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**FILED**

DEC 12 2008

DEPARTMENT OF REAL ESTATE

By *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of  
MALAN FINANCIAL ALLIANCE  
CORPORATION,

No. H-2823 SD

Respondent.

ORDER DENYING REINSTATEMENT OF LICENSE

On August 14, 2003, a Decision was rendered revoking the corporate real estate broker license and license rights of Respondent MALAN FINANCIAL ALLIANCE CORPORATION (herein "Respondent"), but granting Respondent the right to the issuance of a restricted corporate real estate broker license. On September 23, 2003, a restricted corporate real estate broker license was issued to Respondent, and Respondent has operated as a restricted licensee since that time.

On April 7, 2006, Respondent petitioned for reinstatement of said corporate real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said Petition (herein "Petition").

I have considered Respondent's Petition and the evidence and arguments in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has

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1 undergone sufficient rehabilitation to warrant the reinstatement of Respondent's unrestricted  
2 corporate real estate broker license.

3           The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State*  
4 *Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and  
5 integrity than an applicant for first time licensure. The proof must be sufficient to overcome the  
6 prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

7           The Department has developed criteria in Section 2911 of Title 10, California  
8 Code of Regulations to assist in evaluating the rehabilitation of an applicant for reinstatement of  
9 a license. Among the criteria relevant in this proceeding are:

10           Section 2911(k) Correction of business practices resulting in injury to others or  
11 with the potential to cause such injury. Respondent's license was disciplined on the basis of  
12 audits showing violations of Sections 10145, 10159.3, 10161.8, 10236.4, 10240(a) and 10085 of  
13 the Business and Professions Code ("Code") and Sections 2832.1, 2831.2, 2831, 2951, 2834,  
14 2731, 2726, 2970 and 2831 of Chapter 6, Title 10, California Code of Regulations, consisting of  
15 non-compliant trust fund handling and bookkeeping, and an array of fictitious business name,  
16 salesperson license status and advance fee violations. Each of these violations involved activities  
17 or practices with some potential to cause injury to the public. These negligent practices are also  
18 reflected in Respondent's Petition filed by its current designated broker Nancy Bricker. In  
19 response to item 4 of the Petition, ("Have you ever been a defendant in any civil court  
20 litigation...?") Respondent answered "no". This was not correct. On June 4, 2002 in Orange  
21 County Superior Court, Case No. 02CC10633, a civil complaint was filed by American Interbank  
22 Mortgage against related persons and corporations, and on September 11, 2002 in the same court,  
23 an amended civil complaint was filed against Respondent, Nancy Bricker and her son Daniel  
24 Bricker, alleging libel, unfair competition, false advertising and unfair competition. On June 7,  
25 2007, following a jury trial, a civil money judgment which included exemplary damages was  
26 entered in that case against Respondent and Daniel Bricker, based on activities and practices with  
27 potential to cause injury to the public. Respondent dismissed its appeal and the judgment became

1 fully final on April 10, 2008. Respondent's failure to disclose the case in its Petition involved an  
2 apparent attempt to conceal important information from the Department of Real Estate.

3 In view of the violations found, and the results of the Department's examination of  
4 Respondent's Petition and business activities, it is concluded that Respondent has failed to  
5 demonstrate correction of business practices causing injury to others or with the potential to  
6 cause such injury. Since Respondent has not established that it has complied with Section  
7 2911(k) of Chapter 6, Title 10, California Code of Regulations, I am not satisfied that  
8 Respondent is sufficiently rehabilitated to receive an unrestricted corporate real estate broker  
9 license.

10 NOW, THEREFORE, IT IS ORDERED that Respondent's Petition for  
11 reinstatement of Respondent's corporate real estate broker licenses is denied.

12 This Order shall become effective at 12 o'clock noon on JAN 02 2009

13 IT IS SO ORDERED 12/4/08

14 JEFF DAVIS  
15 Real Estate Commissioner  
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DEC 12 2008

DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of

WILLIAM JAMES LADEWIG,

Respondent.

No. H-2823 SD

ORDER DENYING REINSTATEMENT OF LICENSE

On August 14, 2003, a Decision was rendered revoking the real estate broker license of Respondent WILLIAM JAMES LADEWIG (herein "Respondent"), but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on September 23, 2003, and Respondent has operated as a restricted broker licensee without cause for disciplinary action against him since that time.

On January 26, 2006, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said Petition (herein "Petition").

I have considered Respondent's Petition and the evidence and arguments in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has

///

1. undergone sufficient rehabilitation to warrant the reinstatement of Respondent's unrestricted real  
2. estate broker license.

