

1 I have considered the petition of Respondent and the
2 evidence and arguments in support thereof. Respondent has
3 demonstrated to my satisfaction that Respondent meets the
4 requirements of law for the issuance to Respondent of an
5 unrestricted real estate broker license and that it would not be
6 against the public interest to issue said license to Respondent.

7 NOW, THEREFORE, IT IS ORDERED that Respondent's
8 petition for reinstatement is granted and that a real estate
9 broker license be issued to Respondent if Respondent satisfies
10 the following conditions within nine (9) months from the date of
11 this Order:

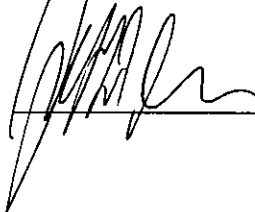
12 1. Submittal of a completed application and payment of
13 the fee for a real estate broker license.

14 2. Submittal of evidence of having, since the most
15 recent issuance of an original or renewal real estate license,
16 taken and successfully completed the continuing education
17 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
18 for renewal of a real estate license.

19 This Order shall be effective immediately.

20 DATED: _____

21 JEFF DAVI
22 Real Estate Commissioner

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FILED

JUL 05 2000

DEPARTMENT OF REAL ESTATE

By Juan A. Escobar

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
MONTGOMERY L. TOSCANO,)	No. H-7573 SF
Respondent.)	

ORDER GRANTING REINSTATEMENT OF LICENSE

On July 14, 1998, an Order was rendered herein revoking the real estate broker license of 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 August 19, 1998, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On August 27, 1999, 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.

///

1 I have considered the petition of Respondent and the
2 evidence and arguments in support thereof including Respondent's
3 record as a restricted licensee. Respondent has demonstrated to
4 my satisfaction that Respondent meets the requirements of law for
5 the issuance to Respondent of an unrestricted real estate broker
6 license and that it would not be against the public interest to
7 issue said license to Respondent.

8 NOW, THEREFORE, IT IS ORDERED that Respondent's
9 petition for reinstatement is granted and that a real estate
10 broker license be issued to Respondent if Respondent satisfies
11 the following conditions within nine months from the date of this
12 Order:

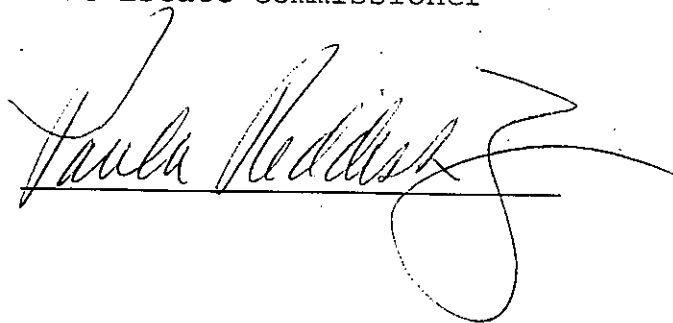
13 1. Submittal of a completed application and payment of
14 the fee for a real estate broker license.

15 2. Submittal of evidence of having, since the most
16 recent issuance of an original or renewal real estate license,
17 taken and successfully completed the continuing education
18 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
19 for renewal of a real estate license.

20 This Order shall be effective immediately.

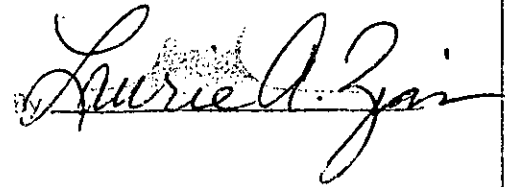
21 DATED: June 24, 2000.

22 PAULA REDDISH ZINNEMANN
23 Real Estate Commissioner

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27

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4
5 Telephone: (916) 227-0789
6
7

FILED
JUL 29 1998
DEPARTMENT OF REAL ESTATE



8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) NO. H-7573 SF
12)
13 ARTHUR BRIAN FICHTENBERG,) OAH NO. N-1998050377
14 and MONTGOMERY L. TOSCANO,)
15 Respondents.) STIPULATION AND AGREEMENT

16 It is hereby stipulated by and between Respondent
17 ARTHUR BRIAN FICHTENBERG and MONTGOMERY L. TOSCANO (hereinafter
18 "Respondents"), individually and by and through Curt Sproul, Esq.,
19 Respondents' attorney of record herein, and the Complainant,
20 acting by and through James L. Beaver, Counsel for the Department
21 of Real Estate, as follows for the purpose of settling and
22 disposing of the Accusation filed on May 6, 1998 in this matter
23 (hereinafter "the Accusation"):

