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Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105
Telephone: (213) 576-6982 (office)

FILED

JUN 16 2009

DEPARTMENT OF REAL ESTATE
BY: *Handwritten signature*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-34644 LA
)	
TU VIVIENDA REAL ESTATE)	
INVESTMENTS INC. and GILMER K.)	<u>STIPULATION</u>
POZO, individually and as)	<u>AND</u>
designated officer of)	<u>AGREEMENT</u>
Tu Vivienda Real Estate)	
Investments Inc.,)	
)	
Respondents.)	

It is hereby stipulated by and between Respondents
TU VIVIENDA REAL ESTATE INVESTMENTS INC. and GILMER K. POZO,
individually and as designated officer of Tu Vivienda Real Estate
Investments Inc. represented by Frank M. Buda, Esq. (sometimes
collectively referred to as "Respondents"), and the Complainant,
acting by and through Elliott Mac Lennan, Counsel for the
Department of Real Estate, as follows for the purpose of settling
and disposing of the Accusation ("Accusation") filed on
January 16, 2008, in this matter:

1 1. All issues which were to be contested and all
2 evidence which was to be presented by Complainant and Respondents
3 at a formal hearing on the Accusation, which hearing was to be
4 held in accordance with the provisions of the Administrative
5 Procedure Act ("APA"), shall instead and in place thereof be
6 submitted solely on the basis of the provisions of this
7 Stipulation and Agreement ("Stipulation").
8

9 2. Respondents have received, read and understand the
10 Statement to Respondent, the Discovery Provisions of the APA and
11 the Accusation filed by the Department of Real Estate in this
12 proceeding.

13 3. Respondents timely filed a Notice of Defense
14 pursuant to Section 11506 of the Government Code for the purpose
15 of requesting a hearing on the allegations in the Accusation.
16 Respondents hereby freely and voluntarily withdraw said Notice of
17 Defense. Respondents acknowledge that they understand that by
18 withdrawing said Notice of Defense they thereby waive their right
19 to require the Commissioner to prove the allegations in the
20 Accusation at a contested hearing held in accordance with the
21 provisions of the APA and that they will waive other rights
22 afforded to them in connection with the hearing such as the right
23 to present evidence in their defense and the right to cross-
24 examine witnesses.
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1 4. This Stipulation is based on the factual
2 allegations contained in the Accusation. In the interest of
3 expedience and economy, Respondents choose not to contest these
4 allegations, but to remain silent and understand that, as a
5 result thereof, these factual allegations, without being admitted
6 or denied, will serve as a prima facie basis for the disciplinary
7 action stipulated to herein. The Real Estate Commissioner shall
8 not be required to provide further evidence to prove said factual
9 allegations.

10 5. This Stipulation is made for the purpose of
11 reaching an agreed disposition of this proceeding and is
12 expressly limited to this proceeding and any other proceeding or
13 case in which the Department of Real Estate ("Department"), the
14 state or federal government, or any agency of this state, another
15 state or federal government is involved.

16 6. It is understood by the parties that the Real
17 Estate Commissioner may adopt this Stipulation as his Decision in
18 this matter thereby imposing the penalty and sanctions on
19 Respondents' real estate licenses and license rights as set forth
20 in the "Order" herein below. In the event that the Commissioner
21 in his discretion does not adopt the Stipulation, it shall be
22 void and of no effect and Respondents shall retain the right to a
23 hearing and proceeding on the Accusation under the provisions of
24 the APA and shall not be bound by any stipulation or waiver made
25 herein.
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1 7. The Order or any subsequent Order of the Real
2 Estate Commissioner made pursuant to this Stipulation shall not
3 constitute an estoppel, merger or bar to any further
4 administrative or civil proceedings by the Department of Real
5 Estate with respect to any matters which were not specifically
6 alleged to be causes for Accusation in this proceeding but do
7 constitute a bar, estoppel and merger as to any allegations
8 actually contained in the Accusations against Respondent herein.

9 8. Respondents understand that by agreeing to this
10 Stipulation, Respondents agree to pay, pursuant to Business and
11 Professions Code Section 10148, the cost of the audit. The
12 amount of said cost for the audit is \$8,874.00.

