

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
Deputy Commissioner
3 MIRANDA LEKANDER (CA BAR NO. 210082)
Senior Corporations Counsel
4 Department of Corporations
1515 K Street, Ste. 200
5 Sacramento, California 95814
Telephone: (916) 322-8730 Fax: (916) 445-6985
6 Attorneys for Complainant

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

10
11 In the Matter of) File No.: 963-2265
THE CALIFORNIA CORPORATIONS)
12 COMMISSIONER,) SETTLEMENT AGREEMENT
13)
Complainant,)
14)
15 v.)
16 OLD TOWN ESCROW, INC.,)
17 Respondent.)
18 _____)

19 This Settlement Agreement is entered into between Old Town Escrow, Inc. (“Old Town
20 Escrow”) and the California Corporations Commissioner ("Commissioner"), and is made with
21 respect to the following facts:

22 **RECITALS**

- 23 A. Old Town Escrow holds escrow agent’s license number 963-2265 with its principal
24 place of business located at 300 W. Colorado Boulevard, Suite A, Pasadena, California, 91105.
25 B. Maximiliano Pellegrini is the president and owner of Old Town Escrow and is
26 authorized to enter into this Settlement Agreement on behalf of Old Town Escrow.
27 C. Pursuant to Financial Code section 17406, Old Town Escrow, Inc. (“Old Town
28 Escrow”) was required to submit its annual audit report for the fiscal year ending December 31,

1 2008 (“2008 audit report”) to the Commissioner on or before April 15, 2009. Old Town Escrow did
2 not file its 2008 audit report until September 28, 2009 – 163 days after the time required by
3 Financial Code section 17406.

4 D. On October 6, 2009, the Commissioner issued to Old Town Escrow an Order
5 Imposing Penalties Pursuant to Financial Code Section 17408 (“Penalty Order”) in the sum of
6 \$8,300.00. As Old Town Escrow did not timely request a hearing, the Penalty Order was deemed
7 final 30 days after service.

8 F. It is the intention and desire of the parties to resolve these matters without the
9 necessity of a hearing and/or other litigation.

10 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
11 forth herein, the parties agree as follows:

12 **TERMS AND CONDITIONS**

13 1. This Settlement Agreement is entered into for the purpose of judicial economy and
14 expediency, and to avoid the expense of a hearing, and possible further court proceedings.

15 2. Old Town Escrow hereby admits the allegations contained in the Penalty Order. Old
16 Town Escrow’s admissions herein are solely for the limited purposes of this proceeding and any
17 future proceeding that may be initiated by or brought before the Commissioner against Old Town
18 Escrow. It is the intent and understanding between the parties that this Settlement Agreement, and
19 particularly Old Town Escrow’s admissions herein, shall not be binding or admissible against Old
20 Town Escrow in any action(s) brought against Old Town Escrow by third parties.

21 3. As full and final resolution of this matter, Old Town Escrow agrees to pay to the
22 Commissioner the sum of \$8,300.00 in penalties. The penalties shall be paid in five (5) installments
23 as follows: The first installment in the sum of \$4,150.00 shall be due on May 1, 2011, and the
24 remaining four installments in the sum of \$1,037.50 shall be due on the first day of each successive
25 month commencing on June 1, 2011 and ending on September 1, 2011. All payments shall be
26 mailed certified to the attention of Senior Corporations Counsel Miranda LeKander at the California
27 Department of Corporations, 1515 K Street, Suite 200, Sacramento, CA 95814.

28 4. Old Town Escrow further agrees to an automatic revocation of its escrow agent’s

1 license if any installment payment agreed to in Paragraph 3 is not timely paid in strict compliance
2 with the terms thereof.

3 5. Old Town Escrow acknowledges it waived its right to an administrative hearing under
4 Financial Code sections 17608 and 17408 in connection with the Penalty Order, and hereby waives
5 its right to a hearing, and to any reconsideration, appeal, or other rights which may be afforded
6 pursuant to the Escrow Law, the California Administrative Procedure Act, the California Code of
7 Civil Procedure, or any other provision of law in connection with these matters.

8 6. Old Town Escrow acknowledges and agrees that the revocation provided for above in
9 Paragraph 4 shall not be the exclusive remedy available to the Commissioner in pursuing future
10 violations but may be sought and employed in addition to any other remedy available pursuant to the
11 Escrow Law.

12 7. The parties hereby acknowledge and agree that this Settlement Agreement is intended
13 to constitute a full, final and complete resolution of the Penalty Order. The parties further
14 acknowledge and agree that nothing contained in this Settlement Agreement shall operate to limit the
15 Commissioner's ability to assist any other agency (county, state or federal) with any prosecution,
16 administrative, civil or criminal, brought by any such agency against Old Town Escrow based upon
17 any of the activities alleged in these matters or otherwise.

18 8. Each of the parties represents, warrants, and agrees that it has received, or
19 acknowledges the right to seek, independent legal advice from its attorney(s) with respect to the
20 advisability of executing this Settlement Agreement.

21 9. Each of the parties represents, warrants, and agrees that in executing this Settlement
22 Agreement it has relied solely on the statements set forth herein and, if applicable, the advice of its
23 own counsel. Each of the parties further represents, warrants, and agrees that in executing this
24 Settlement Agreement it has placed no reliance on any statement, representation, or promise of any
25 other party, or any other person or entity not expressly set forth herein, or upon the failure of any
26 party or any other person or entity to make any statement, representation or disclosure of anything
27 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in
28 any way fraudulently induced to execute this Settlement Agreement; and (2) to preclude the

1 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
2 Settlement Agreement.

3 10. This Settlement Agreement is the final written expression and the complete and
4 exclusive statement of all the agreements, conditions, promises, representations, and covenants
5 between the Parties with respect to the subject matter hereof, and supercedes all prior or
6 contemporaneous agreements, negotiations, representations, understandings, and discussions
7 between and among the parties, their respective representatives, and any other person or entity, with
8 respect to the subject matter covered hereby.

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

16 12. This Settlement Agreement may be executed in one or more counterparts, each of
17 which shall be an original but all of which, together, shall be deemed to constitute a single
18 document.

19 13. Each signator hereto covenants that he/she possesses all necessary capacity and
20 authority to sign and enter into this Settlement Agreement.

21 Dated: 4-6-11

22 PRESTON DuFAUCHARD
California Corporations Commissioner

23 By _____
24 ALAN S. WEINGER
25 Deputy Commissioner

26 Dated: 4-6-11

27 OLD TOWN ESCROW, INC.

28 By _____
MAXIMILIANO PELLEGRINI, President

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