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

H-7573 SF

ARTHUR BRIAN FICHTENBERG
and MONTGOMERY L. TOSCANO

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

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

7 3. On May 20, 1998, Respondents each filed a Notice of
8 Defense pursuant to Section 11505 of the Government Code for the
9 purpose of requesting a hearing on the allegations in the
10 Accusation. Respondents hereby freely and voluntarily withdraw
11 said Notice of Defense. Respondents acknowledge that Respondents
12 understand that by withdrawing said Notice of Defense Respondents
13 will thereby waive Respondents' right to require the Commissioner
14 to prove the allegations in the Accusation at a contested hearing
15 held in accordance with the provisions of the APA and that
16 Respondents will waive other rights afforded to Respondents in
17 connection with the hearing such as the right to present evidence
18 in defense of the allegations in the Accusation and the right to
19 cross-examine witnesses.

20 4. Respondents, pursuant to the limitations set forth
21 below, hereby admit that the factual allegations in the Accusation
22 are true and correct and the Real Estate Commissioner shall not be
23 required to provide further evidence of such allegations. The
24 parties agree that the Statement in Mitigation, attached as
25 Exhibit "A" hereto, is incorporated by this reference into this
26 Stipulation and Agreement.

27 ///

H-7573 SF

ARTHUR BRIAN FICHTENBERG
and MONTGOMERY L. TOSCANO



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I

The acts and omissions of Respondents described in Paragraph VII of the Accusation constitute cause for the suspension or revocation of the licenses and license rights of Respondents under Section 10177(d) of the Code in conjunction with Section 11018.2 of the Code.

II

The acts and omissions of Respondents described in Paragraph IX of the Accusation constitute cause for the suspension or revocation of the licenses and license rights of Respondents under Section 10177(d) of the Code in conjunction with Section 11013.4 of the Code.

ORDER

I

All licenses and licensing rights of Respondent ARTHUR BRIAN FICHTENBERG under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if, within ninety (90) days from the effective date of this Decision, Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license.

The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

H-7573 SF

ARTHUR BRIAN FICHTENBERG
and MONTGOMERY L. TOSCANO

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

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

12 3. Respondent shall not be eligible to apply for the
13 issuance of an unrestricted real estate license nor the removal of
14 any of the conditions, limitations or restrictions attaching to
15 the restricted license until one (1) year has elapsed from the
16 effective date of this Decision.

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

27 ///

H-7573 SF

ARTHUR BRIAN FICHTENBERG
and MONTGOMERY L. TOSCANO



1 opportunity for a hearing pursuant to the Administrative Procedure
2 Act to present such evidence.

3 5. Respondent shall, within six (6) months from the
4 issuance of the restricted license, take and pass the Professional
5 Responsibility Examination administered by the Department
6 including the payment of the appropriate examination fee. If
7 Respondent fails to satisfy this condition, the Commissioner may
8 order the suspension of the restricted license until Respondent
9 passes the examination.

10 6. Any restricted real estate broker license issued to
11 Respondent may be suspended or revoked for a violation by
12 Respondent of any of the conditions attaching to the restricted
13 license.

14 II

15 All licenses and licensing rights of Respondent
16 MONTGOMERY L. TOSCANO under the Real Estate Law are revoked;
17 provided, however, a restricted real estate broker license shall
18 be issued to Respondent pursuant to Section 10156.5 of the
19 Business and Professions Code if, within ninety (90) days from the
20 effective date of this Decision, Respondent makes application
21 therefor and pays to the Department of Real Estate the appropriate
22 fee for the restricted license.

23 The restricted license issued to Respondent shall be
24 subject to all of the provisions of Section 10156.7 of the
25 Business and Professions Code and to the following limitations,
26 conditions and restrictions imposed under authority of Section
27 10156.6 of that Code:

H-7573 SF

ARTHUR BRIAN FICHTENBERG
and MONTGOMERY L. TOSCANO



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

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

12 3. Respondent shall not be eligible to apply for the
13 issuance of an unrestricted real estate license nor the removal of
14 any of the conditions, limitations or restrictions attaching to
15 the restricted license until one (1) year has elapsed from the
16 effective date of this Decision.

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

27 ///

H-7573 SF

ARTHUR BRIAN FICHTENBERG
and MONTGOMERY L. TOSCANO



1 opportunity for a hearing pursuant to the Administrative Procedure
2 Act to present such evidence.

3 5. Respondent shall, within six (6) months from the
4 issuance of the restricted license, take and pass the Professional
5 Responsibility Examination administered by the Department
6 including the payment of the appropriate examination fee. If
7 Respondent fails to satisfy this condition, the Commissioner may
8 order the suspension of the restricted license until Respondent
9 passes the examination.