3.           The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State*  
4. *Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and  
5. integrity than an applicant for first time licensure. The proof must be sufficient to overcome the  
6. prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

7.           The Department has developed criteria in Section 2911 of Title 10, California  
8. Code of Regulations to assist in evaluating the rehabilitation of an applicant for reinstatement of  
9. a license. Among the criteria relevant in this proceeding are:

10.           Section 2911(i) Completion of, or sustained enrollment in, formal educational or  
11. vocational training courses for economic self-improvement. Respondent has submitted no  
12. significant evidence of formal educational or vocational training courses for economic self-  
13. improvement.

14.           Section 2911(l) Significant or conscientious involvement in community, church or  
15. privately-sponsored programs designed to provide social benefits or to ameliorate social  
16. problems. Respondent has submitted no significant evidence of formal community service  
17. activities since license discipline.

18.           Section 2911(m) New and different social and business relationships from those  
19. which existed at the time of the conduct that is the basis for denial of the departmental action  
20. sought. Respondent has submitted no significant evidence of any change of social or business  
21. relationships since license discipline.

22.           Section 2911(n) Change in attitude from that which existed at the time of the  
23. conduct in question as evidenced by any or all of the following: (1) Testimony of applicant. (2)  
24. Evidence from family members, friends or other persons familiar with applicant's previous  
25. conduct and with his subsequent attitudes and behavioral patterns. (3) Evidence from probation  
26. or parole officers or law enforcement officials competent to testify as to applicant's social  
27. adjustments. (4) Evidence from psychiatrists or other persons competent to testify with regard to

1 neuropsychiatric or emotional disturbances. (5) Absence of subsequent felony or misdemeanor  
2 convictions that are reflective of an inability to conform to societal rules when considered in light  
3 of the conduct in question. Respondent has submitted no significant evidence from family  
4 members, friends or other persons familiar with applicant's previous conduct and with his  
5 subsequent attitudes and behavioral patterns.

6 Since Respondent has not established that he has complied with Sections 2911(i),  
7 (l), (m), and (n) of Title 10, California Code of Regulations, I am not satisfied that Respondent is  
8 sufficiently rehabilitated to receive an unrestricted real estate broker license.

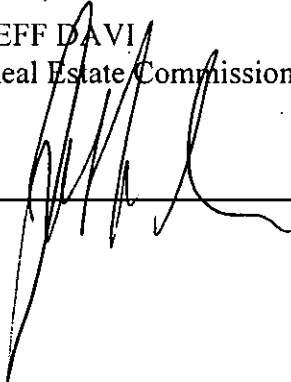
9 NOW, THEREFORE, IT IS ORDERED that Respondent's Petition for  
10 reinstatement of Respondent's real estate broker license is denied.

11 This Order shall become effective at 12 o'clock noon on JAN 02 2009

12 IT IS SO ORDERED 12/4/08

13  
14 JEFF DAVIS  
Real Estate Commissioner

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1 Department of Real Estate  
2 P. O. Box 187000  
3 Sacramento, CA 95818-7000  
4  
5 Telephone: (916) 227-0789  
6  
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**FILED**  
SEP - 2 2003

DEPARTMENT OF REAL ESTATE  
By *Laurie G. [Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) No. H-2823 SD  
12 MALAN FINANCIAL ALLIANCE, ) OAH NO. L-2003030974  
13 AND WILLIAM JAMES LADEWIG, )  
14 Respondents. ) STIPULATION AND AGREEMENT

15 It is hereby stipulated by and between MALAN FINANCIAL  
16 ALLIANCE (hereinafter "Respondent MALAN") and WILLIAM JAMES  
17 LADEWIG (hereinafter "Respondent LADEWIG") and their attorney of  
18 record Joel L. Incorvaia, and Complainant, acting by and through  
19 David A. Peters, Counsel for the Department of Real Estate, as  
20 follows for the purpose of settling and disposing of the  
21 Accusation filed March 8, 2003 in this matter.

22 1. All issues which were to be contested and all  
23 evidence which was to be presented by Complainant and  
24 Respondents at a formal hearing on the Accusation, which hearing  
25 was to be held in accordance with the provisions of the  
26 Administrative Procedure Act (APA) (Government Code Section 1500  
27 et seq.), shall instead and in place thereof be submitted solely

1 on the basis of the provisions of this Stipulation and  
2 Agreement.

3           2. Respondents have received, read and understand  
4 the Statement to Respondent, the Discovery Provisions of the  
5 APA, and the Accusation filed by the Department of Real Estate  
6 in this proceeding.

