

1 DEPARTMENT OF REAL ESTATE  
2 P. O. Box 187000  
3 Sacramento, CA 95818-7000  
4 Telephone: (916) 227-0789

FILED  
APR - 2 2003

DEPARTMENT OF REAL ESTATE  
By Amir El-Zohary

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) DRE No. H-8264 SF  
12 F. E. FORBES COMPANY, INC. )  
13 and MARK EDWARD FORBES, ) OAH No. 2003010834  
14 Respondents. ) STIPULATION AND AGREEMENT

15 It is hereby stipulated by and between Respondents F.  
16 E. FORBES COMPANY, INC., a corporation, and MARK EDWARD FORBES  
17 (hereinafter "Respondents"), individually and by and through  
18 Shapiro Buchman Provine Patton LLP, attorneys of record herein  
19 for Respondents, and the Complainant, acting by and through James  
20 L. Beaver, Counsel for the Department of Real Estate (herein "the  
21 Department"), as follows for the purpose of settling and  
22 disposing of the Accusation filed on November 23, 2002 in this  
23 matter (herein "the Accusation"):

24 1. All issues which were to be contested and all  
25 evidence which was to be presented by Complainant and Respondents

27 DRE No. H-8264 SF

F. E. FORBES COMPANY, INC. and  
MARK EDWARD FORBES

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

6 2. Respondents have received, read and understand the  
7 Statement to Respondent, the Discovery Provisions of the APA and  
8 the Accusation filed by the Department in this proceeding.

9 3. On January 23, 2003, Respondents filed Notices of  
10 Defense pursuant to Section 11505 of the Government Code for the  
11 purpose of requesting a hearing on the allegations in the  
12 Accusation. Respondents each hereby freely and voluntarily  
13 withdraw said Notice of Defense. Respondents acknowledge that  
14 Respondents understand that by withdrawing said Notice of Defense  
15 Respondents will thereby waive Respondents' right to require the  
16 Real Estate Commissioner (herein "the Commissioner") to prove the  
17 allegations in the Accusation at a contested hearing held in  
18 accordance with the provisions of the APA and that Respondents  
19 will waive other rights afforded to Respondents in connection  
20 with the hearing such as the right to present evidence in defense  
21 of the allegations in the Accusation and the right to cross-  
22 examine witnesses.

23 4. Respondents, pursuant to the limitations set forth  
24 below, hereby admit that the factual allegations in the  
25 Accusation are true and correct and the Real Estate Commissioner  
26 shall not be required to provide further evidence of such

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F. E. FORBES COMPANY, INC. and  
MARK EDWARD FORBES

1 allegations.

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

12 6. This Stipulation and Agreement shall not  
13 constitute an estoppel, merger or bar to any further  
14 administrative or civil proceedings by the Department with  
15 respect to any matters which were not specifically alleged to be  
16 causes for accusation in this proceeding.

17 7. Respondents understand that by agreeing to this  
18 Stipulation and Agreement, Respondents jointly and severally  
19 agree to pay, pursuant to Section 10148 of the California  
20 Business and Professions Code, the cost of the audit which  
21 resulted in the determination that Respondents committed the  
22 trust fund violation(s) found in paragraph I, below, of the  
23 Determination of Issues. The amount of said costs is \$4,416.06.

24 8. Respondents further understand that by agreeing to  
25 this Stipulation and Agreement in Settlement, the findings set  
26 forth below in the Determination Of Issues become final, and that

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MARK EDWARD FORBES

1 the Commissioner may charge said Respondents, jointly and  
2 severally, for the costs of any audit conducted pursuant to  
3 Section 10148 of the California Business and Professions Code to  
4 determine if the trust fund violation(s) found in paragraph I,  
5 below, of the Determination of Issues have been corrected. The  
6 maximum costs of said audit shall not exceed \$4,853.60.

