

1 BUREAU OF REAL ESTATE  
2 P. O. Box 137007  
3 Sacramento, CA 95813-7007

4 Telephone: (916) 263-8670  
5 Fax: (916) 263-3767

**FILED**

JAN 11 2017

BUREAU OF REAL ESTATE  
By B. Nicholas

6  
7 BEFORE THE BUREAU OF REAL ESTATE  
8 STATE OF CALIFORNIA

9 \*\*\*

10 In the Matter of the Accusation of )  
11 )  
12 ) NO. H-11916 SF  
13 LINDSEY PROPERTIES, INC. and )  
14 DONALD WALTER LINDSEY, ) STIPULATION AND AGREEMENT  
15 ) IN SETTLEMENT AND ORDER  
16 Respondents. )

17 It is hereby stipulated by and between Respondents LINDSEY PROPERTIES,  
18 INC. (herein "LPI") and DONALD WALTER LINDSEY (herein "LINDSEY") (herein  
19 collectively, "Respondents") acting by and through Harvey L. Rochman, attorney of record for  
20 Respondents, and the Complainant, acting by and through Mary F. Clarke, Counsel for the  
21 Bureau of Real Estate (herein "the Bureau"), as follows for the purpose of settling and disposing  
22 the Accusation filed on December 16, 2015, in this matter (herein "Accusation"):

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

1                   2. Respondents have received, read and understand the Statement to Respondent,  
2 the Discovery Provisions of the APA, and the Accusation filed by the Bureau in this proceeding.

3                   3. Notices of Defense were filed on December 31, 2015 by Respondents  
4 pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on  
5 the allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said  
6 Notices of Defense. Respondents acknowledge they understand that by withdrawing said Notices  
7 of Defense they will thereby waive their rights to require the Real Estate Commissioner (herein  
8 "the Commissioner") to prove the allegations in the Accusation at a contested hearing held in  
9 accordance with the provisions of the APA and that they will waive other rights afforded to them  
10 in connection with the hearing such as the right to present evidence in defense of the allegations  
11 in the Accusation and the right to cross-examine witnesses.

12                   4. This Stipulation is based on the factual allegations contained in the Accusation  
13 filed in this proceeding. In the interest of expedience and economy, Respondents choose not to  
14 contest these factual allegations, but to remain silent and understand that, as a result thereof,  
15 these factual statements, will serve as a prima facie basis for the disciplinary action stipulated to  
16 herein. The Real Estate Commissioner shall not be required to provide further evidence to prove  
17 such allegations.

18                   5. It is understood by the parties that the Commissioner may adopt this  
19 Stipulation as his decision in this matter thereby imposing the penalty and sanctions on  
20 Respondents' real estate licenses and license rights as set forth in the below "Order." In the event  
21 the Commissioner in his discretion does not adopt this Stipulation, it shall be void and of no  
22 effect, and Respondents shall retain the right to a hearing and proceeding on the Accusation  
23 under all the provisions of the APA and shall not be bound by any admission or waiver made  
24 herein.

25                   6. The "Order" or any subsequent Order of the Commissioner made pursuant to  
26 this Stipulation shall not constitute an estoppel, merger, or bar to any further administrative or  
27



- 1                    2831.2 of the Regulations, in conjunction with Section 10177(d) of
- 2                    the Code;
- 3                    (d) as to Paragraph 8(d) under Section 10145 of the Code and Section
- 4                    2834 of the Regulations, in conjunction with Section 10177(d) of the
- 5                    Code;
- 6                    (e) as to Paragraph 8(e) under Section 10148 of the Code, in conjunction
- 7                    with Section 10177(d) of the Code;
- 8                    (f) as to Paragraph 8(f) under Section 10140.6(b) of the Code and
- 9                    Section 2773 of the Regulations, in conjunction with
- 10                    Section 10177(d) of the Code;
- 11                    (g) as to Paragraph 8(g) under Sections 10085 of the Code and Section
- 12                    2970 of the Regulations, in conjunction with Section 10177(d) of the
- 13                    Code;
- 14                    (h) as to Paragraph 8(h) under Section 10146 of the Code, in conjunction
- 15                    with Section 10177(d) of the Code;
- 16                    (i) as to Paragraph 8(i) under Section 10146 of the Code and Section
- 17                    2972 of the Regulations, in conjunction with Section 10177(d) of the
- 18                    Code; and
- 19                    (j) as to Paragraph 8(j) under Sections 10130, 10131(d) and 10137 of
- 20                    the Code, in conjunction with Section 10177(d) of the Code.