7           3. On March 20, 2003, Respondents filed their Notice  
8 of Defense pursuant to Section 11505 of the Government Code for  
9 the purpose of requesting a hearing on the allegations in the  
10 Accusation. Respondents hereby freely and voluntarily withdraw  
11 their Notice of Defense. Respondents acknowledge that by  
12 withdrawing said Notice of Defense they will thereby waive their  
13 right to require the Commissioner to prove the allegations in  
14 the Accusation at a contested hearing held in accordance with  
15 the provisions of the APA and that they will waive other rights  
16 afforded to them in connection with the hearing such as the  
17 right to present evidence in defense of the allegations in the  
18 Accusation and the right to cross-examine witnesses.

19           4. This Stipulation is based on the factual  
20 allegations contained in the Accusation. In the interests of  
21 expedience and economy, Respondents choose not to contest these  
22 allegations, but to remain silent and understand that, as a  
23 result thereof, these factual allegations, without being  
24 admitted or denied, will serve as a prima facia basis for the  
25 disciplinary action stipulated to herein. The Real Estate  
26 Commissioner shall not be required to provide further evidence  
27 to prove said factual allegations.



1           5. It is understood by he parties that the Real  
2 Estate Commissioner may adopt the Stipulation and Agreement as  
3 her Decision in this matter, thereby imposing the penalty and  
4 sanctions on Respondents' real estate licenses and license  
5 rights as set forth in the below "Order". In the event that the  
6 Commissioner in her discretion does not adopt the Stipulation  
7 and Agreement, it shall be void and of no effect, and  
8 Respondents shall retain the right to a hearing and proceeding  
9 on the Accusation under all the provisions of the APA and shall  
10 not be bound by any admission or waiver made herein.

11           6. The Order or any subsequent Order of the Real  
12 Estate Commissioner made pursuant to this Stipulation and  
13 Agreement shall not constitute an estoppel, merger or bar to any  
14 further administrative or civil proceedings by the Department of  
15 Real Estate with respect to any matters which were not  
16 specifically alleged to be causes for accusation in this  
17 proceeding.

18           7. Respondents understand that by agreeing to this  
19 Stipulation and Agreement in Settlement, Respondents agree to  
20 pay, pursuant to Section 10148 of the Business and Professions  
21 Code, the cost of the audit which led to this disciplinary  
22 action. The amount of said costs is \$9,406.92.

23           8. Respondents have received, read, and understand  
24 the "Notice Concerning Costs of Subsequent Audit". Respondents  
25 further understand that by agreeing to this Stipulation and  
26 Agreement in Settlement, the findings set forth below in the  
27 DETERMINATION OF ISSUES become final, and that the Commissioner

1 may charge Respondents for the costs of any subsequent audit  
2 conducted pursuant to Section 10148 of the Business and  
3 Professions Code to determine if the violations have been  
4 corrected. The maximum costs of said audit will not exceed  
5 \$9,406.92.

6 DETERMINATION OF ISSUES

7 By reason of the foregoing stipulations, admissions  
8 and waivers, and solely for the purpose of settlement of the  
9 pending Accusation without a hearing, it is stipulated and  
10 agreed that the following determination of issues shall be made:

11 I

12 The conduct of Respondents, as described in the  
13 Accusation, constitutes cause for the suspension or revocation  
14 of real estate license and license rights of Respondents MALAN  
15 and LADEWIG under the provisions of Business and Professions  
16 Code Section 10177(d) in conjunction with Business and  
17 Professions Code Sections 10145, 10159.5, 10161.8, 10236.4,  
18 10240(a) and 10085 and Sections 2832.1, 2831.2, 2831, 2951,  
19 2834, 2731, 2752, 2726, 2970, 2831 of Title 10, California Code  
20 of Regulations.

21 ORDER

22 I

23 A. The real estate broker license and all license  
24 rights of Respondent MALAN FINANCIAL ALLIANCE under the Real  
25 Estate Law are revoked; provided, however, a restricted real  
26 estate broker license shall be issued to Respondent pursuant to  
27 Section 10156.5 of the Business and Professions Code if

1 Respondent makes application therefor and pays to the Department  
2 of Real Estate the appropriate fee for the restricted license  
3 within ninety (90) days from the effective date of this  
4 Decision. The restricted license issued to Respondent shall be  
5 subject to all of the provisions of Section 10156.7 of the  
6 Business and Professions Code to the following limitations,  
7 conditions and restrictions imposed under authority of Section  
8 10156.6 of the Code.