7 DETERMINATION OF ISSUES

8 By reason of the foregoing stipulations, admissions and  
9 waivers and solely for the purpose of settlement of the pending  
10 Accusation without hearing, it is stipulated and agreed that the  
11 following Determination of Issues shall be made:

12 I

13 The acts and omissions of Respondent F. E. FORBES  
14 COMPANY, INC. (hereinafter "FEFC") and Respondent MARK EDWARD  
15 FORBES (hereinafter "FORBES") as described in the Accusation are  
16 grounds for the suspension or revocation of the licenses and  
17 license rights of Respondent FEFC under the following provisions  
18 of the California Business and Professions Code (herein "the  
19 Code") and/or the provisions of Chapter 6, Title 10, California  
20 Code of Regulations (herein "the Regulations"):

21 (a) as to Paragraph XI under Section 10130 of the code  
22 in conjunction with Section 10177(d) of the Code;

23 (b) as to paragraph XII(a) under Section 10145 of the  
24 Code and Section 2831 of the Regulations in conjunction with  
25 Section 10177(d) of the Code;

26 (c) as to Paragraph XII(b) under Section 10145 of the

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MARK EDWARD FORBES

1 Code and Section 2831.1 of the Regulations in conjunction with  
2 Section 10177(d) of the Code;

3 (d) as to Paragraph XIV(c) under Section 10234 of the  
4 Code in conjunction with Section 10177(d) of the Code;

5 (e) as to Paragraph XIV(b) under Sections 10229(k) and  
6 10232.4(a) of the Code in conjunction with Section 10177(d) of  
7 the Code; and

8 (f) as to Paragraph XV under Section 10240 of the Code  
9 in conjunction with Section 10177(d) of the Code.

10 II

11 The acts and omissions of Respondent MARK EDWARD FORBES  
12 (hereinafter "FORBES") as described in Paragraph XVI of the  
13 Accusation are grounds for the suspension or revocation of the  
14 licenses and license rights of Respondent FORBES under Sections  
15 10177(g) and 10177(h) of the Code and Section 10159.2 of the Code  
16 in conjunction with Section 10177(d) of the Code.

17 ORDER

18 I

19 A. All licenses and licensing rights of Respondent F.  
20 E. FORBES COMPANY, INC. under the Real Estate Law are suspended  
21 for a period of sixty (60) days from the effective date of the  
22 Decision herein; provided, however:

23 1. If Respondent FEFC petitions, forty (40) days of  
24 said sixty (60) day suspension (or a portion thereof) shall be  
25 stayed upon condition that:

26 (a) Respondent FEFC pays a monetary penalty pursuant

27 DRE No. H-8264 SF

F. E. FORBES COMPANY, INC. and  
MARK EDWARD FORBES

1 to Section 10175.2 of the Code at the rate of \$250.00 for each  
2 day of the suspension for a total monetary penalty of \$10,000.00.

3 (b) Said payment shall be in the form of a cashier's  
4 check or certified check made payable to the Recovery Account of  
5 the Real Estate Fund. Said check must be received by the  
6 Department prior to the effective date of the Decision in this  
7 matter.

8 (c) If Respondent FEFC fails to pay the monetary  
9 penalty in accordance with the terms and conditions of the  
10 Decision, the Commissioner may, without a hearing, vacate and set  
11 aside the stay order, and order the immediate execution of all or  
12 any part of the stayed suspension.

13 (d) No final subsequent determination be made, after  
14 hearing or upon stipulation, that cause for disciplinary action  
15 against Respondent FEFC occurred within two (2) years of the  
16 effective date of the Decision herein. Should such a  
17 determination be made, the Commissioner may, in his or her  
18 discretion, vacate and set aside the stay order, and order the  
19 execution of all or any part of the stayed suspension, in which  
20 event the Respondent FEFC shall not be entitled to any repayment  
21 nor credit, prorated or otherwise, for money paid to the  
22 Department under the terms of this Decision.