13 9. Respondents have received, read, and understand the
14 "Notice Concerning Costs of Subsequent Audit". Respondents
15 further understand that by agreeing to this Stipulation, the
16 findings set forth below in the Determination of Issues become
17 final, and the Commissioner may charge Respondents for the cost
18 of any subsequent audit conducted pursuant to Business and
19 Professions Code Section 10148 to determine if the violations
20 have been corrected. The maximum cost of the subsequent audit
21 will not exceed \$8,874.00.

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DETERMINATION OF ISSUES

1 By reason of the foregoing, it is stipulated and agreed
2 that the following determination of issues shall be made:
3

I.

4
5 The conduct, acts or omissions of TU VIVIENDA REAL
6 ESTATE INVESTMENTS INC. and GILMER K. POZO, as described in
7 Paragraph 4, above, are in violation of Sections 10145 and 10240
8 of the Business and Professions Code ("Code") and Sections
9 2831.1, 2832(e), 2832.1 and 2950(f) of Title 10, Chapter 6 of the
10 California Code of Regulations ("Regulations") and is a basis for
11 discipline of Respondents' license and license rights as
12 violation of the Real Estate Law pursuant to Code Sections
13 10177(d) and 10177(g).
14

II.

15
16 The conduct, acts or omissions of GILMER K. POZO, as
17 described in Paragraph 4, above, constitutes a failure to keep TU
18 VIVIENDA REAL ESTATE INVESTMENTS INC. in compliance with the Real
19 Estate Law during the time that he was the officer designated by
20 a corporate broker licensee in violation of Section 10159.2 of
21 the Code. This conduct is a basis for the suspension or
22 revocation of Respondent's license pursuant to Code Section
23 10177(h).
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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

All license and licensing rights of Respondents

TU VIVIENDA REAL ESTATE INVESTMENTS INC. and GILMER K. POZO,

under the Real Estate Law are suspended for a period of sixty

(60) days from the effective date of this Decision; provided,

however, that if Respondents request, the initial thirty (30)

days of said suspension (or a portion thereof) shall be stayed

upon condition that:

A 1. Respondents each pay a monetary penalty pursuant

to Section 10175.2 of the Business and Professions Code at the
rate of \$66.67 per day for each day of the suspension for a total
monetary penalty of \$2,000 each or \$4,000 in total.

2. Said payment shall be in the form of a cashier's

check or certified check made payable to the Recovery Account of
the Real Estate Fund. Said check must be received by the
Department prior to the effective date of the Decision in this
matter.

3. No further cause for disciplinary action against

the real estate licenses of Respondents occurs within two (2)
years from the effective date of the Decision in this matter.

4. If Respondents fail to pay the monetary penalty in

accordance with the terms of the Decision, the Commissioner may,
without a hearing, order the immediate execution of all or any

1 part of the stayed suspension, in which event the Respondents
2 shall not be entitled to any repayment nor credit, prorated or
3 otherwise, for money paid to the Department under the terms of
4 this Decision.

5 5. If Respondents pay the monetary penalty and if no
6 further cause for disciplinary action against the real estate
7 license of Respondent occurs within two (2) years from the
8 effective date of the Decision, the stay hereby granted shall
9 become permanent

10 B. The remaining thirty (30) days of the sixty (60)
11 day suspension shall be stayed for two (2) years upon the
12 following terms and conditions:

13 (a) Respondents shall obey all laws, rules and
14 regulations governing the rights, duties and responsibilities of
15 a real estate licensee in the State of California; and

16 (b) That no final subsequent determination be made
17 after hearing or upon stipulation, that cause for disciplinary
18 action occurred within two (2) years from the effective date of
19 this Decision. Should such a determination be made, the
20 Commissioner may, in his discretion, vacate and set aside the
21 stay order and reimpose all or a portion of the stayed
22 suspension. Should no such determination be made, the stay
23 imposed herein shall become permanent.
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II.

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2 Pursuant to Section 10148 of the Business and
3 Professions Code, Respondents TU VIVIENDA REAL ESTATE INVESTMENTS
4 INC. and GILMER K. POZO shall pay the Commissioner's reasonable
5 cost for (a) the audit which led to this disciplinary action (b)
6 a subsequent audit to determine if Respondents are now in
7 compliance with the Real Estate Law. The cost of the audit which
8 led to this disciplinary action is \$8,874.00. In calculating the
9 amount of the Commissioner's reasonable cost, the Commissioner
10 may use the estimated average hourly salary for all persons
11 performing audits of real estate brokers, and shall include an
12 allocation for travel time to and from the auditor's place of
13 work. Said amount for the prior and subsequent audits shall not
14 exceed \$17,748.00.