9 1. The restricted license issued to Respondent MALAN  
10 may be suspended prior to hearing by Order of the Real Estate  
11 Commissioner in the event of Respondent's conviction or plea of  
12 nolo contendere to a crime which is substantially related to  
13 Respondent's fitness or capacity as a real estate licensee.

14 2. The restricted license issued to Respondent MALAN  
15 may be suspended prior to hearing by Order of the Real Estate  
16 Commissioner on evidence satisfactory to the Commissioner that  
17 Respondent has violated provisions of the California Real Estate  
18 Law, the Subdivided Lands Law, Regulations of the Real Estate  
19 Commissioner or conditions attaching to the restricted license.

20 3. Respondent MALAN shall not be eligible to apply  
21 for the issuance of an unrestricted real estate license nor for  
22 the removal of any of the conditions, limitations or  
23 restrictions of a restricted license until two (2) years have  
24 elapsed from the effective date of this Decision.

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1                   4.     Pursuant to Section 10148 of the Business and  
2 Professions Code, Respondent MALAN or Respondent LADEWIG shall  
3 pay the Commissioner's reasonable cost for: a) the audit which  
4 led to this disciplinary action and, b) a subsequent audit to  
5 determine if Respondents have corrected the trust fund  
6 violations found in Paragraph I of the Determination of Issues.  
7 In calculating the amount of the Commissioner's reasonable cost,  
8 the Commissioner may use the estimated average hourly salary for  
9 all persons performing audits of real estate brokers, and shall  
10 include an allocation for travel costs, including mileage, time  
11 to and from the auditor's place of work and per diem.  
12 Respondent MALAN or Respondent LADEWIG shall pay such cost  
13 within sixty (60) days of receiving an invoice from the  
14 Commissioner may suspend the restricted license issued to  
15 Respondent pending a hearing held in accordance with Section  
16 11500, et seq., of the Government Code, if payment is not timely  
17 made as provided for herein, or as provided for in a subsequent  
18 agreement between the Respondent and the Commissioner. The  
19 suspension shall remain in effect until payment is made in full  
20 or until the Respondent enters into an agreement satisfactory to  
21 the Commissioner to provide for payment, or until a decision  
22 providing otherwise is adopted following a hearing held pursuant  
23 to this condition.

24                   5.     Respondent MALAN or Respondent LADEWIG shall  
25 prior to the effective date of the Decision provide evidence  
26 satisfactory to the Commissioner that the Respondents have cured  
27 the trust fund shortage alleged in the Accusation.



1                   2.    The restricted license issued to Respondent  
2 LADEWIG may be suspended prior to hearing by Order of the Real  
3 Estate Commissioner on evidence satisfactory to the Commissioner  
4 that Respondent has violated provisions of the California Real  
5 Estate Law, the Subdivided Lands Law, Regulations of the Real  
6 Estate Commissioner or conditions attaching to the restricted  
7 license.

8                   3.    Respondent LADEWIG shall not be eligible to apply  
9 for the issuance of an unrestricted real estate license nor for  
10 the removal of any of the conditions, limitations or  
11 restrictions of a restricted license until two (2) years have  
12 elapsed from the effective date of this Decision.

13                   4.    Respondent LADEWIG shall, within nine (9) months  
14 from the effective date of this Decision, present evidence  
15 satisfactory to the Real Estate Commissioner that Respondent  
16 has, since the most recent issuance of an original or renewal  
17 real estate license, taken and successfully completed the  
18 continuing education requirements of Article 2.5 of Chapter 3 of  
19 the Real Estate Law for renewal of a real estate license. If  
20 Respondent fails to satisfy the condition, the Commissioner may  
21 order the suspension of the restricted license until the  
22 Respondent presents such evidence. The Commissioner shall  
23 afford Respondent the opportunity for a hearing pursuant to the  
24 Administrative Procedure Act to present such evidence.

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1           5.     Respondent LADEWIG shall, within six (6) months  
2 from the effective date of this Decision, take and pass the  
3 Professional Responsibility Examination administered by the  
4 Department including the payment of the appropriate examination  
5 fee. If Respondent fails to satisfy this condition, the  
6 Commissioner may order the suspension of Respondent's license  
7 until Respondent passes the examination.

8           6.     Pursuant to Section 10148 of the Business and  
9 Professions Code, Respondent LADEWIG or Respondent MALAN shall  
10 pay the Commissioner's reasonable cost for: a) the audit which  
11 led to this disciplinary action and, b) a subsequent audit to  
12 determine if Respondents have corrected the trust fund  
13 violations found in Paragraph I of the Determination of Issues.  
14 In calculating the amount of the Commissioner's reasonable cost,  
15 the Commissioner may use the estimated average hourly salary for  
16 all persons performing audits of real estate brokers, and shall  
17 include an allocation for travel costs, including mileage, time  
18 to and from the auditor's place of work and per diem.