23 (e) If Respondent FEFC pays the monetary penalty and  
24 if no further cause for disciplinary action against the real  
25 estate license of Respondent occurs within two (2) years from the  
26 effective date of the Decision herein, then the stay hereby

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F. E. FORBES COMPANY, INC. and  
MARK EDWARD FORBES

1 granted shall become permanent.

2 2. Twenty (20) days of said sixty (60) day  
3 suspension shall be stayed upon condition that:

4 (a) No final subsequent determination be made, after  
5 hearing or upon stipulation, that cause for disciplinary action  
6 against Respondent occurred within two (2) years of the  
7 effective date of the Decision herein.

8 (b) Should such a determination be made, the  
9 Commissioner may, in his or her discretion, vacate and set  
10 aside the stay order, and order the execution of all or any  
11 part of the stayed suspension, in which event the Respondent  
12 shall not be entitled to any repayment nor credit, prorated or  
13 otherwise, for money paid to the Department under the terms of  
14 this Decision.

15 (c) If no order vacating the stay is issued, and if  
16 no further cause for disciplinary action against the real  
17 estate license of Respondent occurs within two (2) years from  
18 the effective date of the Decision, then the stay hereby  
19 granted shall become permanent.

20 B. Respondent FEFC shall, within 45 days of receiving  
21 an invoice therefor from the Commissioner, pay (jointly and  
22 severally with Respondent FORBES) the Commissioner's costs in the  
23 amount of \$4,416.06 of the audit conducted pursuant to Section  
24 10148 of the Business and Professions Code that resulted in the  
25 determination that Respondent FEFC committed the violations  
26 described in Paragraph I of the Determination of Issues, above.

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F. E. FORBES COMPANY, INC. and  
MARK EDWARD FORBES

1 If Respondent FEFC fails to pay such cost within the 45 days, the  
2 Commissioner may in his or her discretion indefinitely suspend  
3 all license and licensing rights of Respondent under the Real  
4 Estate Law until payment is made in full or until Respondent  
5 enters into an agreement satisfactory to the Commissioner to  
6 provide for payment. Upon payment in full, any indefinite  
7 suspension provided in this paragraph shall be stayed.

8 C. Respondent FEFC shall pay (jointly and severally  
9 with Respondent FORBES) the Commissioner's costs, not to exceed  
10 \$4,853.60, of any audit conducted pursuant to Section 10148 of  
11 the Business and Professions Code to determine if Respondent has  
12 corrected the violations described in Paragraph I of the  
13 Determination of Issues, above. In calculating the amount of the  
14 Commissioner's reasonable cost, the Commissioner may use the  
15 estimated average hourly salary for all persons performing audits  
16 of real estate brokers, and shall include an allocation for  
17 travel time to and from the auditor's place of work. Respondent  
18 FEFC shall pay such cost within 45 days of receiving an invoice  
19 therefor from the Commissioner detailing the activities performed  
20 during the audit and the amount of time spent performing those  
21 activities. If Respondent fails to pay such cost within the 45  
22 days, the Commissioner may in his or her discretion indefinitely  
23 suspend all license and licensing rights of Respondent FEFC under  
24 the Real Estate Law until payment is made in full or until  
25 Respondent FEFC enters into an agreement satisfactory to the  
26 Commissioner to provide for payment. Upon payment in full, the

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F. E. FORBES COMPANY, INC. and  
MARK EDWARD FORBES



1 indefinite suspension provided in this paragraph shall be stayed.

2 II

3 A. All licenses and licensing rights of Respondent  
4 FORBES under the Real Estate Law are indefinitely suspended until  
5 such time as Respondent FORBES provides proof satisfactory to the  
6 Commissioner that Respondent FORBES has, within thirty days prior  
7 to the effective date of the Decision herein or any date after  
8 said effective date, taken and successfully completed the trust  
9 fund accounting and handling course specified in paragraph (3),  
10 subdivision (a) of Section 10170.5 of the Business and  
11 Professions Code. Upon satisfaction of this condition, the  
12 indefinite suspension provided in this paragraph shall be stayed.