21                    ORDER

22                    I

23                    All licenses and licensing rights of Respondent LPI under the Real Estate Law are

24 revoked; provided, however, a restricted real estate corporate broker license shall be issued to

25 Respondent pursuant to Section 10156.5 of the Code if Respondent makes application therefor

26 and pays to the Bureau the appropriate fee for the restricted license within 90 days from the



1 effective date of this Decision. The restricted license issued to Respondent shall be subject to all  
2 of the provisions of Section 10156.7 of the Code and to the following limitations, conditions and  
3 restrictions imposed under authority of Section 10156.6 of that Code:

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

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

12 3. Pursuant to Section 10148 of the Code, Respondent shall pay, jointly and  
13 severally with Respondent LINDSEY, the sum of \$9,813.72 for the Commissioner's cost of the  
14 audit which led to this disciplinary action. **Respondent shall pay such cost within sixty (60)**  
15 **days of receiving an invoice therefore from the Commissioner.** Payment of audit costs should  
16 not be made until Respondent receives the invoice. If Respondent fails to satisfy this condition  
17 in a timely manner as provided for herein, Respondent's real estate license shall automatically be  
18 suspended until payment is made in full, or until a decision providing otherwise is adopted  
19 following a hearing held pursuant to this condition.

20 4. Pursuant to Section 10148 of the Code, Respondent shall pay, jointly and  
21 severally with Respondent LINDSEY, the Commissioner's reasonable cost, not to exceed  
22 \$12,267.15, for an audit to determine if Respondent has corrected the violation(s) found in the  
23 Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, the  
24 Commissioner may use the estimated average hourly salary for all persons performing audits of  
25 real estate brokers, and shall include an allocation for travel time to and from the auditor's place  
26 of work. **Respondent shall pay such cost within sixty (60) days of receiving an invoice**  
27

1 **therefore from the Commissioner.** Payment of the audit costs should not be made until  
2 Respondent receives the invoice. If Respondent fails to satisfy this condition in a timely manner  
3 as provided for herein, Respondent's real estate license shall automatically be suspended until  
4 payment is made in full, or until a decision providing otherwise is adopted following a hearing  
5 held pursuant to this condition.

6 5. All licenses and licensing rights of Respondent are indefinitely suspended  
7 unless or until Respondent, jointly and severally with Respondent LINDSEY, pays the sum of  
8 \$5,145.05 for the Commissioner's reasonable cost of the investigation and enforcement which  
9 led to this disciplinary action. Said payment shall be in the form of a cashier's check made  
10 payable to the Bureau of Real Estate. **The investigative and enforcement costs must be**  
11 **delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA**  
12 **95813-7013, prior to the effective date of this Decision.**

13 II

14 All licenses and licensing rights of Respondent LINDSEY under the Real Estate  
15 Law are revoked; provided, however, a restricted designated officer-broker license shall be  
16 issued to Respondent pursuant to Section 10156.5 of the Code if Respondent makes application  
17 therefor and pays to the Bureau the appropriate fee for the restricted license within 90 days from  
18 the effective date of this Decision. The restricted license issued to Respondent shall be subject to  
19 all of the provisions of Section 10156.7 of the Code and to the following limitations, conditions  
20 and restrictions imposed under authority of Section 10156.6 of that Code:

21 1. The restricted license issued to Respondent may be suspended prior to hearing  
22 by Order of the Commissioner in the event of Respondent's conviction or plea of nolo contendere  
23 to a crime which is substantially related to Respondent's fitness or capacity as a real estate  
24 licensee.

25 2. The restricted license issued to Respondent may be suspended prior to hearing  
26 by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that  
27



1 Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands  
2 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted  
3 license.

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

7 4. Pursuant to Section 10148 of the Code, Respondent shall pay, jointly and  
8 severally with Respondent LPI, the sum of \$9,813.72 for the Commissioner's cost of the audit  
9 which led to this disciplinary action. **Respondent shall pay such cost within sixty (60) days of**  
10 **receiving an invoice therefore from the Commissioner.** Payment of audit costs should not be  
11 made until Respondent receives the invoice. If Respondent fails to satisfy this condition in a  
12 timely manner as provided for herein, Respondent's real estate license shall automatically be  
13 suspended until payment is made in full, or until a decision providing otherwise is adopted  
14 following a hearing held pursuant to this condition.

