

1 Department of Real Estate  
107 South Broadway, Room 8107  
2 Los Angeles, California 90012  
3 (213) 620-4790

NOV 13 1990

DEPARTMENT OF REAL ESTATE  
BY K. K. K. K.

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \* \*

11 TO: ) No. H-24319 LA  
12 THE MORTGAGE ASSOCIATES, INC., )  
a corporation and CARLYLE EVERAD ) ORDER TO DESIST  
13 DAVIS, individually and as ) AND REFRAIN  
designated officer of The Mortgage )  
14 Associates, Inc. )  
15 \_\_\_\_\_ )

16 The Real Estate Commissioner of the State of California  
17 (hereinafter "Commissioner") has caused an investigation to be  
18 made of your activities as real estate brokers, and based upon the  
19 findings of that investigation, is of the opinion that, while  
20 engaged in activities that require a real estate broker license  
21 under the provisions of Sections 10131(a), 10131(d) and 10131.2  
22 of the California Business and Professions Code (hereinafter "Code"),  
23 you violated Sections 10085, 10145, 10146, 10148 and 10232.4 of  
24 the Code, and Sections 2831, 2831.2 and 2970 of Chapter 6, Title  
25 10, California Code of Regulations (hereinafter the Regulations").

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I

At all times material herein, THE MORTGAGE ASSOCIATES, INC. (hereinafter "TMA") was and now is licensed by the Department of Real Estate of the State of California (hereinafter "Department") as a corporate real estate broker.

II

At all times material herein, you, CARLYLE EVERAD DAVIS (hereinafter "DAVIS"), were and now are licensed by the Department as a real estate broker and as the designated officer of TMA. As the designated officer of TMA, you, DAVIS, were responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as set forth in Section 10159.2 of the Code.

III

All further reference to TMA shall be deemed to include in addition to TMA, the officers, directors, employees, agents, and real estate licensees employed by or associated with TMA, who at all times herein mentioned were engaged in the furtherance of the business or operations of said parties and who were acting within the course and scope of their corporate authority and employment.

IV

At all times herein mentioned, you, TMA, engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the meaning of Sections 10131(a), 10131(d), and 10131.2 of the Code, by engaging in the

1 sales or offers to sell, the solicitation of prospective  
2 purchasers or sellers of or the negotiation of the purchase or sale  
3 of real property on behalf of others for or in expectation of  
4 compensation. In addition, TMA operated a mortgage loan brokerage  
5 business with the public, wherein you collected payments and  
6 performed services for borrowers and lenders on loans secured by  
7 liens on real property, for or in expectation of compensation.

8

V

9 At all times material herein, you, TMA, engaged in the  
10 business of contracting for or receiving advance fees within the  
11 meaning of Section 10026 of the Code in connection with employment  
12 undertaken to promote the sale of real property, or to obtain a  
13 loan or loans therein.

14

VI

15 On or about September 19 and 20, 1989, the Department  
16 conducted an examination of your books and records pertaining to  
17 your trust fund handling, collection of advance fees, and other  
18 activities as real estate brokers. The time period covered by  
19 said examination was from September 1988, up to and including  
20 September 20, 1989, and unless otherwise specified, the relevant  
21 period of time referenced herein, shall be the same.

22

VII

23 At all times material, in the conduct of a mortgage  
24 broker business, you, TMA, packaged loans for various financial  
25 institutions and received monthly mortgage payments as well as  
26 trust funds for credit reports, appraisals and loan processing  
27 fees, and deposited or caused to be deposited, and disbursed or

1 caused to be disbursed, said trust funds through the following  
2 bank accounts at the Montrose branch of Security Pacific Bank:

3 <u>Account Name</u>	<u>Account Number</u>	<u>Funds Deposited</u>
4 Loan Trust Account (hereinafter T/A #1)	029-130-069	Good Faith Deposits
5 Service Trust Account 6 (hereinafter T/A #2)	029-130-088	Mortgage Payments

7 VIII

8 In the course of conducting the above-described  
9 business, you, TMA also used a business account entitled "TMA  
10 Business Checking Account" (No. 029-106-568 hereinafter "Checking  
11 Account") at the same bank. Said account was used for the deposit  
12 of commissions received from various institutional lenders as well  
13 as the receipt of processing fees from prospective borrowers. In  
14 addition, said account was used by you for the disbursement of  
15 payments of various business expenses.

16 IX

17 At all times mentioned herein, you, TMA, did not  
18 maintain a control account for the receipt and disbursement of  
19 trust funds received for the good faith deposits made by prospec-  
20 tive borrowers, for trust funds deposited in T/A #1. You failed to  
21 maintain a record of checks received in chronological sequence in  
22 columnar form, and failed to maintain a daily balance of the  
23 account after each day's transactions. You, TMA, violated Section  
24 2831 of the Regulations by the above-described conduct.