15
16 Respondents shall pay such cost within 60 days of
17 receiving an invoice from the Commissioner detailing the
18 activities performed during the audit and the amount of time
19 spent performing those activities.

20 The Commissioner may suspend the license of Respondents
21 pending a hearing held in accordance with Section 11500, et seq.,
22 of the Government Code, if payment is not timely made as provided
23 for herein, or as provided for in a subsequent agreement between
24 the Respondent and the Commissioner. The suspension shall remain
25 in effect until payment is made in full or until Respondents
26 enter into an agreement satisfactory to the Commissioner to
27

1 provide for payment, or until a decision providing otherwise is
2 adopted following a hearing held pursuant to this condition.

3 III.

4 All licenses and licensing rights of Respondent GILMER

5 K. POZO are indefinitely suspended unless or until Respondent
6 provides proof satisfactory to the Commissioner, of having taken
7 and successfully completed the continuing education course on
8 trust fund accounting and handling specified in paragraph (3) of
9 subdivision (a) of Section 10170.5 of the Business and
10 Professions Code. Proof of satisfaction of this requirement
11 includes evidence that respondent has successfully completed the
12 trust fund account and handling continuing education course
13 within 120 days prior to the effective date of the Decision in
14 this matter.
15

16 DATED: 10-3-08

17 ELLIOTT MAC LENNAN, Counsel for
18 the Department of Real Estate

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* * *

EXECUTION OF THE STIPULATION

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3 We have read the Stipulation and discussed it with our
4 counsel. Its terms are understood by us and are agreeable and
5 acceptable to us. We understand that we are waiving rights given
6 to us by the California Administrative Procedure Act (including
7 but not limited to Sections 11506, 11508, 11509 and 11513 of the
8 Government Code), and we willingly, intelligently and voluntarily
9 waive those rights, including the right of requiring the
10 Commissioner to prove the allegations in the Accusation at a
11 hearing at which we would have the right to cross-examine
12 witnesses against us and to present evidence in defense and
13 mitigation of the charges.

MAILING AND FACSIMILE

14
15 Respondents (1) shall mail the original signed
16 signature page of the stipulation herein to Elliott Mac Lennan:
17 Attention: Legal Section, Department of Real Estate, 320 W.
18 Fourth St., Suite 350, Los Angeles, California 90013-1105.
19 Additionally, Respondents shall also (2) facsimile a copy of
20 signed signature page, to the Department at the following
21 telephone/fax number: (213) 576-6917, Attention: Elliott Mac
22 Lennan.
23

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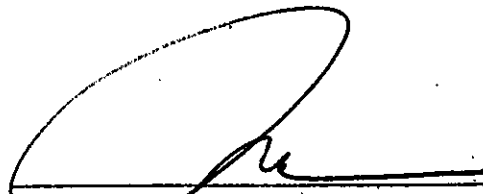
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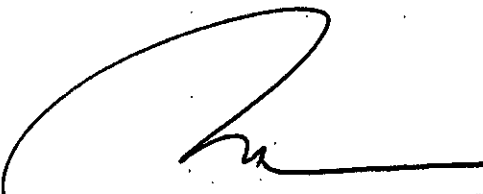
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1 A facsimile constitutes acceptance and approval of the
2 terms and conditions of this stipulation. Respondents agree,
3 acknowledge and understand that by electronically sending to the
4 Department a facsimile copy of Respondents' actual signature as
5 it appears on the stipulation that receipt of the facsimile copy
6 by the Department shall be as binding on Respondents as if the
7 Department had received the original signed stipulation.