19 Respondent LADEWIG or Respondent MALAN shall pay such cost  
20 within sixty (60) days of receiving an invoice from the  
21 Commissioner detailing the activities performed during the audit  
22 and the amount of time spent performing those activities. The  
23 Commissioner may suspend the restricted license issued to  
24 Respondents pending a hearing held in accordance with Section  
25 11500, et seq., of the Government Code, if payment is not timely  
26 made as provided for herein, or as provided for in a subsequent  
27 agreement between the Respondents and the Commissioner. The

1 suspension shall remain in effect until payment is made in full  
2 or until the Respondent enters into an agreement satisfactory to  
3 the Commissioner to provide payment, or until a decision  
4 providing otherwise is adopted following a hearing held pursuant  
5 to this condition.

6 7. Respondent LADEWIG shall prior to the effective  
7 date of the Decision provide evidence satisfactory to the  
8 Commissioner that Respondents have cured the trust fund shortage  
9 alleged in the Accusation.

10 8. Respondent LADEWIG shall, prior to and as a  
11 condition of the issuance of the restricted license, submit  
12 proof satisfactory to the Commissioner of having taken and  
13 successfully completed the continuing education course on trust  
14 fund accounting and handling specified in subdivision (a) of  
15 Section 10170.5 of the Business and Professions Code. Proof of  
16 satisfaction of this requirement includes evidence that  
17 Respondent has successfully completed the trust fund account and  
18 handling continuing education course within 120 days prior to  
19 the effective date of the Decision in this matter.

20 9. Any restricted real estate broker license issued  
21 to Respondent LADEWIG may be suspended or revoked for a  
22 violation by Respondent of any of the conditions attaching to  
23 the restricted license.

24  
25 8/4/03  
26 DATED

24  
25 David A. Peters  
26 DAVID A. PETERS, Counsel  
27 DEPARTMENT OF REAL ESTATE

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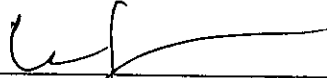


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2 I have read the Stipulation and Agreement, have  
3 discussed it with my counsel, and its terms are understood by me  
4 and are agreeable and acceptable to me. I understand that I am  
5 waiving rights given to me by the California Administrative  
6 Procedure Act (including but not limited to Sections 11505,  
7 11598, 11509, and 11513 of the Government Code), and I  
8 willingly, intelligently, and voluntarily waive those rights,  
9 including the right of requiring the Commissioner to prove the  
10 allegations in the Second Amended Accusation at a hearing at  
11 which I would have the right to cross-examine witnesses against  
12 me and to present evidence in defense and mitigation of the  
13 charges.

14 07-24-03

15 DATED



16 MALAN FINANCIAL ALLIANCE  
Respondent

By: William James Ladewig

17 07-24-03

18 DATED

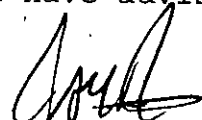


19 WILLIAM JAMES LADEWIG  
Respondent

20 I have reviewed the Stipulation and Agreement in  
21 Settlement as to form and content and have advised my client  
22 accordingly.

23 7/24/03

DATED



24 JOEL L. INCORVAIA  
25 Attorney for Respondents

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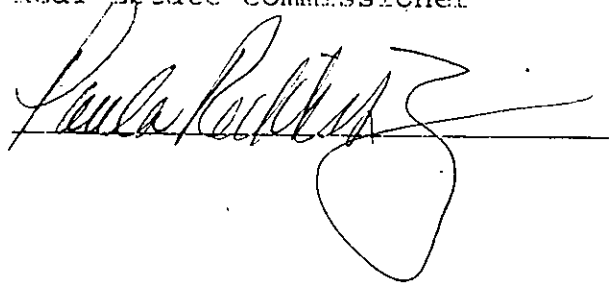
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The foregoing Stipulation and Agreement for  
Settlement is hereby adopted by the Real Estate Commissioner as  
her Decision and Order and shall become effective at 12 o'clock  
noon on SEPTEMBER 23, 2003.

IT IS SO ORDERED August 14, 2003.

