

1 Bureau of Real Estate  
2 P.O. Box 187007  
3 Sacramento, CA 95818-7007  
4 Telephone: (916) 227-0781

**FILED**

AUG 02 2017

BUREAU OF REAL ESTATE  
By B. Nicholas

7  
8 **BEFORE THE BUREAU OF REAL ESTATE**  
9 **STATE OF CALIFORNIA**

10 \* \* \*

11 In the Matter of the Accusation of )

12 JOHN BENJAMIN BURGESS, )

13 Respondent.)

No. H-6305 SAC

STIPULATION AND  
AGREEMENT

14 It is hereby stipulated by and between JOHN BENJAMIN BURGESS  
15 (Respondent), represented by David C. Johnston, and the Complainant, acting by and through  
16 Truly Sughrue, Counsel for the Bureau of Real Estate (Bureau), as follows for the purpose of  
17 settling and disposing the First Amended Accusation (Accusation) filed on January 12, 2017,  
18 in this matter:

19 1. All issues which were to be contested and all evidence which was to be  
20 presented by Complainant and Respondent at a formal hearing on the Accusation, which hearing  
21 was to be held in accordance with the provisions of the Administrative Procedure Act (APA),  
22 shall instead and in place thereof be submitted solely on the basis of the provisions of this  
23 Stipulation and Agreement.

24 2. Respondent has received, read, and understands the Statement to  
25 Respondent, and the Discovery Provisions of the APA filed by the Bureau in this proceeding.

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2           3.       Respondent filed a Notice of Defense pursuant to Section 11505 of the  
3 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.  
4 Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent  
5 acknowledges that Respondent understands that by withdrawing said Notice of Defense  
6 Respondent will thereby waive Respondent's rights to require the Real Estate Commissioner  
7 (Commissioner) to prove the allegations in the Accusation at a contested hearing held in  
8 accordance with the provisions of the APA, and that Respondent will waive other rights afforded  
9 to Respondent in connection with the hearing such as the right to present evidence in defense of  
10 the allegations in the Accusation and the right to cross-examine witnesses.

11           4.       This Stipulation and Agreement is based on the factual allegations  
12 contained in the Accusation. In the interest of expediency and economy, Respondent chooses not  
13 to contest these factual allegations, but to remain silent and understand that, as a result thereof,  
14 these factual statements will serve as a prima facie basis for the "Determination of Issues" and  
15 "Order" set forth below. The Commissioner shall not be required to provide further evidence to  
16 prove such allegations.

17           5.       This Stipulation and Agreement and Respondent's decision not to contest  
18 the Accusation are made for the purpose of reaching an agreed disposition of this proceeding and  
19 are expressly limited to this proceeding and any other proceeding or case in which the Bureau,  
20 the state or federal government, an agency of this state, or an agency of another state is involved.

21           6.       Respondent understands that by agreeing to this Stipulation and  
22 Agreement, Respondent agrees to pay, pursuant to Section 10148 of the California Business and  
23 Professions Code (Code), the cost of the audit, which resulted in the determination that  
24 Respondent committed the trust fund handling violation(s) found in the Determination of Issues.  
25 The amount of said costs is \$3,761.21.

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2           7.     Respondent further understand that by agreeing to this Stipulation and  
3 Agreement, the findings set forth below in the Determination of Issues become final, and that  
4 the Commissioner may charge said Respondents for the costs of any audit conducted pursuant to  
5 Section 10148 of the Code to determine if the violations have been corrected. The maximum  
6 costs of said audit shall not exceed \$4,701.51.

7           8.     It is understood by the parties that the Commissioner may adopt the  
8 Stipulation and Agreement as his decision in this matter thereby imposing the penalty and  
9 sanctions on the real estate licenses and license rights of Respondent as set forth in the below  
10 "Order". In the event that the Commissioner in his discretion does not adopt the Stipulation and  
11 Agreement, it shall be void and of no effect, and Respondent shall retain the right to a hearing  
12 and proceeding on the Accusation under all the provisions of the APA and shall not be bound by  
13 any admission or waiver made herein.

14           9.     The Order or any subsequent Order of the Commissioner made pursuant to  
15 this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further  
16 administrative or civil proceedings by the Bureau with respect to any matters which were not  
17 specifically alleged to be causes for action in Accusation H-6305 SAC.

