

1 Department of Real Estate  
2 P. O. Box 187007  
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789

FILED  
MAY 22 2006

DEPARTMENT OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) NO. H-4272 SAC  
12 )  
13 )  
14 OPTIMUM FINANCIAL SERVICES, ) STIPULATION AND AGREEMENT  
15 INC., AMERICAN HOME REALTY ) IN SETTLEMENT AND ORDER  
16 SERVICES, INC., SCOTT ) AS TO SCOTT SWENSON AND  
17 SWENSON, and TAMMY FORBES, ) AMERICAN HOME REALTY  
18 ) SERVICES, INC. ONLY  
19 Respondents. )

20 It is hereby stipulated by and between AMERICAN HOME  
21 REALTY SERVICES, INC. (hereinafter "Respondent AMERICAN") and  
22 SCOTT SWENSON (hereinafter "Respondent SWENSON") and their  
23 attorney of record, Thomas C. Lasken, and the Complainant, acting  
24 by and through David B. Seals, Counsel for the Department of Real  
25 Estate, as follows for the purpose of settling and disposing of  
26 the First Amended Accusation filed on September 22, 2005, in this  
27 matter:

1. All issues which were to be contested and all  
evidence which was to be presented by Complainant and Respondents  
AMERICAN and SWENSON at a formal hearing on the First Amended

1 Accusation, which hearing was to be held in accordance with the  
2 provisions of the Administrative Procedure Act (APA), shall  
3 instead and in place thereof be submitted solely on the basis of  
4 the provisions of this Stipulation and Agreement in Settlement.

5           2. Respondents AMERICAN and SWENSON have received,  
6 read and understand the Statement to Respondent, the Discovery  
7 Provisions of the APA and the First Amended Accusation filed by  
8 the Department of Real Estate in this proceeding.

9           3. A Notice of Defense was filed on or about April 22,  
10 2005 by Respondents AMERICAN and SWENSON, pursuant to Section  
11 11505 of the Government Code for the purpose of requesting a  
12 hearing on the allegations in the First Amended Accusation.  
13 Respondents AMERICAN and SWENSON hereby freely and voluntarily  
14 withdraw said Notice of Defense. Respondents AMERICAN and  
15 SWENSON acknowledge that they understand that by withdrawing said  
16 Notice of Defense they will thereby waive their right to require  
17 the Commissioner to prove the allegations in the First Amended  
18 Accusation at a contested hearing held in accordance with the  
19 provisions of the APA and that they will waive other rights  
20 afforded to them in connection with the hearing such as the right  
21 to present evidence in defense of the allegations in the First  
22 Amended Accusation and the right to cross-examine witnesses.

23           4. This Stipulation is based on the factual allegations  
24 contained in the First Amended Accusation. In the interests of  
25 expedience and economy, Respondents AMERICAN and SWENSON choose  
26 not to contest these allegations, but to remain silent and  
27 understand that, as a result thereof, these factual allegations,



1 stipulated and agreed that the facts alleged above are grounds  
2 for the suspension or revocation of the licenses and license  
3 rights of Respondent SCOTT SWENSON under Section 10177(h) of the  
4 Code and of Respondent AMERICAN HOME REALTY SERVICES, INC. under  
5 Section 10177(g) of the Code.

6 ORDER

7 I

8 All licenses and licensing rights of Respondents SCOTT  
9 SWENSON and AMERICAN HOME REALTY SERVICES, INC. under the Real  
10 Estate Law are suspended for a period of ninety (90) days from  
11 the effective date of this Order; provided, however, that:

12 1. Sixty (60) days of said suspension shall be stayed  
13 for two (2) years upon the following terms and conditions:

14 a. Respondents, and each of them, shall obey all laws,  
15 rules and regulations governing the rights, duties and  
16 responsibilities of a real estate licensee in the State of  
17 California; and,

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

26 2. The remaining thirty (30) days of said 90-day  
27 suspension shall be stayed upon the condition that each said

1 Respondent petition pursuant to Section 10175.2 of the Business  
2 and Professions Code and pays a monetary penalty pursuant to  
3 Section 10175.2 of the Business and Professions Code at a rate of  
4 \$100 for each day of the suspension for a total monetary penalty  
5 of \$3,000 per Respondent:

6 a. Said payment shall be in the form of a cashier's  
7 check or certified check made payable to the Recovery Account of  
8 the Real Estate Fund. Said check must be delivered to the  
9 Department prior to the effective date of the Order in this  
10 matter.

