

1 MARY F. CLARKE, Counsel (SBN 186744)  
2 BUREAU OF REAL ESTATE  
3 1651 Exposition Blvd.  
4 P. O. Box 137007  
5 Sacramento, CA 95813-7007

6 Telephone: (916) 263-8670 (Main Office)  
7 -or- (916) 263-7303 (Direct)  
8 -or- (916) 263-3767 (Fax)

**FILED**

AUG 16 2013

BUREAU OF REAL ESTATE

By K. Contreras

9 BEFORE THE BUREAU OF REAL ESTATE

10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Accusation of )  
13 ) NO. H-11569 SF  
14 JOHN STEPHEN SHIELLS, )  
15 ) ACCUSATION  
16 Respondent. )  
17 )

18 The Complainant, ROBIN TANNER, a Deputy Real Estate Commissioner of the  
19 State of California, makes this Accusation in her official capacity against Respondent JOHN  
20 STEPHEN SHIELLS (herein "Respondent"), and is informed and alleges as follows:

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22 At all times herein mentioned, Respondent is licensed and/or has license rights  
23 under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code)  
24 (herein the "Code").

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26 At all times herein mentioned, Respondent was and now is licensed by the  
27 State of California Bureau of Real Estate (herein the "Bureau") as a real estate broker.

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At all times herein mentioned, Respondent engaged in the business of, acted in  
the capacity of, advertised, or assumed to act as a real estate broker within the State of California

1 within the meaning of Section 10131(d) of the Code, including the operation and conduct of a  
2 mortgage loan brokerage with the public wherein, on behalf of others, for compensation or in  
3 expectation of compensation, Respondent solicited borrowers or lenders for or negotiated loans or  
4 collected payments or performed services for borrowers or lenders or note owners in connection  
5 with loans secured directly or collaterally by liens on real property or on a business opportunity.

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7 In so acting as a real estate broker, Respondent accepted or received funds in trust  
8 (herein "trust funds") from or on behalf of lenders, investors, borrowers and others in connection  
9 with the mortgage loan brokerage activities described in Paragraph 3, above, and thereafter from  
10 time to time made disbursements of said trust funds.

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12 The aforesaid trust funds accepted or received by Respondent were deposited or  
13 caused to be deposited by Respondent into one or more bank accounts (herein "trust fund  
14 accounts") maintained by Respondent for the handling of trust funds at the St. Paul, Minnesota,  
15 branch of US Bank including but not necessarily limited to "John S. Shiells, Marilyn M. Shiells,"  
16 account number xxxxxxxx9396 (herein "Bank Account #1");

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18 Between about January 1, 2011 and April 30, 2012, in connection with the  
19 activities described in Paragraph 3, above, Respondent:

20 (a) failed to place trust funds entrusted to Respondent into the hands of a principal  
21 on whose behalf the funds were received, into a neutral escrow depository, or into a trust fund  
22 account in the name of Respondent as trustee at a bank or other financial institution, in that  
23 Respondent placed such funds in Bank Account #1, in violation of Section 10145 of the Code and  
24 Section 2832 of Title 10 Chapter 6 of the California Code of Regulations (herein "the Regulations");

25 (b) failed to keep a columnar record in chronological sequence of all trust  
26 funds received and disbursed from Bank Account #1 containing all the information required by  
27 Section 2831 of the Regulations;

1 (c) failed to keep a separate record for each beneficiary or transaction for Bank  
2 Account #1 containing all the information required by Section 10145 of the Code and Section  
3 2831.1 of the Regulations;

4 (d) failed to reconcile at least once a month, the balance of all separate  
5 beneficiary or transaction records with Bank Account #1, as required by Section 2831.2 of the  
6 Regulations;

7 (e) caused, suffered or permitted money of others which was received and  
8 held by Respondent as trustee in Bank Account #1 to be commingled with Respondent's own  
9 money, in violation of Section 10176(e) of the Code and Section 2835 of the Regulations;

10 (f) failed to submit a Multi-Lender Transaction Notice to the Bureau within  
11 30 days after qualification as a threshold broker for mortgage loan activity for the following  
12 loans, in violation of Section 10238(a):

<u>Loan #</u>	<u>Property</u>
1	Ralston Way, Hayward CA
2	Olive, Oakland, CA
3	68 <sup>th</sup> Avenue, Oakland, CA

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16 (g) failed to provide Mortgage Loan Disclosure Statements to borrowers  
17 Golden Pinnacle Development Corporation for Loan #1 and Community Fund, LLC for Loan #2,  
18 satisfying all of the requirements of Sections 10240 (Written Disclosure Statement) and 10241  
19 (Statement Content) of the Code;