18                   \* \* \*

19                   DETERMINATION OF ISSUES

20           By reason of the foregoing stipulations and waivers and solely for the purpose of  
21 settlement of the pending Accusation without a hearing, it is stipulated and agreed that the  
22 following determination of issues shall be made:

23           The acts and omissions of Respondent as described in the Accusation are  
24 grounds for the suspension or revocation of Respondent's licenses and license rights under the  
25 following sections of the Code and Title 10 of the California Code of Regulations (Regulations):

26           As to Paragraph 7(a), under Sections 10177(d) and/or 10177(g) of the Code in  
27 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

1 As to Paragraph 9(b), under Sections 10177(d) of the Code in conjunction with  
2 Section 2831.2 of the Regulations;

3 As to Paragraph 9(c), under Sections 10177(d) of the Code in conjunction with  
4 Section 2831 of the Regulations; and

5 As to Paragraph 9(d), under Sections 10177(d) of the Code in conjunction with  
6 Section 2834 of the Regulations and Section 10145 of the Code.

7 \* \* \*

8 ORDER

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

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

21 2. The restricted license issued to Respondent may be suspended prior to  
22 hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that  
23 Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands  
24 Law, Regulations of the Commissioner or conditions attaching to the restricted license.

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

1 Decision and Order. Respondent shall not be eligible to apply for any unrestricted licenses until  
2 all restrictions attaching to the license have been removed.

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

13 5. All licenses and licensing rights of Respondent are indefinitely suspended  
14 unless or until Respondent provides proof satisfactory to the Commissioner, of having taken and  
15 successfully completed the continuing education course on trust fund accounting and handling  
16 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of  
17 satisfaction of these requirements includes evidence that Respondent has successfully completed  
18 the trust fund account and handling continuing education courses, no earlier than 120 days prior  
19 to the effective date of the Decision and Order in this matter. Proof of completion of the trust  
20 fund accounting and handling course must be delivered to the Bureau of Real Estate, Flag  
21 Section at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-8758, prior to the  
22 effective date of this Decision and Order.

23 6. Pursuant to Section 10148 of the Code, Respondent shall pay the sum of  
24 \$3,761.21 for the Commissioner's cost of the audit which led to this disciplinary action.  
25 Respondent shall pay such cost within sixty (60) days of receiving an invoice therefore from the  
26 Commissioner. Payment of audit costs should not be made until Respondent receives the  
27 invoice. If Respondent fails to satisfy this condition in a timely manner as provided for herein,

1 Respondent's real estate license shall automatically be suspended until payment is made in full,  
2 or until a decision providing otherwise is adopted following a hearing held pursuant to this  
3 condition.

4                   7.     Pursuant to Section 10148 of the Code, Respondent shall pay the  
5 Commissioner's reasonable cost, not to exceed \$4,701.51, for an audit to determine if  
6 Respondent has corrected the violation(s) found in the Determination of Issues. In calculating  
7 the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated  
8 average hourly salary for all persons performing audits of real estate brokers, and shall include an  
9 allocation for travel time to and from the auditor's place of work. Respondent shall pay such cost  
10 within sixty (60) days of receiving an invoice therefore from the Commissioner. Payment of the  
11 audit costs should not be made until Respondent receives the invoice. If Respondent fails to  
12 satisfy this condition in a timely manner as provided for herein, Respondent's real estate license  
13 shall automatically be suspended until payment is made in full, or until a decision providing  
14 otherwise is adopted following a hearing held pursuant to this condition.

15  
16 DATED

10-July-17

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17 TRULY SUGHRUE  
18 Counsel for Complainant

19  
20 \* \* \*

21 I have read the Stipulation and Agreement, discussed it with my counsel, and its  
22 terms are understood by me and are agreeable and acceptable to me. I understand that I am  
23 waiving rights given to me by the California Administrative Procedure Act, and I willingly,  
24 intelligently and voluntarily waive those rights, including the right of requiring the  
25 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the  
26 right to cross-examine witnesses against me and to present evidence in defense and mitigation of  
27 the charges.

1 Respondent and Respondent's attorney further agree to send the original signed  
2 Stipulation by mail to the following address no later than one (1) week from the date the  
3 Stipulation is signed by Respondent and Respondent's attorney: *Bureau of Real Estate, Legal*  
4 *Section, P.O. Box 137007, Sacramento, California 95813-7007.* Respondent and Respondent's  
5 attorney understand and agree that if they fail to return the original signed Stipulation by the due  
6 date, Complainant retains the right to set this matter for hearing.

7  
8 July 7 2017  
9 DATED

John Benjamin Burgess  
JOHN BENJAMIN BURGESS  
Respondent

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

14  
15 July 7, 2017  
16 DATED

David C. Johnston  
DAVID C. JOHNSTON  
Attorney for Respondent

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18 The foregoing Stipulation and Agreement is hereby adopted as my Decision and  
19 Order and shall become effective at 12 o'clock noon on AUG 23 2017

20 IT IS SO ORDERED

7/27/2017

21  
22 WAYNE S. BELL  
23 REAL ESTATE COMMISSIONER

24 [Signature]  
25  
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