15 5. Pursuant to Section 10148 of the Code, Respondent shall pay, jointly and  
16 severally with Respondent LPI, the Commissioner's reasonable cost, not to exceed \$12,267.15,  
17 for an audit to determine if Respondent has corrected the violation(s) found in the Determination  
18 of Issues. In calculating the amount of the Commissioner's reasonable cost, the Commissioner  
19 may use the estimated average hourly salary for all persons performing audits of real estate  
20 brokers, and shall include an allocation for travel time to and from the auditor's place of work.  
21 **Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from**  
22 **the Commissioner.** Payment of the audit costs should not be made until Respondent receives  
23 the invoice. If Respondent fails to satisfy this condition in a timely manner as provided for  
24 herein, Respondent's real estate license shall automatically be suspended until payment is made  
25 in full, or until a decision providing otherwise is adopted following a hearing held pursuant to  
26 this condition.

27

1                   6. All licenses and licensing rights of Respondent are indefinitely suspended  
2 unless or until Respondent, jointly and severally with Respondent LPI, pays the sum of  
3 \$5,145.05 for the Commissioner's reasonable cost of the investigation and enforcement which  
4 led to this disciplinary action. Said payment shall be in the form of a cashier's check made  
5 payable to the Bureau of Real Estate. **The investigative and enforcement costs must be**  
6 **delivered to the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA**  
7 **95813-7013, prior to the effective date of this Decision.**

8                   7. Respondent shall, within nine (9) months from the effective date of this  
9 **Decision**, present evidence satisfactory to the Commissioner that Respondent has, since the most  
10 recent issuance of an original or renewal real estate license, taken and successfully completed the  
11 continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal  
12 of a real estate license. If Respondent fails to satisfy this condition, Respondent's real estate  
13 license shall automatically be suspended until Respondent presents evidence satisfactory to the  
14 Commissioner of having taken and successfully completed the continuing education  
15 requirements. **Proof of completion of the continuing education courses must be delivered to**  
16 **the Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013.**

17                   8. Respondent shall, within six (6) months from the effective date of this  
18 **Decision**, take and pass the Professional Responsibility Examination administered by the Bureau  
19 including the payment of the appropriate examination fee. If Respondent fails to satisfy this  
20 condition, Respondent's real estate license shall automatically be suspended until Respondent  
21 passes the examination.

22                   9. All licenses and licensing rights of Respondent LINDSEY are indefinitely  
23 suspended unless or until Respondent provides proof satisfactory to the Commissioner, of having  
24 taken and successfully completed the continuing education course on trust fund accounting and  
25 handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and  
26 Professions Code. Proof of satisfaction of these requirements includes evidence that Respondent  
27



1 has successfully completed the trust fund account and handling continuing education courses, no  
2 earlier than 120 days prior to the effective date of the Decision in this matter. **Proof of**  
3 **completion of the trust fund accounting and handling course must be delivered to the**  
4 **Bureau of Real Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by**  
5 **fax at 916-263-8758, prior to the effective date of this Decision.**

6  
7  
8 11-8-16  
9 \_\_\_\_\_  
10 DATED

11  
12   
13 \_\_\_\_\_  
14 MARY F. CLARKE, Counsel  
15 Bureau of Real Estate

16 \*\*\*

17 Respondents can signify acceptance and approval of the terms and conditions of  
18 this Stipulation by faxing or electronically e-mailing a copy of the signature page, as actually  
19 signed by Respondents, to the Bureau at fax number (916) 263-3767. Respondents agree,  
20 acknowledge and understand that by electronically sending to the Bureau a fax or other electronic  
21 copy of Respondents' actual signature as it appears on the Stipulation, that receipt of the faxed or  
22 e-mailed copy by the Bureau shall be as binding on Respondent as if the Bureau had received the  
23 original signed Stipulation.

24 We have read this Stipulation and its terms are understood by us and are agreeable  
25 and acceptable to us. We understand that we are waiving rights given to us by the California  
26 APA (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government  
27 Code), and we willingly, intelligently, and voluntarily waive those rights, including the right of  
requiring the Commissioner to prove the allegations in the Accusation at a hearing at which we  
would have the right to cross-examine witnesses against us and to present evidence in defense  
and mitigation of the charges.

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

LINDSEY PROPERTIES, INC.  
Respondent

October 20, 2016

DATED

By:



DONALD WALTER LINDSEY  
Designated Officer Broker

October 20, 2016

DATED



DONALD WALTER LINDSEY  
Respondent

\*\*\*

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

11/07/16

DATED



HARVEY L. ROCHMAN  
Attorney for Respondent

\*\*\*

The foregoing Stipulation and Agreement in Settlement and Order is hereby adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on

FEB 01 2017

, ~~2016~~ 2017

IT IS SO ORDERED

January 10, 2017

2016 WSB

WAYNE S. BELL  
REAL ESTATE COMMISSIONER