10 6. Any restricted real estate broker license issued to
11 Respondent may be suspended or revoked for a violation by
12 Respondent of any of the conditions attaching to the restricted
13 license.

14 June 18, 1998
15 DATED

James L. Beaver
16 JAMES L. BEAVER, Counsel
17 DEPARTMENT OF REAL ESTATE
18 * * *

18 I have read the Stipulation and Agreement, have
19 discussed its terms with my attorney and its terms are understood
20 by me and are agreeable and acceptable to me. I understand that
21 I am waiving rights given to me by the California Administrative
22 Procedure Act (including but not limited to Sections 11506,
23 11508, 11509, and 11513 of the Government Code), and I willingly,
24 intelligently, and voluntarily waive those rights, including the
25 right of requiring the Commissioner to prove the allegations in
26 the Accusation at a hearing at which I would have the right to
27 ///

1 cross-examine witnesses against me and to present evidence in
2 defense and mitigation of the charges.

3
4 June 15, 1998
5 DATED

Arthur Brian Fichtenberg
ARTHUR BRIAN FICHTENBERG
Respondent

6
7 June 15, 1998
8 DATED

Montgomery L. Toscano
MONTGOMERY L. TOSCANO
Respondent

9 I have reviewed the Stipulation and Agreement as to form
10 and content and have advised my clients accordingly.

11
12 June 17, 1998
13 DATED

Curt Sproul
CURT SPROUL, ESQ.
Attorney for Respondents

14 * * *

15 The foregoing Stipulation and Agreement for Settlement
16 is hereby adopted by the Real Estate Commissioner as his Decision
17 and Order and shall become effective at 12 o'clock noon on
18 August 19, 1998.

19 IT IS SO ORDERED 7/14, 1998.

20 JIM ANTT, JR.
Real Estate Commissioner

21
22 J. Antt
23
24
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26
27

1 Curtis C. Sproul, State Bar No. 58370
WEINTRAUB GENSHEA & SPROUL
2 Law Corporation
400 Capitol Mall, 11th Floor
3 Sacramento, California 95814
(916) 558-6000
4

5 Attorneys for Respondents
6
7

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 THE STATE OF CALIFORNIA
10

11 In the Matter of the Accusation of

No. H-7573

12 ARTHUR BRIAN FICHTENBERG,
13 and MONTGOMERY L.
14 TOSCANO,

**RESPONDENTS' STATEMENT IN
MITIGATION IN RESPONSE
TO ACCUSATION**

15 Respondents.
16

17 ARTHUR BRIAN FICHTENBERG ("Fichtenberg") and MONTGOMERY L.
18 TOSCANO ("Toscano"), respondents in the above-captioned Action, jointly offer the following
19 Statement in Mitigation of the Accusation filed by the California Department of Real Estate on
20 May 6, 1998 (the "Accusation"):

21 1. The substance of the Accusation relates to several sales of lots in a small (29 lot)
22 development located within the city limits of the City of Sonoma known as Fryer Creek Village
23 (the "Development"). The Development contains no common areas, all lots are accessed by
24 public streets and there is no association comprised of the owners of lots within the
25 Development. Prior to any conveyances of lots in the subdivision, all public improvements were
26 installed and paid for.

WEINTRAUB 27 ///
GENSHLEA 28 ///
& SPROUL
LAW CORPORATION

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Eleventh Floor
Sacramento, CA 95814
(916) 558-6000

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EXHIBIT "A"

- 1 -

1 2. The land comprising the Development was acquired by a general partnership
2 named "Newcomb Investments" in 1991 (the "Partnership"). Fichtenberg and Toscano were
3 managing general partners of the Partnership.

4 3. Due to local community opposition to the Partnership's initial development plan,
5 the Partnership was compelled to carry its investment in the land during the period from 1991
6 until the final subdivision map recorded in 1995. Because the Partnership was precluded from
7 pursuing its initial development plan in an expeditious fashion, which, if successful, would have
8 resulted in a prompt return on the partners' investment, several partners expressed a desire to
9 liquidate their interest in the Partnership through receipt of title to lots in the Development as the
10 withdrawing partners' return on their investment. Accordingly, the Partnership distributed eight
11 lots to one partner, three lots to another partner, two lots to another partner, and one lot to a
12 fourth partner, for a total of 14 lots distributed to four partners. In addition, on Lot 3, the
13 Partnership constructed a residence which was deeded to Fichtenberg and which now serves as
14 Mr. Fichtenberg's principal residence. It is conceded that there is no general exemption from the
15 Public Report requirements of the Subdivided Lands Act applicable to the conveyance of
16 subdivided lots to partners of a subdivider-partnership in liquidation of the recipient partner's
17 interest. However, such a conveyance of subdivided interests in the context of a partnership that
18 was not formed for purposes of evading the Act is certainly not the type of transaction that the
19 Act was primarily designed to regulate — namely sales of subdivided interests to third-party
20 members of the general public who have no interest in the development entity.