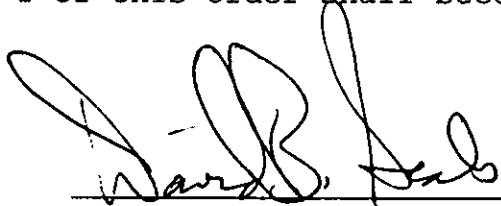
11 b. No further cause for disciplinary action against the  
12 Real Estate licenses of each said Respondent occurs within two  
13 (2) years from the effective date of the decision in this matter.

14 c. If a Respondent fails to pay the monetary penalty as  
15 provided above prior to the effective date of this Order, the  
16 stay of the suspension shall be vacated as to said Respondent and  
17 the order of suspension shall be immediately executed, under this  
18 Paragraph 2 of this Order, in which event said Respondent shall  
19 not be entitled to any repayment nor credit, prorated or  
20 otherwise, for the money paid to the Department under the terms  
21 of this Order.

22 d. If said Respondent pays the monetary penalty and any  
23 other moneys due under this Stipulation and Agreement and if no  
24 further cause for disciplinary action against the real estate  
25 licenses of that Respondent occurs within two (2) years from the  
26 effective date of this Order, the entire stay hereby granted to  
27

1 said Respondent under Paragraph I of this Order shall become  
2 permanent.

3  
4 DATED: Apr 20, 2006

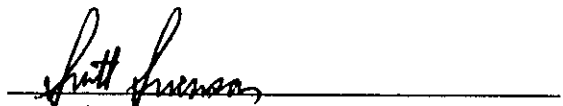


DAVID B. SEALS, Counsel  
DEPARTMENT OF REAL ESTATE

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7 \* \* \*

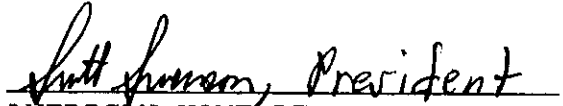
8 I have read the Stipulation and Agreement, have  
9 discussed it with my counsel, and its terms are understood by me  
10 and are agreeable and acceptable to me. I understand that I am  
11 waiving rights given to me by the California Administrative  
12 Procedure Act (including but not limited to Sections 11506,  
13 11508, 11509, and 11513 of the Government Code), and I willingly,  
14 intelligently, and voluntarily waive those rights, including the  
15 right of requiring the Commissioner to prove the allegations in  
16 the First Amended Accusation at a hearing at which I would have  
17 the right to cross-examine witnesses against me and to present  
18 evidence in defense and mitigation of the charges.

19  
20 DATED: 4/18/06



SCOTT SWENSON  
Respondent

21  
22 DATED: 4/18/06



AMERICAN HOME REALTY SERVICES  
Respondent

23  
24  
25 ///  
26 ///

27 \* \* \*

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

3  
4 DATED:

April 11, 2006

Tom C. Lasken

THOMAS C. LASKEN  
Attorney for Respondents

5  
6  
7 \* \* \*

8 The foregoing Stipulation and Agreement in Settlement  
9 is hereby adopted by the Real Estate Commissioner as his  
10 Decision and Order and shall become effective at 12 o'clock noon  
11 on JUN 12 2006.