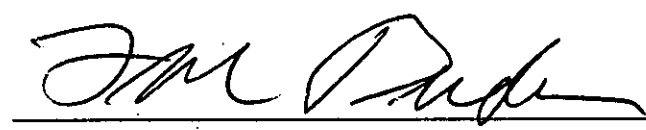
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11 DATED: 4/15/09


TU VIVIENDA REAL ESTATE INVESTMENTS
INC., a corporate real estate
broker,
BY: GILMER K. POZO D.O.,
Respondent

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16 DATED: 4/15/09


GILMER K. POZO, individually and as
designated officer of Tu Vivienda
Real Estate Investments Inc.,
Respondent

17
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21 DATED: 4-15-09


FRANK M. BUDA, Esq.
Attorney for Respondents
Approved as to form

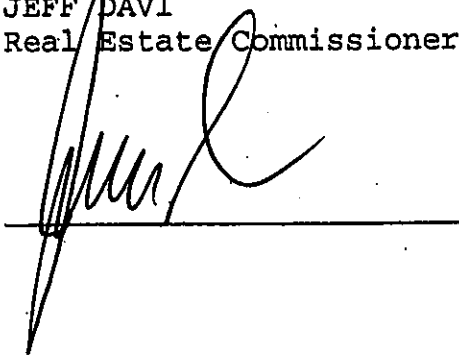
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The foregoing Stipulation and Agreement is hereby
adopted as my Decision as to Respondents TU VIVIENDA REAL ESTATE
INVESTMENTS INC. and GILMER K. POZO, individually and as
designated officer of Tu Vivienda Real Estate Investments Inc.,
and shall become effective at 12 o'clock noon on
July 16, 2009.

IT IS SO ORDERED 8/25/, 2009.

JEFF DAVI
Real Estate Commissioner



A handwritten signature in black ink, appearing to read 'Jeff Davi', is written over a horizontal line. The signature is stylized and cursive.

1 ELLIOTT MAC LENNAN (SBN 66674)
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

FILED

JAN 16 2008

5 Telephone: (213) 576-6911 (direct)
6 -or- (213) 576-6982 (office)

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H-34644 LA

12 TU VIVIENDA REAL ESTATE)
13 INVESTMENTS INC.; and GILMER K.)
14 POZO, individually and as)
15 designated officer of)
16 Tu Vivienda Real Estate)
Investments Inc.)

A C C U S A T I O N

Respondents.)

17 The Complainant, Robin Trujillo, a Deputy Real Estate
18 Commissioner of the State of California, acting in her official
19 capacity, for cause of Accusation against TU VIVIENDA REAL ESTATE
20 INVESTMENTS INC. and GILMER K. POZO, individually and as Tu
21 Vivienda Realty Estate Inc., is informed and alleges as follows:

22 1.

23 All references to the "Code" are to the California
24 Business and Professions Code and all references to "Regulations"
25 are to Title 10, Chapter 6, California Code of Regulations.

26 ///

1 LICENSE HISTORY

2 2.

3 1. At all times mentioned, TU VIVIENDA REAL ESTATE
4 INVESTMENTS INC. ("TU VIVIENDA"), was licensed or had license
5 rights issued by the Department of Real Estate ("Department") as
6 a corporate real estate broker. On December 31, 2004, TU
7 VIVIENDA was originally licensed as a corporate real estate
8 broker by and through GILMER K. POZO.

9 2. At all times mentioned, GILMER K. POZO
10 ("POZO"), was licensed or had license rights issued by the
11 Department as a real estate broker. On December 31, 2004, POZO
12 was originally licensed as a real estate broker. On December 31,
13 2004, POZO was licensed as the designated officer of TU VIVIENDA.

14 LICENSED ACTIVITIES AND BROKERAGE

15 3.

16 At all times mentioned, in the City of North Hollywood,
17 County of Los Angeles, TU VIVIENDA and POZO acted as real estate
18 brokers and conducted licensed activities within the meaning of:

19 A. Code Section 10131(a). TU VIVIENDA operated a
20 residential resale brokerage.

21 B. Code Section 10131(d). TU VIVIENDA operated
22 mortgage and loan brokerage; and

23 C. In addition, TU VIVIENDA conducted broker-
24 controlled escrows through its escrow division under the
25 exemption set forth in California Financial Code Section
26 17006(a)(4) for real estate brokers performing escrows incidental
27

1 to a real estate transaction where the broker is a party and
2 where the broker is performing acts for which a real estate
3 license is required.

4 AUDIT

5 4.