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner



FILED

**BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA**

APR - 9 2003

DEPARTMENT OF REAL ESTATE

By Laurie J. [Signature]

*In the Matter of the Accusation of*

MALAN FINANCIAL ALLIANCE,  
AND WILLIAM JAMES LADEWIG,

}

Case No. H-2823 SD

OAH No. L-2003030974

*Respondents*

**NOTICE OF HEARING ON ACCUSATION**

*To the above named respondents:*

*You are hereby notified* that a hearing will be held before the Department of Real Estate at **THE OFFICE OF ADMINISTRATIVE HEARINGS, 1350 FRONT STREET, SUITE 6022, SAN DIEGO, CA 92101** on **TUESDAY, JULY 8, 2003**, at the hour of **9:00 A.M.**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

*Dated:* APRIL 9, 2003

By David A. Peters  
DAVID A. PETERS, Counsel (2)

1 DAVID A. PETERS, Counsel (SBN 99528)  
2 Department of Real Estate  
3 P. O. Box 187000  
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789  
6 -or- (916) 227-0781 (Direct)

FILED  
MAR - 8 2003

DEPARTMENT OF REAL ESTATE

By Laurie [Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11	In the Matter of the Accusation of	)	
12	MALAN FINANCIAL ALLIANCE,	)	No. H-2823 SD
13	and WILLIAM JAMES LADEWIG,	)	<u>ACCUSATION</u>
14	Respondents.	)	

15 The Complainant, J. Chris Graves, a Deputy Real Estate  
16 Commissioner of the State of California, for cause of accusation  
17 against MALAN FINANCIAL ALLIANCE dba Payless Home Loans  
18 (hereinafter "Respondent MALAN") and WILLIAM JAMES LADEWIG  
19 (hereinafter "Respondent LADEWIG") is informed and alleges as  
20 follows:

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22 The Complainant, J. Chris Graves, a Deputy Real Estate  
23 Commissioner of the State of California, makes this Accusation  
24 in his official capacity.

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II

At all times herein mentioned, Respondent MALAN was and now is licensed by the Department of Real Estate of the State of California (hereinafter "the Department") as a real estate broker corporation acting by and through Respondent LADEWIG as designated broker-officer of Respondent MALAN.

III

At all times herein mentioned, Respondent LADEWIG was and now is licensed by the Department as a real estate broker, individually and as designated broker-officer of Respondent MALAN. As said designated broker-officer, Respondent LADEWIG was at all times herein mentioned responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees and employees of Respondent MALAN for which a license is required.

IV

Whenever reference is made in an allegation in this Accusation to an act or omission of Respondent MALAN, such allegation shall be deemed to mean that the officers, directors, employees, agents and/or real estate licensees employed by or associated with Respondent MALAN committed such act or omission while engaged in the furtherance of the business or operations of such corporate Respondent and while acting within the course and scope of their authority and employment.

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1 V

2 At all times herein mentioned, Respondents engaged in  
3 the business of, acted in the capacity of, advertised, or  
4 assumed to act as real estate brokers within the State of  
5 California within the meaning of Sections 10131(d) of the Code,  
6 including the operation and conduct of a mortgage loan brokerage  
7 business with the public wherein lenders and borrowers were  
8 solicited for loans secured directly or collaterally by liens on  
9 real property or a business opportunity, and wherein such loans  
10 were arranged, negotiated, processed, and consummated on behalf  
11 of others for compensation or in expectation of a compensation.

12 VI

13 At all times herein mentioned, in the course of or  
14 incidental to the aforesaid mortgage loan brokerage business,  
15 Respondents also engaged in the business of, acted in the  
16 capacity of, advertised, or assumed to act as escrow holders or  
17 agents for the purpose of effecting mortgage loan transactions,  
18 and thereby acted or assumed to act within and under the  
19 exemption from the provisions of the Escrow Law as provided by  
20 Section 17006(a)(4) of the Financial Code of the State of  
21 California.

22 VII

23 Beginning on or about August 27, 2002, the Department  
24 conducted an audit of Respondents' mortgage loan brokerage and  
25 escrow activities for the time period July 1, 2001 through  
26 August 31, 2002 as set forth in Audit Nos. SD020012 and SD020023  
27 dated November 27, 2002. During the course of the mortgage loan

1 brokerage activities described in Paragraph V above, and the  
2 escrow activities described in Paragraph VI above, Respondents  
3 received and disbursed funds held in trust on behalf of another  
4 or others.