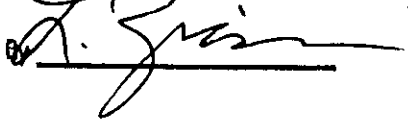
12 IT IS SO ORDERED

5-17  
Jeff Davi  
JEFF DAVI  
Real Estate Commissioner

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FILED  
MAY 22 2006

DEPARTMENT OF REAL ESTATE



BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

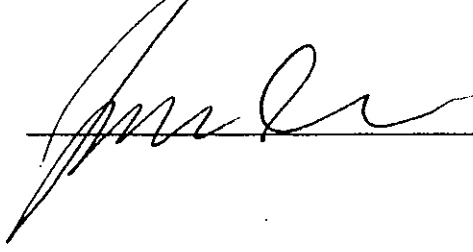
In the Matter of the Accusation of	)	No. H-4272 SAC
	)	
OPTIMUM FINANCIAL SERVICES,	)	
INC., AMERICAN HOME REALTY	)	
SERVICES, INC., SCOTT	)	
SWENSON, and TAMMY FORBES,	)	
	)	
Respondents.	)	

DISMISSAL

The Accusation herein filed on September 22, 2005 as  
to Respondent OPTIMUM FINANCIAL SERVICES, INC. only, is  
DISMISSED.

IT IS SO ORDERED this 9th day of April, 2006.

JEFF DAVI  
Real Estate Commissioner





1 Department of Real Estate  
2 P. O. Box 187007  
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789

FILED  
NOV -8 2005

DEPARTMENT OF REAL ESTATE

By *D. Zani*

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) NO. H-4272 SAC  
12 )  
13 )  
14 OPTIMUM FINANCIAL SERVICES, ) STIPULATION AND AGREEMENT  
15 INC., AMERICAN HOME REALTY ) IN SETTLEMENT  
16 SERVICES, INC., SCOTT ) AND ORDER  
17 SWENSON, and TAMMY FORBES, ) AS TO TAMMY FORBES  
18 Respondents. ) ONLY  
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17  
18 It is hereby stipulated by and between TAMMY FORBES  
19 (hereinafter "Respondent FORBES") and her attorney of record, C.  
20 Breck Jones of Jones & Kerr, and the Complainant, acting by and  
21 through David B. Seals, Counsel for the Department of Real  
22 Estate, as follows for the purpose of settling and disposing of  
23 the First Amended Accusation filed on September 22, 2005, in  
24 this matter:

25 1. All issues which were to be contested and all  
26 evidence which was to be presented by Complainant and Respondent  
27 FORBES at a formal hearing on the First Amended Accusation,

1 which hearing was to be held in accordance with the provisions  
2 of the Administrative Procedure Act (APA), shall instead and in  
3 place thereof be submitted solely on the basis of the provisions  
4 of this Stipulation and Agreement in Settlement.

5           2. Respondent FORBES has received, read and  
6 understands the Statement to Respondent, the Discovery  
7 Provisions of the APA and the First Amended Accusation filed by  
8 the Department of Real Estate in this proceeding.

9           3. A Notice of Defense was filed on or about May 11,  
10 2005 by Respondent FORBES, pursuant to Section 11505 of the  
11 Government Code for the purpose of requesting a hearing on the  
12 allegations in the First Amended Accusation. Respondent FORBES  
13 hereby freely and voluntarily withdraws said Notice of Defense.  
14 Respondent FORBES acknowledges that she understands that by  
15 withdrawing said Notice of Defense she will thereby waive her  
16 right to require the Commissioner to prove the allegations in  
17 the First Amended Accusation at a contested hearing held in  
18 accordance with the provisions of the APA and that she will  
19 waive other rights afforded to her in connection with the  
20 hearing such as the right to present evidence in defense of the  
21 allegations in the First Amended Accusation and the right to  
22 cross-examine witnesses.

23           4. This Stipulation is based on the factual  
24 allegations contained in the First Amended Accusation. In the  
25 interests of expedience and economy, Respondent FORBES chooses  
26 not to contest these allegations, but to remain silent and  
27 understands that, as a result thereof, these factual



1 stipulated and agreed that the facts alleged above are grounds  
2 for the suspension or revocation of the licenses and license  
3 rights of Respondent TAMMY FORBES under Section 10176(a) of the  
4 Code.