20 (h) failed to provide Lender/Purchaser Disclosure Statements to lenders De  
21 Sanz and Thaler Investments, LLC (herein "TIL") for Loans #1, #2, and #3, in violation of  
22 Section 10238(l) of the Code;

23 (i) failed to provide an appraisal report or broker's evaluation to lenders De  
24 Sanz and TIL for Loans #1, #2, and #3, in violation of Section 10238(h) of the Code;

25 (j) failed to qualify lenders De Sanz and Sheills and TIL from investing more  
26 than 10 percent of their assets or adjusted gross income into Loans #1, #2, and #3, in violation of  
27 Section 10238(f) of the Code;

1 (k) failed to put in place written loan servicing agreements for Loans #1, #2,  
2 and #3 with lenders, in violation of Sections 10238(k) and 10233 of the Code;

3 (l) failed to accurately record deeds of trust for Loans #2 and #3, in that  
4 Respondent failed to timely provide Respondent's portion of the funding for both loans, in  
5 violation of Section 10238(g) of the Code; and

6 (m) failed to report to the Bureau as a threshold broker within 30 days of  
7 qualification as a threshold broker; failed to submit to the Bureau trust fund status reports for its  
8 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> quarters for 2011; and failed to submit to the Bureau the Mortgage Loan/Trust  
9 Deed Annual Report and annual report of trust fund financial statements reviewed by a CPA  
10 within 90 days after the end of the 2011 calendar year, in violation of Sections 10232.2 and  
11 10232.25 of the Code.

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13 The facts alleged above are grounds for the suspension or revocation of the  
14 license and license rights of Respondent under the following provisions of the Code and/or the  
15 Regulations:

16 (a) as to Paragraph 6(a) under Section 10145 of the Code and Section 2832  
17 of the Regulations in conjunction with Section 10177(d) of the Code;

18 (b) as to Paragraph 6(b) under Section 2831 of the Regulations in  
19 conjunction with Section 10177(d) of the Code;

20 (c) as to Paragraph 6(c) under Section 10145 of the Code and Section  
21 2831.1 of the Regulations in conjunction with Section 10177(d) of the  
22 Code;

23 (d) as to Paragraph 6(d) under Section 2831.2 of the Regulations in  
24 conjunction with Section 10177(d) of the Code;

25 (e) as to Paragraph 6(e) under Section 10176(e) of the Code and Section  
26 2835 of the Regulations in conjunction with Section 10177(d) of the  
27 Code;

- 1 (f) as to Paragraph 6(f) under Section 10238(a) of the Code in conjunction  
2 with Section 10177(d) of the Code;
- 3 (g) as to Paragraph 6(g) under Sections 10240 and 10241 of the Code in  
4 conjunction with Section 10177(d) of the Code;
- 5 (h) as to Paragraph 6(h) under Section 10238(l) of the Code in conjunction  
6 with Section 10177(d) of the Code;
- 7 (i) as to Paragraph 6(i) under Section 10238(h) of the Code in conjunction  
8 with Section 10177(d) of the Code;
- 9 (j) as to Paragraph 6(j) under Section 10238(f) of the Code in conjunction  
10 with Section 10177(d) of the Code;
- 11 (k) as to Paragraph 6(k) under Sections 10238(k) and 10233 of the Code in  
12 conjunction with Section 10177(d) of the Code;
- 13 (l) as to Paragraph 6(l) under Section 10238(g) of the Code in conjunction  
14 with Section 10177(d) of the Code; and
- 15 (m) as to Paragraph 6(m) under Sections 10232.2 and 10232.25 of the Code in  
16 conjunction with Section 10177(d) of the Code.

17 COST RECOVERY

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19 Audit Costs

20 The acts and/or omissions of Respondent as alleged in Paragraph 7, above,  
21 entitle the Bureau to reimbursement of the costs of its audit pursuant to Section 10148(b) of the  
22 Code.

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24 Investigation and Enforcement Costs

25 Section 10106 of the Code provides, in pertinent part, that in any order issued in  
26 resolution of a disciplinary proceeding before the Bureau, the Commissioner may request the  
27 Administrative Law Judge to direct a licensee found to have committed a violation of this part to  
pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), for the cost of the investigation and enforcement as permitted by law, and for such other and further relief as may be proper under other applicable provisions of law.



ROBIN TANNER  
Deputy Real Estate Commissioner

Dated at Oakland, California  
this 13<sup>th</sup> day of June, 2013.