13 B. All licenses and licensing rights of Respondent  
14 FORBES under the Real Estate Law are suspended for a period of  
15 sixty (60) days from the effective date of the Decision herein;  
16 provided, however:

17 1. If Respondent FORBES petitions, forty (40) days of  
18 said sixty (60) day suspension (or a portion thereof) shall be  
19 stayed upon condition that:

20 (a) Respondent FORBES pays a monetary penalty pursuant  
21 to Section 10175.2 of the Code at the rate of \$250.00 for each  
22 day of the suspension for a total monetary penalty of \$10,000.00.

23 (b) Said payment shall be in the form of a cashier's  
24 check or certified check made payable to the Recovery Account of  
25 the Real Estate Fund. Said check must be received by the  
26 Department prior to the effective date of the Decision in this

27 DRE No. H-8264 SF

F. E. FORBES COMPANY, INC. and  
MARK EDWARD FORBES

1 matter.

2 (c) If Respondent FORBES fails to pay the monetary  
3 penalty in accordance with the terms and conditions of the  
4 Decision, the Commissioner may, without a hearing, vacate and set  
5 aside the stay order, and order the immediate execution of all or  
6 any part of the stayed suspension.

7 (d) No final subsequent determination be made, after  
8 hearing or upon stipulation, that cause for disciplinary action  
9 against Respondent FORBES occurred within two (2) years of the  
10 effective date of the Decision herein. Should such a  
11 determination be made, the Commissioner may, in his or her  
12 discretion, vacate and set aside the stay order, and order the  
13 execution of all or any part of the stayed suspension, in which  
14 event the Respondent shall not be entitled to any repayment nor  
15 credit, prorated or otherwise, for money paid to the Department  
16 under the terms of this Decision.

17 (e) If Respondent FORBES pays the monetary penalty and  
18 if no further cause for disciplinary action against the real  
19 estate license of Respondent FORBES occurs within two (2) years  
20 from the effective date of the Decision herein, then the stay  
21 hereby granted shall become permanent.

22 2. Twenty (20) days of said sixty (60) day  
23 suspension shall be stayed upon condition that:

24 (a) No final subsequent determination be made, after  
25 hearing or upon stipulation, that cause for disciplinary action  
26 against Respondent occurred within two (2) years of the

27 DRE No. H-8264 SF

F. E. FORBES COMPANY, INC. and  
MARK EDWARD FORBES

1 effective date of the Decision herein.

2 (b) Should such a determination be made, the  
3 Commissioner may, in his or her discretion, vacate and set  
4 aside the stay order, and order the execution of all or any  
5 part of the stayed suspension, in which event the Respondent  
6 shall not be entitled to any repayment nor credit, prorated or  
7 otherwise, for money paid to the Department under the terms of  
8 this Decision.

9 (c) If no order vacating the stay is issued, and if  
10 no further cause for disciplinary action against the real  
11 estate license of Respondent occurs within two (2) years from  
12 the effective date of the Decision, then the stay hereby  
13 granted shall become permanent.

14 C. Respondent FORBES shall, within 45 days of  
15 receiving an invoice therefor from the Commissioner, pay (jointly  
16 and severally with Respondent FEFC) the Commissioner's costs in  
17 the amount of \$4,416.06 of the audit conducted pursuant to  
18 Section 10148 of the Business and Professions Code that resulted  
19 in the determination that Respondent FEFC committed the  
20 violations described in Paragraph I of the Determination of  
21 Issues, above. If Respondent FORBES fails to pay such cost within  
22 the 45 days, the Commissioner may in his or her discretion  
23 indefinitely suspend all license and licensing rights of  
24 Respondent under the Real Estate Law until payment is made in  
25 full or until Respondent FORBES enters into an agreement  
26 satisfactory to the Commissioner to provide for payment. Upon