5 ORDER

6 I

7 All licenses and licensing rights of Respondent TAMMY  
8 FORBES under the Real Estate Law are revoked; provided, however,  
9 a restricted real estate salesperson license shall be issued to  
10 Respondent FORBES pursuant to Section 10156.5 of the Business  
11 and Professions Code if Respondent FORBES makes application  
12 therefor and pays to the Department of Real Estate the  
13 appropriate fee for the restricted license within 90 days from  
14 the effective date of this Decision. The restricted license  
15 issued to Respondent FORBES shall be subject to all of the  
16 provisions of Section 10156.7 of the Business and Professions  
17 Code and to the following limitations, conditions and  
18 restrictions imposed under authority of Section 10156.6 of that  
19 Code:

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

26 ///

27 ///

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

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

13                    4. Respondent FORBES shall submit with any  
14 application for license under an employing broker, or any  
15 application for transfer to a new employing broker, a statement  
16 signed by the prospective employing real estate broker on a form  
17 approved by the Department of Real Estate which shall certify:

18                    (a) That the employing broker has read the Decision  
19                    of the Commissioner which granted the right to a  
20                    restricted license; and

21                    (b) That the employing broker will exercise close  
22                    supervision over the performance by the  
23                    restricted licensee relating to activities for  
24                    which a real estate license is required.

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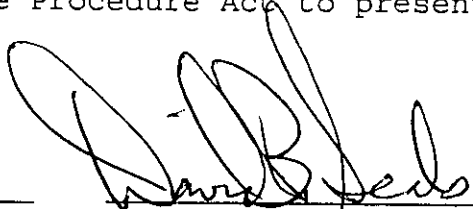
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1                   5. Respondent FORBES shall, within six (6) months from  
2 the effective date of this Decision, take and pass the  
3 Professional Responsibility Examination administered by the  
4 Department including the payment of the appropriate examination  
5 fee. If Respondent FORBES fails to satisfy this condition, the  
6 Commissioner may order suspension of Respondent's license until  
7 Respondent passes the examination.

8                   6. Respondent FORBES shall, within nine months from  
9 the effective date of this Decision, present evidence  
10 satisfactory to the Real Estate Commissioner that Respondent  
11 FORBES has, since the most recent issuance of an original or  
12 renewal real estate license, taken and successfully completed  
13 the continuing education requirements of Article 2.5 of Chapter  
14 3 of the Real Estate Law for renewal of a real estate license.  
15 If Respondent FORBES fails to satisfy this condition, the  
16 Commissioner may order the suspension of the restricted license  
17 until the Respondent presents such evidence. The Commissioner  
18 shall afford Respondent FORBES the opportunity for a hearing  
19 pursuant to the Administrative Procedure Act to present such  
20 evidence.

21  
22 DATED: Oct. 24, 2005



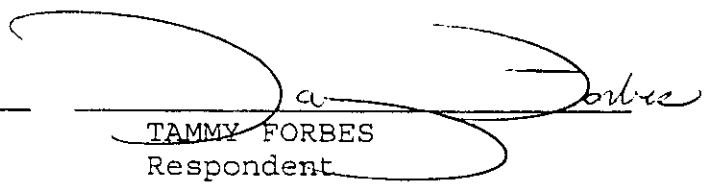
DAVID B. SEALS, Counsel  
DEPARTMENT OF REAL ESTATE

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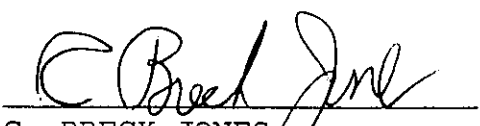
\* \* \*

I have read the Stipulation and Agreement, have discussed it with my counsel, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the First Amended Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

DATED: October 4, 2005   
TAMMY FORBES  
Respondent

\* \* \*

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

DATED: October 18, 2005   
C. BRECK JONES  
Attorney for Respondent FORBES

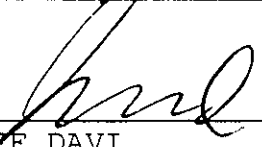
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The foregoing Stipulation and Agreement in Settlement  
is hereby adopted by the Real Estate Commissioner as his Decision  
and Order and shall become effective at 12 o'clock noon on  
NOV 29 2005

IT IS SO ORDERED

11-30-05  
  
JEFF DAVI  
Real Estate Commissioner





1 Estate Law, (Part 1 of Division 4 of the Business and  
2 Professions Code, hereafter the Code).

3 II

4 The Complainant, CHARLES W. KOENIG, a Deputy Real  
5 Estate Commissioner of the State of California, makes this  
6 Accusation against Respondents in his official capacity and not  
7 otherwise.