25 X

26 At all times mentioned herein, you, TMA, failed to  
27 maintain monthly reconciliations of all separate beneficiary

1 or transaction records with the control records of all trust funds  
2 received and disbursed. You, TMA, violated Section 2831.2 of the  
3 Regulations by failing to perform such monthly reconciliations.

4 XI

5 At all times mentioned herein, you, TMA, collected  
6 "good faith deposits" pursuant to agreements entered into between  
7 you and the prospective borrowers. Said funds were deposited in  
8 T/A #1 and were used for credit reports, real property appraisals,  
9 and loan processing fees. Said monies constitute advance fees  
10 within the meaning of Section 10026 of the Code, and as advance  
11 fees, are deemed trust funds within the meaning of Section 10046,  
12 10085 of the Code. You, TMA, violated Section 10085 of the Code  
13 and Section 2970 of the Regulations by not having submitted to the  
14 Department for review not less than 5 days prior to use, all  
15 agreements calling for the payment of advance fees.

16 XII

17 At all times mentioned herein, in the course of  
18 collecting advance fees as described in Paragraph XI, above, you,  
19 TMA, transferred a portion of each advance fee deposited from T/A  
20 #1 to your checking account. This portion of the deposit was  
21 designated as a loan processing fee and was paid into your  
22 checking account prior to the completion of the processing of  
23 the loan by the financial institution. You, TMA, and you, DAVIS,  
24 violated Section 10146 of the Code, by withdrawing these funds  
25 from T/A #1 prior to the time that they were actually expended  
26 for the benefit of the principal, and depositing them into the  
27 checking account.

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XIII

During the examination described in Paragraph VI hereinabove, the Department auditor requested all books and records for loan packaging activities performed during the period examined. You, TMA, and you, DAVIS, violated Section 10148 of the Code in that you were unable to produce all invoices for appraisal and credit reports as you had failed to maintain these invoices for a period of three years from the date of the closing of the transaction.

XIV

At all times mentioned herein, in the course of making solicitations to particular persons and in negotiating with said persons to make loans secured by liens on real property, you, TMA, failed to provide said lenders with the disclosure statement described in Section 10232.5 of the Code before said lenders became obligated to make said loans. You, TMA, violated Section 10232.4 of the Code by failing to provide lenders with the required disclosure statement.

XV

You, DAVIS, failed to comply with Section 10159.2 of the Code by allowing TMA to violate the above-described provisions of the Real Estate Law during the time that you were the designated officer of TMA, and subjected yourself to possible discipline under Section 10177(h) of the Code.

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1 NOW, THEREFORE, YOU, AND EACH OF YOU, YOUR AGENTS,  
2 EMPLOYEES, AND SUCCESSORS IN INTEREST, ARE ORDERED TO DESIST AND  
3 REFRAIN from receiving funds in trust in transactions involving  
4 a real estate license unless and until said activities are  
5 performed in compliance with Sections 10145 and 10148 of the Code  
6 and Regulations 2831 and 2831.2.

7 FURTHER, YOU AND EACH OF YOU, YOUR AGENTS, EMPLOYEES  
8 AND SUCCESSORS IN INTEREST, ARE ORDERED TO DESIST AND REFRAIN  
9 from soliciting prospective buyers for and contracting for or  
10 collecting advance fees from any person unless and until said  
11 activities are performed in compliance with Sections 10085 and  
12 10146 of the Code and Section 2970 of the Regulations.

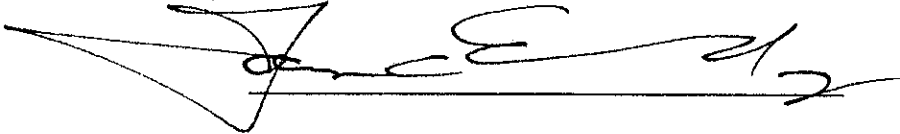
13 FURTHER, YOU AND EACH OF YOU, YOUR EMPLOYEES, AGENTS  
14 AND SUCCESSORS IN INTEREST, ARE ORDERED TO DESIST AND REFRAIN  
15 from performing mortgage loan activity within the meaning of  
16 Section 10131(d) of the Code unless and until said activities are  
17 performed in compliance with Section 10232.4 of the Code.

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1 FINALLY, YOU, CARLYLE EVERAD DAVIS, ARE ORDERED TO  
2 DESIST AND REFRAIN from conduct which would subject your license  
3 and/or license rights to discipline pursuant to Section 10177(h)  
4 of the Code.

5 DATED: 11-6-90

7 JAMES A. EDMONDS, JR.  
8 Real Estate Commissioner

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cc: The Mortgage Associates, Inc.  
Carlyle Evead Davis  
8405 Pershing Drive #100  
Playa del Rey, CA 90293