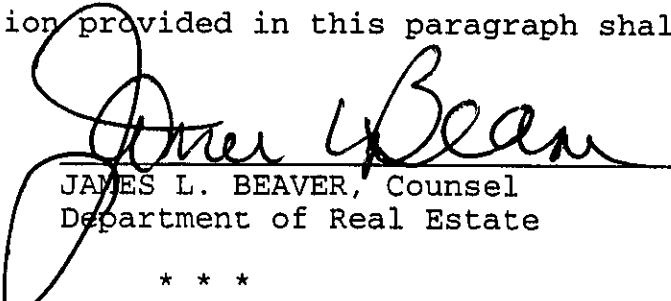
27 DRE No. H-8264 SF

F. E. FORBES COMPANY, INC. and  
MARK EDWARD FORBES

1 payment in full, any indefinite suspension provided in this  
2 paragraph shall be stayed.

3 D. Respondent FORBES shall pay (jointly and severally  
4 with Respondent FEFC) the Commissioner's costs, not to exceed  
5 \$4,853.60, of any audit conducted pursuant to Section 10148 of  
6 the Business and Professions Code to determine if Respondent FEFC  
7 has corrected the violations described in Paragraph I of the  
8 Determination of Issues, above. In calculating the amount of the  
9 Commissioner's reasonable cost, the Commissioner may use the  
10 estimated average hourly salary for all persons performing audits  
11 of real estate brokers, and shall include an allocation for  
12 travel time to and from the auditor's place of work. Respondent  
13 shall pay such cost within 45 days of receiving an invoice  
14 therefor from the Commissioner detailing the activities performed  
15 during the audit and the amount of time spent performing those  
16 activities. If Respondent FORBES fails to pay such cost within  
17 the 45 days, the Commissioner may in his or her discretion  
18 indefinitely suspend all license and licensing rights of  
19 Respondent under the Real Estate Law until payment is made in  
20 full or until Respondent enters into an agreement satisfactory to  
21 the Commissioner to provide for payment. Upon payment in full,  
22 the indefinite suspension provided in this paragraph shall be  
23 stayed.

24 March 20, 2003  
DATED

  
JAMES L. BEAVER, Counsel  
Department of Real Estate  
\* \* \*

27 DRE No. H-8264 SF

F. E. FORBES COMPANY, INC. and  
MARK EDWARD FORBES

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

12 3/18/2003

13 DATED

F. E. FORBES COMPANY, INC.  
Respondent

14 By Mark E. Forbes  
15 MARK EDWARD FORBES  
16 Designated Officer - Broker

17 3/18/2003

18 DATED

Mark E. Forbes  
19 MARK EDWARD FORBES  
20 Respondent

21 \* \* \*

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

24 3-18-03

25 DATED

SHAPIRO BUCHMAN PROVINE PATTON LLP  
Attorneys for Respondents

26 By [Signature]

27 ///

\* \* \*

DRE No. H-8264 SF

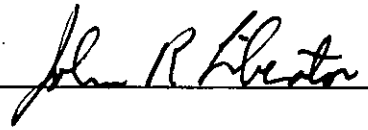
F. E. FORBES COMPANY, INC. and  
MARK EDWARD FORBES

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The foregoing Stipulation and Agreement is hereby  
adopted by me as my Decision in this matter and shall become  
effective at 12 o'clock noon on \_\_\_\_\_ APRIL 23 \_\_\_\_\_, 2003.

IT IS SO ORDERED March 24, 2003.

