounts are
10 prohibited except by the actual writing of a check from one escrow to the
11 other, and by depositing the check for the account of, and the writing of a
12 receipt for the escrow to which the funds are being transferred. Each
13 transfer shall be properly supported and documented in escrow files by
14 inclusion of escrow instructions executed by the principals authorizing the
15 transfer.

16 Financial Code section 17608 provides in pertinent part:

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

19 ...

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

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

27 22. CCR section 1732.2 provides in pertinent part:

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

- (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

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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)[.]

23. 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.

IV.

Prayer

The Commissioner finds that, by reason of the foregoing, HEC violated Financial Code section 17409.1 by depositing trust funds into its master trust account and failing to properly reconcile the trust account in violation of CCR section 1732.2. Based on HEC's violations of the Escrow Law, grounds exist to suspend the company's escrow agent's license for a period of up to 7 days.

WHEREFORE, IT IS PRAYED that:

Under Financial Code section 17608, The Heritage Escrow Company's escrow agent's license be suspended for a period of up to 7 days.

Dated: August 14, 2020
Los Angeles, California

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
UCHE L. ENENWALI
Senior Counsel
Enforcement Division