5 VIII

6 Beginning on or before July 1, 2001 through on or  
7 after August 31, 2002, Respondents maintained the following  
8 trust fund accounts:

9	<u>TITLE AND ACCOUNT NUMBERS</u>	<u>BANK</u>
10	Malan Financial Alliance Corp. DBA MFAC Escrow (Trust) Account No. 2280033951 (hereinafter "Trust Account #1")	California Bank & Trust Valley Center, California
11		
12	Malan Financial Alliance Corp. Trust Account Account No. 2280033951 (hereinafter "Trust Account #2)	California Bank & Trust Valley Center, California
13		
14		

15 IX

16 In connection with the receipt and disbursement of  
17 trust funds described in Paragraph VII above, Respondents failed  
18 to deposit and maintain trust funds in Trust Account #1 in such  
19 manner that as of July 31, 2002, there was a shortage of  
20 \$7,688.99 of trust funds.

21 X

22 In connection with the receipt and disbursement of  
23 trust funds described in Paragraph VII above, Respondents failed  
24 to deposit and maintain trust funds in Trust Account #1 in such  
25 manner that as of August 31, 2002, there was a shortage of  
26 \$889.19 of trust funds.

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XI

Respondents failed to obtain the prior written consent from each of the principals for the reduction of the aggregate trust funds in Trust Account #1 to an amount less than the aggregate trust fund liability to the owners of said funds as required by Section 2832.1 of Title 10, California Code of Regulations (hereinafter "the Regulations).

XII

In connection with the receipt and disbursement of trust funds described in Paragraph VII above, Respondents failed to adequately maintain and perform reconciliations with the records of all trust funds received and disbursed as to Trust Account #1 and Trust Account #2 as required by Section 2831.1 of the Regulations at least once per month, in conformance with Section 2831.2 of the Regulations.

XIII

In connection with the receipt and disbursement of trust funds in Account #1 and Account #2 described in Paragraph VIII above, Respondents failed to maintain adequate records of trust funds received and disbursed in violation of Sections 2831 and 2951 of the Regulations.

XIV

In connection with the receipt and disbursement of trust funds in Account #1 and Account #2 described in Paragraph VIII above, Respondents failed to maintain a separate record for each beneficiary or transaction, accounting therein for all said

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1 trust funds received, deposited, and disbursed in the manner  
2 required by Section 2831.1 of the Regulations.

3 XV

4 In connection with the receipt and disbursement of  
5 trust funds described in Paragraph VII above, Respondents  
6 permitted withdrawals to made from Account#1 and Account #2 by  
7 someone other than a corporate officer designated pursuant to  
8 Section 10158 and 10211 of the Code, or a salesperson licensed  
9 to Respondents and authorized in writing by Respondents to  
10 withdraw said funds, or an authorized unlicensed employee  
11 covered by a fidelity bond indemnifying against loss in an  
12 amount sufficient to cover the maximum amount of funds to which  
13 the employee had access at any time, in violation of Section  
14 2834 and 2951 of the Regulations.

15 XVI

16 Within the three-year period immediately preceding the  
17 filing of this Accusation, Respondents operated their real  
18 estate business under the fictitious business names "MFAC",  
19 "MFAC Escrow", "Malan Financial Alliance Corporation", "Malan  
20 Financial Alliance Corp.", and "Malan Financial Alliance Inc.",  
21 without Respondents obtaining a license from the Department  
22 bearing said fictitious business names in violation of Section  
23 10159.5 of the Code and Section 2731 of the Regulations.

24 XVII

25 Within the three-year period immediately preceding the  
26 filing of this Accusation, Respondents failed to notify the  
27 Commissioner in writing within five (5) days of the employment

1 of Respondents of real estate salespersons Herbert Eugene Baker,  
2 Kevin Charles Hand, and Jaime Adres Valle as required by Section  
3 10161.8 of the Code and Section 2752 of the Regulations.

4 XVIII

5 Within the three-year period immediately preceding the  
6 filing of this Accusation, Respondents failed to have a written  
7 agreement with each of his salespersons, whether licensed as a  
8 salesperson or as a broker under a broker salesperson  
9 arrangement, dated and signed by the parties and covering  
10 material aspects of the relationship between the parties as  
11 required by Sections 2726 of the Regulations.

12 XIX

13 In connection with the mortgage loan brokerage  
14 activities described in Paragraph V above, Respondents failed to  
15 disclose in Mortgage Loan Disclosure Statements all of the  
16 information required by Section 10236.4 of the Code.

17 XX

18 In connection with the mortgage loan brokerage  
19 activities described in Paragraph V above, Respondents failed to  
20 present to borrowers, before said borrowers became obligated to  
21 the complete the loan, a statement with the contents set forth  
22 in Section 10241 of the Code and 2840 of the Regulations, in  
23 violation of Section 10240(a) of the Code.