6 On May 22, 2007, the Department completed an audit
7 examination of the books and records of TU VIVIENDA pertaining to
8 the residential resale, mortgage and loan brokerage and broker
9 escrow activities described in Paragraph 3, that require a real
10 estate license. The audit examination covered a period of time
11 beginning on February 1, 2006 through January 31, 2007. The
12 audit examination revealed violations of the Code and the
13 Regulations as set forth below, and more fully discussed in Audit
14 Report LA 060228 and LA 060291 and the exhibits and work papers
15 attached to said audit report.

16 TRUST ACCOUNTS

17 5.

18 At all times mentioned, in connection with the
19 activities described in Paragraph 4, above, TU VIVIENDA accepted
20 or received funds including funds in trust (hereinafter "trust
21 funds") from or on behalf of actual or prospective parties to
22 transactions including buyers, sellers, lenders, borrowers and
23 escrowholders handled by TU VIVIENDA. Thereafter TU VIVIENDA
24 made deposits and or disbursements of such funds. From time to
25 time herein mentioned during the audit period, said trust funds
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1 were deposited and/or maintained by TU VIVIENDA in the bank
2 accounts as follows:

3 "Tu Vivienda Real Estate Investments Inc. Escrow Division Trust
4 Account
5 0001-750127"
6 Mellon 1st Business Bank
Los Angeles, California ("escrow trust account T/A#1")

7 "Tu Vivienda Real Estate Investments Inc. Escrow Division Trust
8 Account
9 0001-783025"
10 Mellon 1st Business Bank
Los Angeles, California (escrow trust account T/A#2")

11 VIOLATIONS OF THE REAL ESTATE LAW

12 6.

13 With respect to the licensed activities referred to in
14 Paragraph 3, and the audit examination including the exhibits and
15 work papers referred to in Paragraph 4, it is alleged that TU
16 VIVIENDA and POZO:

17 (a) Permitted, allowed or caused the disbursement of
18 trust funds from the escrow trust account T/A #1, where the
19 disbursement of funds reduced the total of aggregate funds in
20 escrow trust account, to an amount which, on January 31, 2007,
21 was \$700.00, less than the existing aggregate trust fund
22 liability of TU VIVIENDA to every principal who was an owner of
23 said funds, without first obtaining the prior written consent of
24 the owners of said funds, as required by Code Section 10145 and
25 Regulations 2832.1, 2950(d), 2950(g) and 2951. Unidentified
26 funds in the amount of \$10,177.27, were present in escrow trust
27

1 account T/A #1. The \$700.00 shortage was restored on February
2 13, 2007:

3 (b) (1) Recorded trust deeds for Dennys Burgos in the
4 total amount of \$15,710.85, for Burgos' property located at 1354
5 E. Avenue J4, Lancaster, without obtaining loan applications or
6 providing appropriate disclosures for the purpose of lending
7 money to Burgos to secure a priority purchase position in the
8 event of foreclosure, in violation of Code Sections 10234(a),
9 10176(i)/10177(j) and 10177(g); and

10 (b) (2) Recorded a trust deed for Eloy P. Ramirez, in
11 amount of \$10,000.00, for Ramirez' property located at 37912
12 Calcedony Court, Palmdale, without obtaining a loan application
13 or providing appropriate disclosures for the purpose of lending
14 money to Ramirez to secure a priority purchase position in the
15 event of foreclosure, in violation of Code Sections 10234(a),
16 10176(i)/10177(j) and 10177(g)!

17 (c) Failed to maintain an accurate and complete
18 separate record for each beneficiary or transaction, thereby
19 failing to account for all trust funds received, deposited and
20 disbursed for the escrow trust accounts, as required by Code
21 Section 10145 and Regulations 2831.1, 2950(d) and 2951. Funds
22 were deposited into the escrow trust accounts that were not
23 identified nor posted to the separate record.
24

25 (d) Failed to perform a monthly reconciliation of the
26 balance of all separate beneficiary or transaction records
27

1 maintained pursuant to Regulation 2831.1 with the record of all
2 trust funds received and disbursed by the escrow trust accounts,
3 as required by Code Section 10145 and Regulations 2831.2, 2950(d)
4 and 2951.