8 III

9 At all times herein mentioned, Respondent OPTIMUM  
10 FINANCIAL SERVICES, INC. (hereafter OPTIMUM) was and is licensed  
11 by the Department of Real Estate (hereafter the Department) as a  
12 real estate broker corporation, individually and doing business  
13 as AMERICAN HOME REALTY and OPTIMUM MORTGAGE SERVICES.

14 IV

15 At all times herein mentioned, Respondent AMERICAN  
16 HOME REALTY SERVICES, INC. (hereafter AMERICAN) was and is  
17 licensed by the Department of Real Estate (hereafter the  
18 Department) as a real estate broker corporation.

19 V

20 At all times herein mentioned, Respondent SCOTT  
21 SWENSON (hereafter SWENSON) was and is licensed by the  
22 Department as an individual real estate broker, and as the  
23 designated broker officer of Respondents OPTIMUM and AMERICAN.

24 VI

25 At all times herein mentioned, Respondent TAMMY FORBES  
26 (hereafter FORBES) was and is licensed by the Department as a  
27 real estate salesperson.

1 VII

2 Within the three years last past, Respondents engaged  
3 in the business of, acted in the capacity of, advertised and  
4 assumed to act as real estate brokers in the State of California  
5 within the meaning of Section 10131(a) of the Code, including  
6 the operation and conduct of a real estate resale brokerage with  
7 the public wherein, on behalf of others, for compensation or in  
8 expectation of compensation, Respondents sold and offered to  
9 sell, bought and offered to buy, solicited prospective sellers  
10 and purchases of, solicited and obtained listings of, and  
11 negotiated the purchase and sale of real property.

12 FIRST CAUSE OF ACTION

13 VIII

14 In or about September of 2002, while acting in the  
15 capacity of a real estate licensee as alleged above, Respondents  
16 entered into an "Exclusive Authorization and Right to Sell"  
17 listing agreement with Andrew and Dennise Stearns (hereafter  
18 Sellers) to sell their residential real property located at 2730  
19 Winterrush Lane, Lincoln, California. The listing agreement  
20 provided that AMERICAN HOME REALTY, as the listing broker, would  
21 receive a commission of six (6) percent of the listing or  
22 purchase price, or as split with other cooperating brokers.

23 IX

24 On or about September 26, 2002, Respondents registered  
25 the listing of the above property for sale with the Multiple  
26 Listing Service, and expressly listed and advertised that the  
27 property was not located in a district subject to Mello Roos

1 taxes. Respondents marketed information to the public that  
2 contained the representation that the property was not subject  
3 to Mello Roos.

4 X

5 On or about November 17, 2002, David and Marisa Stone  
6 (hereafter Buyers) submitted a written offer to purchase the  
7 above property on specified terms with an earnest money deposit  
8 of \$1,000.00. Buyers made the offer, among other reasons, in  
9 reliance on Respondents' advertised information that the  
10 property was not subject to Mello Roos taxes. On or about  
11 November 20, 2002, Buyers and Sellers entered into contract.

12 XI

13 Respondents owed a duty to Buyers to diligently  
14 exercise reasonable skill and care in the performance of their  
15 duties, and to disclose all facts known to Respondents  
16 materially affecting the value or desirability of the property  
17 that were not known to, or within the diligent attention and  
18 observation of the parties. At no time prior to November 20,  
19 2002, did Respondents disclose to Buyers that the property was  
20 located in a district subject to Mello Roos taxes.

21 XII

22 Approximately one week or more after November 20,  
23 2002, Buyers learned that Respondents' representations were  
24 false and untrue, and that the property was located in a  
25 district subject to Mello Roos taxes.

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XIII

By reason of the facts alleged above, Respondents have committed acts and/or omissions that constitute grounds for disciplinary action under the provisions of Sections 10176(a), 10177(g), and/or 10176(i) of the Code.