24 XXI

25 Within the three-year period immediately preceding the  
26 filing of this Accusation, in connection with the mortgage loan  
27 brokerage activities described in Paragraph V above, Respondents

1 engaged in the business of claiming, demanding, charging,  
2 receiving, collecting or contracting for the collection of  
3 advance fees within the meaning of Sections 10026 and 10131.2  
4 (advance fees) of the Code. Said advance fees were in the form  
5 a "rate lock fee" in the amount of \$400.00 charged to the  
6 borrower's credit card. Said advance fees were trust funds.

7 XXII

8 In connection with the collection and handling of the  
9 advance fees described in Paragraph XXI above, Respondents  
10 failed to cause the advance fee contracts and all materials used  
11 in obtaining said advance fee agreements to be submitted to the  
12 Department prior to use as required by Section 10085 of the Code  
13 and Section 2970 of the Regulations.

14 XXIII

15 In connection with the collection and handling of the  
16 advance fees described in Paragraph XXI above, failed to  
17 maintain adequate columnar records advance fees received and  
18 disbursed in the manner required by Section 2831 of the  
19 Regulations.

20 XXIV

21 The facts alleged above, are grounds for the  
22 suspension or revocation of Respondents' licenses and/or license  
23 rights under the following sections of the Code and Regulations:

24 (1) As to Paragraph IX, under Section 10177(d) of the  
25 Code in conjunction with Section 10145 of the Code;

26 (2) As to Paragraph X, under Section 10177(d) of the  
27 Code in conjunction with Section 10145 of the Code;

1 (3) As to Paragraph XI, under Section 10177(d) of the  
2 Code in conjunction with Section 2832.1 of the Regulations;

3 (4) As to Paragraph XII, under Section 10177(d) of  
4 the Code in conjunction with Section 2831.2 of the Regulations;

5 (5) As to Paragraph XIII, under Section 10177(d) of  
6 the Code in conjunction with Sections 2831 and 2951 of the  
7 Regulations;

8 (6) As to Paragraph XIV, under Section 10177(d) of  
9 the Code in conjunction with Section 2831.1 of the Regulations;

10 (7) As to Paragraph XV, under Section 10177(d) of the  
11 Code in conjunction with Sections 2834 and 2951 of the  
12 Regulations;

13 (8) As to Paragraph XVI, under Section 10177(d) of  
14 the Code in conjunction with Section 10159.5 of the Code and  
15 Sections 2731 of the Regulations;

16 (9) As to Paragraph XVII, under Section 10177(d) of  
17 the Code in conjunction with Section 10161.8 of the Code and  
18 Section 2752 of the Regulations;

19 (10) As to Paragraph XVIII, under Section 10177(d) of  
20 the Code in conjunction with Section 2726 of the Regulations;

21 (11) As to Paragraph XIX, under Section 10177(d) of  
22 the Code in conjunction with Section 10236.4 of the Code;

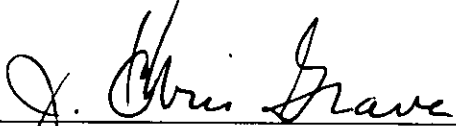
23 (12) As to Paragraph XX, under Section 10177(d) of the  
24 Code in conjunction with Section 10240(a) of the Code;

25 (13) As to Paragraph XXII, under Section 10177(d) of  
26 the Code in conjunction with Section 10085 of the Code and  
27 Section 2970 of the Regulations; and

1 (14) As to Paragraph XXIII, under Section 10177(d) of  
2 the Code in conjunction with Section 2831 of the Regulations.

3 In the alternative, the acts and/or omissions of  
4 Respondent LADEWIG described above, constitute failure on the  
5 part of Respondent LADEWIG, as designated broker-officer for  
6 Respondent MALAN, to exercise reasonable supervision and control  
7 over the licensed activities of Respondent LADEWIG required by  
8 Section 10159.2 of the Code, and is cause for the suspension or  
9 revocation of Respondent LADEWIG's license and or license rights  
10 under Section 10177(h) of the Code.

11 WHEREFORE, Complainant prays that a hearing be  
12 conducted on the allegations of this Accusation and that upon  
13 proof thereof a decision be rendered imposing disciplinary  
14 action against all licenses and license rights of Respondents,  
15 under the Real Estate Law (Part 1 of Division 4 of the Business  
16 and Professions Code) and for such other and further relief as  
17 may be proper under other provisions of law.

18  
19   
20 J. CHRIS GRAVES  
Deputy Real Estate Commissioner

21 Dated at San Diego, California,  
22 this 26<sup>th</sup> day of February, 2003.