5 (e) While acting in the capacity of an escrow holder in
6 a purchase and sale transactions for buyer Ruben Barrios, Escrow
7 #A7X143, failed to place trust funds, including earnest money
8 deposits, accepted on behalf of another into the hands of the
9 owner of the funds, a neutral escrow depository or into a trust
10 fund account in the name of the broker at a bank or other
11 financial institution not later than the next business day
12 following receipt of the funds by the broker or by the broker's
13 salesperson, as required by Code Section 10145 and Regulations
14 2832(e) and 2950(f).

15 (f) Misrepresented to sellers that TU VIVIENDA and POZO
16 held earnest money deposits for three buyers, to wit, Juvencio
17 Lopez, Ruben Barrios, Francisco Sanchez, in violation of Section
18 10176(a).

19 (g) (1) Failed to provide and/or maintain a statement in
20 writing containing all the information required by Code Section
21 10241(c) to borrowers Gloria Castillejo, Javier Garcia, Susana
22 Ramirez and Juvencio Lopez, before these borrowers became
23 obligated to perform under the terms of their respective loans,
24 as required by Code Section 10240 and Regulation 2840; and
25
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1 (g) (2) Failed to disclose yield spread premiums from
2 lenders on the approved Mortgage Loan Disclosure Statement for
3 the borrowers Susana Ramirez and Raul Avila, in violation of Code
4 Section 10240, 10241 and Regulations 2840 and 2840.1.

5 (h) Failed to retain a signed copy of the salesperson
6 license agreements and license certificates for Sigheartau,
7 Meltzer, Lopez, Golian, Hidalgo, Balarezo and Afzal, in violation
8 of Code Section 10160 and Regulations 2726 and 2753.

9 7.

10 The conduct of Respondents TU VIVIENDA and POZO
11 described in Paragraph 6, above, violated the Code and the
12 Regulations as set forth:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
14 6(a)	Code Section 10145 and Regulations 15 2832.1, 2950(d), 2950(g) and 2951 16
18 6(b)	Code Sections 10234(a), 19 10176(1/10177(j)) and 10177(g) 20
22 6(c)	Code Sections 10145 and Regulations 23 2831.1, 2950(d) and 2951 24

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6 (d) Code Section 10145 and Regulations
2831.2, 2950(d) and 2951

6 (e) Code Section 10145 and Regulations
2832(e) and 2950(f)

6 (f) Code Section 10176(a)

6 (g) Code Sections 10240 and 10241 and
Regulation 2840 and 2840.1

6 (h) Code Section 10163 and Regulations
2726 and 2753

Each of the foregoing violations constitute cause for the
suspension or revocation of the real estate license and license
rights of Respondents TU VIVIENDA and POZO under the provisions
of Code Sections 10176(a), 10176(i)/10177(j) and 10177(d) and/or
10177(g).

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1 NEGLIGENCE

2 8.

3 The overall conduct of Respondents TU VIVIENDA and POZO
4 constitutes negligence or incompetence. This conduct and
5 violation are cause for the suspension or revocation of the real
6 estate license and license rights of said Respondents pursuant to
7 Code Section 10177(g).

8 CORPORATE SUPERVISION AND COMPLIANCE

9 9.

10 The overall conduct of Respondent POZO constitutes a
11 failure on her part, as officer designated by a corporate broker
12 licensee, to exercise the reasonable supervision and control over
13 the licensed activities of POZO as required by Code Section
14 10159.2, and to keep TU VIVIENDA in compliance with the Real
15 Estate Law, and is cause for the suspension or revocation of the
16 real estate license and license rights of POZO pursuant to the
17 provisions of Code Sections 10177(d), 10177(g) and 10177(h).

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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against the license and license rights of Respondents TU
5 VIVIENDA REAL ESTATE INVESTMENTS INC. and GILMER K. POZO,
6 individually and as designated officer of Tu Vivienda Real Estate
7 Investments Inc., under the Real Estate Law (Part 1 of Division 4
8 of the Business and Professions Code) and for such other and
9 further relief as may be proper under other applicable provisions
10 of law.

11 Dated at Los Angeles, California

12 this 7 day of December 2007.

13
14 
15 Deputy Real Estate Commissioner
16

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23
24 cc: Tu Vivienda Real Estate Investments Inc.
25 Gilmer K. Pozo D.O.
26 Robin Trujillo
27 Sacto
Audits - Surender Bhatia