SECOND CAUSE OF ACTION

XIV

In or about September of 2002, Respondents registered the listing of real property for sale with the Multiple Listing Service, and expressly listed and advertised that the property was not located in a district subject to Mello Roos taxes. Respondents marketed information to the public that contained the representation that the property was not subject to Mello Roos. The properties include, but are not limited to the following:

- (a) 1450 Markham Ravine Drive, Lincoln, CA
- (b) 2410 Forest Oaks Court, Lincoln, CA
- (c) 2730 Winterrush Lane, Lincoln, CA

XV

In the Residential Purchase Agreement relating to the real property designated in Paragraph XIV(a) immediately above, signed by the sellers on October 4, 2002, Respondent FORBES signed said Agreement on behalf of American Home Realty the dba of Respondent OPTIMUM.

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XVI

In the Residential Purchase Agreement relating to the real property designated in Paragraph XIV(b) immediately above, signed by the sellers on September 27, 2002, Respondent FORBES signed said Agreement on behalf of American Home Realty the dba of Respondent OPTIMUM.

XVII

In the Residential Purchase Agreement relating to the real property designated in Paragraph XIV(c) immediately above, signed by the sellers on November 18, 2002, Respondent FORBES signed said Agreement on behalf of American Home Realty the dba of Respondent OPTIMUM.

XVIII

In performing services for which a real estate license is required, including but not limited to the activities described above, in association with the real property designated in Paragraph XIV for or in association with Respondent OPTIMUM dba American Home Realty, Respondents OPTIMUM and FORBES violated Section 10137 of the Code because FORBES was never licensed under the employ of Respondent OPTIMUM.

XIX

By reason of the facts alleged above, Respondents have committed acts and/or omissions that constitute grounds for disciplinary action under the provisions of Sections 10137, 10176(a), 10177(g), and/or 10176(i) of the Code as appropriate.

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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 license(s) and license rights of Respondents under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other provisions of law.

  
CHARLES W. KOENIG  
Deputy Real Estate Commissioner

Dated at Sacramento, California,  
this 22<sup>nd</sup> day of September, 2005.



1 DEIDRE L. JOHNSON, Counsel  
2 SBN 66322  
3 Department of Real Estate  
4 P. O. Box 187007  
5 Sacramento, CA 95818-7007  
6  
7 Telephone: (916) 227-0789

FILED  
APR 20 2005

DEPARTMENT OF REAL ESTATE

By K. Contreras

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

11 \* \* \*

12 In the Matter of the Accusation of )  
13 ) NO. H-4272 SAC  
14 OPTIMUM FINANCIAL )  
15 SERVICES, INC., ) ACCUSATION  
16 SCOTT SWENSON, and )  
17 TAMMY FORBES, )  
18 Respondents. )

18 The Complainant, CHARLES W. KOENIG, a Deputy Real  
19 Estate Commissioner of the State of California, for causes of  
20 Accusation against OPTIMUM FINANCIAL SERVICES, INC., SCOTT  
21 SWENSON, and TAMMY FORBES, is informed and alleges as follows:

22 PRELIMINARY ALLEGATIONS

23 I

24 Respondents OPTIMUM FINANCIAL SERVICES, INC., SCOTT  
25 SWENSON, and TAMMY FORBES are presently licensed and/or have  
26 license rights under the Real Estate Law, (Part 1 of Division 4  
27 of the Business and Professions Code, hereafter the Code).

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II

The Complainant, CHARLES W. KOENIG, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondents in his official capacity and not otherwise.

III

At all times herein mentioned, Respondent OPTIMUM FINANCIAL SERVICES, INC. (hereafter OPTIMUM) was and is licensed by the Department of Real Estate (hereafter the Department) as a real estate broker corporation, individually and doing business as AMERICAN HOME REALTY and OPTIMUM MORTGAGE SERVICES.

IV

At all times herein mentioned, Respondent SCOTT SWENSON (hereafter SWENSON) was and is licensed by the Department as an individual real estate broker, and as the designated broker officer of Respondent OPTIMUM.

V

At all times herein mentioned, Respondent TAMMY FORBES (hereafter FORBES) was and is licensed by the Department as a real estate salesperson, and was employed by or associated with OPTIMUM.