21 4. Once several of the Partnership's partners had received their lots, they expressed a
22 desire to Messrs. Toscano and Fichtenberg to put the lots on the market. It was those inquires
23 that prompted the Respondents to make inquiries of both the title company and the Department
24 of Real Estate to determine whether the transactions would require a Public Report. The
25 Respondents were generally aware that an exemption from the Public Report requirements is
26 available for lots that are not in a common interest development, but rather are located entirely
27 within the boundaries of a city and are improved. The Respondents were thinking of the
28 exemption available pursuant to Business & Professions Code section 11010.4, but neither Mr.

1 Toscano nor Mr. Fichtenberg was specifically aware that the statute specifically requires that lots
2 otherwise eligible for the exemption be improved, not only with respect to essential
3 infrastructure (such as utilities and roads), but also with a "completed residential structure"
4 (quoting from the statute). Although no written confirmation was requested or received from the
5 Department of Real Estate, the Respondents declare, under penalty of perjury, that they made
6 four separate inquires of the Department of Real Estate, in both the Sacramento and San
7 Francisco offices, and were advised by a DRE staff person that the lots could be sold without
8 a Public Report.

9 5. Accordingly, on the mistaken, yet good faith, belief that lots within the
10 Development qualified for the exemption available pursuant to Business & Professions Code
11 section 11010.4, the Respondents proceeded to consummate the transactions that are listed in
12 Paragraph IV of the Accusation, at a time when the subject lots were not improved with a
13 completed residential structure.

14 6. Prior to being involved as managing partners in the Development, neither Mr.
15 Toscano nor Mr. Fichtenberg had any significant experience in real estate development, as
16 opposed to real estate sales transactions.

17 7. The Respondents state, on information and belief, that the issue of the apparent
18 violation of the Subdivided Lands Act Public Report requirements did not come to the attention
19 of the Department of Real Estate as a result of any complaints from purchasers of lots in the
20 Development, but rather resulted from a letter written to the ^{from Mr. Toscano and} Department by Mr. Fichtenberg in
21 May 28, 1997, in which ^{Mr. Toscano and} Mr. Fichtenberg requested a written opinion on the exemption issue.
22 Once a negative response was received from the Department, the Respondents ceased all further
23 sales activity at the Development until such time as a Public Report was obtained.

24 8. The transaction identified and listed in Paragraph VI of the Accusation as
25 occurring on July 1, 1997 involving Western Pacific Development, involved a situation in which
26 the general purchaser was a partner in a limited partnership with Respondents. The limited
27 partnership was formed in the wake of the wind-down of the Partnership for the sole purpose of
28 re-acquiring several of the Development lots previously sold to withdrawing partners Cooper and

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& SPROUL
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Sacramento, CA 95814
(916) 558-6000

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1 Weir, along with other lots in the development so that the limited partnership could then improve
2 those lots with homes that would be sold to the general public. The lender who was financing
3 that construction and acquisition activity required that Western Pacific take title in its name and
4 therefore the transfer was made. Once again, this is a transaction involving persons who were
5 actively engaged in development of the project, not members of the general public.

6 9. Only the transactions involving Lot 11 (Bixler) and Lot 25 (Preston/Lilly) can be
7 characterized as true public sales. However, in mitigation it is relevant to note that the
8 conveyance to Preston/Lilly did not occur until after a Public Report for the development had
9 been obtained.

10 10. Finally, Respondents note that neither Respondent, in their capacities as real estate
11 licensees, has been the subject of any prior disciplinary proceedings initiated by the Department
12 of Real Estate.

13 The undersigned further declare under penalty of perjury that the foregoing statements
14 of facts relating to the issues raised in the Accusation are true and correct.

15
16 DATED: June 15, 1998

17
18 *Arthur Brian Fichtenberg*
19 ARTHUR BRIAN FICHTENBERG,
Respondent

20
21 *Montgomery L. Toscano*
22 MONTGOMERY L. TOSCANO,
Respondent

27 WEINTRAUB
28 GENSHEA
& SPROUL
LAW CORPORATION

400 Capitol Mall
Eleventh Floor
Sacramento, CA 95814
(916) 558-6000

FILED
JUN - 1 1998

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

Laurie A. Zain
By

In the Matter of the Accusation of

ARTHUR BRIAN FICHTENBERG,
and MONTGOMERY L. TOSCANO,

Case No. H-7573 SF

OAH No. N-1998050377

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the
Office of Administrative Hearings, World Savings Tower, 1970
Broadway, Second Floor, Oakland, CA 94612

on Thursday and Friday, July 9th and 10th, 1998, at the hour of 9:00 AM,
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.

Dated: June 1, 1998

DEPARTMENT OF REAL ESTATE

By *James L. Beaver*
JAMES L. BEAVER Counsel

1 (Part 1 of Division 4 of the Business and Professions Code)
2 (hereinafter "the Code").

3 III

4 At all times herein mentioned, Respondents were and now
5 are licensed by the California Department of Real Estate
6 (hereinafter "the Department") as real estate brokers.

7 IV

8 At all times mentioned herein Respondents were and now
9 are the owners or subdividers or agents of the owners or
10 subdividers of subdivided lands as defined in Section 11000 of the
11 Code.

12 V

13 Said subdivided lands, known as or commonly called
14 "Fryer Creek Village" (hereinafter "said Subdivision"), include
15 all that real property in the City of Sonoma, County of Sonoma,
16 State of California, described as Lots 1 through 29 as shown on
17 that certain map entitled "Fryer Creek Village, a Planned Unit
18 Development"; filed in the office of the County Recorder of Sonoma
19 County, State of California, on December 22, 1994 in Book 532 of
20 Maps at pages 35 through 37, Sonoma County Records.

21 VI

22 Commencing on or about April 4, 1995 and continuing
23 thereafter until at least on or about October 30, 1997,
24 Respondents solicited prospective purchasers, offered for sale and
25 sold lots in said Subdivision, including but not limited to, the
26 lots offered and sold on or about the dates tabulated below to the
27 purchasers tabulated below:



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<u>DATE</u>	<u>PURCHASER</u>	<u>LOTS</u>
04/01/95	Elizabeth Cooper	7, 8, 9, 13 14, 17, 18, 19
02/01/96	Robert Weir	20, 28, 29
04/01/96	David B. Bixler, et ux.	11
09/06/96	Gary, Preston, Timothy Lilly and Rebecca Lilly	25
07/01/97	Western Pacific Development	2, 9, 10, 17, 21

VII

Respondents solicited prospective purchasers, offered for sale and sold lots in said Subdivision, as described in Paragraph VI, above, without having first filed with the Department a notice of intention and completed questionnaire as required by Section 11010 of the Code, and without having first obtained a public report as required by Section 11018.2 of the Code.

VIII

In course of the transactions described in Paragraph VI, above, Respondents entirely failed to provide the purchasers with a copy of a subdivision public report issued by the Department authorizing the sale of lots, units or parcels in said Subdivision, in violation of Section 11018.1(a) of the Code.

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IX

On or about the dates tabulated below, in course of the sale of lot 25 to Gary Preston and to Timothy Lilly and Rebecca Lilly, as described in Paragraph VI, above, Respondents violated Sections 11013.2 and/or 11013.4 of the Code, in that, without first complying with subsections (b), (c), or (d) of Section 11013.2 of the Code, or subsections (b), (c), (d), or (e) of Section 11013.4 of the Code, Respondents caused a portion of the money paid or advanced by the buyers for the purchase of the lot or improvements thereon to be released from the escrow depository to Respondents while the lot was subject to a blanket encumbrance and prior to close of the escrow and conveyance of fee title to the lot to the buyer:

<u>DATE</u>	<u>AMOUNT</u>
04/11/97	\$50,000.00
09/30/97	\$27,000.00

X

The acts and omissions of Respondents described in Paragraph VII, above, constitute cause for the suspension or revocation of the licenses and license rights of Respondents under Section 10177(d) of the Code in conjunction with Section 11018.2 of the Code.

XI

The acts and omissions of Respondents described in Paragraph VIII, above, constitute cause for the suspension or revocation of the licenses and license rights of Respondents under

///

1 Section 10177(d) of the Code in conjunction with Section
2 11018.1(a) of the Code.

3 XII

4 The acts and omissions of Respondents described in
5 Paragraph VIII, above, constitute cause for the suspension or
6 revocation of the licenses and license rights of Respondents under
7 Section 10177(d) of the Code in conjunction with Sections 11013.2
8 and/or 11013.4 of the Code.

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

16 

17 LES R. BETTENCOURT
18 Deputy Real Estate Commissioner

19 Dated at San Francisco, California
20 this 1st day of May, 1998.

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