VI

Within the three years last past, Respondent OPTIMUM engaged in the business and acted in the capacity of a real estate licensee in California, for or in expectation of compensation, under Section 10131(a) of the Code, wherein they sold or offered to sell, bought or offered to buy, solicited

1 prospective sellers or purchasers of, and/or negotiated the  
2 purchase, sale or exchange of real property.

3 FIRST CAUSE OF ACTION

4 VII

5 In or about September of 2002, while acting in the  
6 capacity of a real estate licensee as alleged above, Respondents  
7 OPTIMUM, doing business as AMERICAN HOME REALTY, SWENSON, and  
8 FORBES entered into an "Exclusive Authorization and Right to Sell"  
9 listing agreement with Andrew and Dennise Stearns (hereafter  
10 Sellers) to sell their residential real property located at 2730  
11 Winterrush Lane, Lincoln, California. The listing agreement  
12 provided that AMERICAN HOME REALTY, as the listing broker, would  
13 receive a commission of six (6) percent of the listing or  
14 purchase price, or as split with other cooperating brokers.

15 VIII

16 On or about September 26, 2002, Respondents registered  
17 the listing of the above property for sale with the Multiple  
18 Listing Service, and expressly listed and advertised that the  
19 property was not located in a district subject to Mello Roos  
20 taxes. Respondents created, authorized, permitted, and ratified  
21 the distribution of flyers and other advertisements to the public  
22 that contained the representation that the property was not  
23 subject to Mello Roos.

24 IX

25 On or about November 17, 2002, David and Marisa Stone  
26 (hereafter Buyers) submitted a written offer to purchase the  
27 above property on specified terms with an earnest money deposit

1 of \$1,000.00. Buyers made the offer, among other reasons, in  
2 reliance on Respondents' advertised information that the property  
3 was not subject to Mello Roos taxes. On or about November 20,  
4 2002, Buyers and Sellers entered into contract.

5 X

6 Respondents owed a duty to Buyers to diligently exercise  
7 reasonable skill and care in the performance of their duties, and  
8 to disclose all facts known to Respondents materially affecting  
9 the value or desirability of the property that were not known to,  
10 or within the diligent attention and observation of the parties.  
11 At no time prior to November 20, 2002, did Respondents disclose  
12 to Buyers that the property was located in a district subject to  
13 Mello Roos taxes.

14 XI

15 Approximately one week or more after November 20, 2002,  
16 Buyers learned that Respondents' representations were false and  
17 untrue, and that the property was located in a district subject  
18 to Mello Roos taxes.

19 XII

20 By reason of the facts alleged above, Respondents have  
21 committed acts and/or omissions that constitute negligence,  
22 and/or misrepresentation, fraud and/or dishonest dealing, and  
23 which constitute grounds for disciplinary action under the  
24 provisions of Sections 10176(a), 10177(g), and/or 10176(i) of  
25 the Code.

26 ///

27 ///



1 conduct described in the First and/or Second Causes of Action  
2 above, and/or failed to take reasonable steps to implement  
3 effective supervision that would have prevented it, including but  
4 not limited to both: (1) the establishment of policies, rules,  
5 procedures, and systems to review, oversee, inspect and manage  
6 the handling of listings, and the verification and disclosure of  
7 material information; and, (2) the establishment of systems for  
8 monitoring compliance with such policies, rules, procedures, and  
9 systems, to ensure compliance by the company with the Real Estate  
10 Law.

11 XVI

12 The acts and/or omissions of Respondent SWENSON as  
13 alleged above constitute cause for disciplinary action pursuant  
14 to Section 10177(h) of the Code and Section 2725 of the Regulations.

15 WHEREFORE, Complainant prays that a hearing be  
16 conducted on the allegations of this Accusation and that, upon  
17 proof thereof, a decision be rendered imposing disciplinary  
18 action against all license(s) and license rights of Respondents  
19 under the Real Estate Law (Part 1 of Division 4 of the Business  
20 and Professions Code), and for such other and further relief as  
21 may be proper under other provisions of law.

22  
23   
24 CHARLES W. KOENIG  
25 Deputy Real Estate Commissioner

26 Dated at Sacramento, California,  
27 this 4<sup>th</sup> day of April, 2005.