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

  
\_\_\_\_\_

BY: John R. Liberator  
Chief Deputy Commissioner

DRE No. H-8264 SF

F. E. FORBES COMPANY, INC. and  
MARK EDWARD FORBES

**BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA**

**FILED**  
FEB - 6 2003

DEPARTMENT OF REAL ESTATE

By Laurie G. Gu

*In the Matter of the Accusation of*

F.E. FORBES COMPANY, INC.,  
AND MARK EDWARD FORBES,

Case No. H-8264 SF

OAH No. N-2003010834

---

*Respondents*

**NOTICE OF HEARING ON ACCUSATION**

***To the above named respondents:***

***You are hereby notified*** that a hearing will be held before the Department of Real Estate at **THE OFFICE OF ADMINISTRATIVE HEARINGS, 1515 CLAY STREET, SUITE 206, OAKLAND, CA 94612** on **TUESDAY, MARCH 25, 2003**, at the hour of **9:00 A.M.**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

*Dated:* FEBRUARY 6, 2003

DEPARTMENT OF REAL ESTATE

By

James L. Beaver  
JAMES L. BEAVER, Counsel (LZ)

1 JAMES L. BEAVER, Counsel (SBN 60543)  
2 Department of Real Estate  
3 P. O. Box 187000  
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789  
6 -or- (916) 227-0788 (Direct)

FILED

NOV 23 2002

DEPARTMENT OF REAL ESTATE

By Laurie L. Zee

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 F. E. FORBES COMPANY, INC., ) No. H-8264 SF  
13 and MARK EDWARD FORBES ) ACCUSATION  
14 Respondents. )

15 The Complainant, Les R. Bettencourt, a Deputy Real  
16 Estate Commissioner of the State of California, for cause of  
17 Accusation against F. E. FORBES COMPANY, INC. (herein "FEFC")  
18 and MARK EDWARD FORBES (herein "FORBES"), is informed and  
19 alleges as follows:

20 I

21 The Complainant, Les R. Bettencourt, a Deputy Real  
22 Estate Commissioner of the State of California, makes this  
23 Accusation in his official capacity.

24 II

25 At all times herein mentioned, Respondents FEFC and  
26 FORBES (herein "Respondents") were and now are licensed and/or  
27 have license rights under the Real Estate Law (Part 1 of



1 Division 4 of the Business and Professions Code) (herein "the  
2 Code"):

3 III

4 At all times herein mentioned herein to and until  
5 December 14, 2001, and at all times mentioned herein from and  
6 after March 12, 2002, FEFC was and now is licensed by the  
7 Department of Real Estate of the State of California (herein  
8 "the Department") as a corporate real estate broker by and  
9 through FORBES as designated officer-broker of FEFC to qualify  
10 said corporation and to act for said corporation as a real  
11 estate broker.

12 IV

13 At all times herein mentioned, FORBES was and now is  
14 licensed by the Department as a real estate broker, individually  
15 and, at all times herein mentioned herein to and until  
16 December 14, 2001, and at all times mentioned herein from and  
17 after March 12, 2002, as designated officer-broker of FEFC. As  
18 said designated officer-broker, FORBES was at all times  
19 mentioned herein responsible pursuant to Section 10159.2 of the  
20 Code for the supervision of the activities of the officers,  
21 agents, real estate licensees and employees of FEFC for which a  
22 license is required.

23 V

24 On December 14, 2001, the corporate broker license of  
25 Respondent FEFC, and the license of Respondent FORBES as an  
26 officer of Respondent FEFC, each expired without being renewed  
27 at any time prior to March 12, 2002. At no time mentioned

1 herein between December 14, 2001 and March 12, 2002, was  
2 Respondent FEFC licensed by the Department, and at no such time  
3 was Respondent FORBES licensed by the Department as an officer  
4 of FEFC.

5 VI

6 Whenever reference is made in an allegation in this  
7 Accusation to an act or omission of FEFC, such allegation shall  
8 be deemed to mean that the officers, directors, employees,  
9 agents and/or real estate licensees employed by or associated  
10 with FEFC committed such act or omission while engaged in the  
11 furtherance of the business or operations of such corporate  
12 Respondent and while acting within the course and scope of their  
13 authority and employment.

14 VII

15 At all times herein mentioned, Respondents engaged in  
16 the business of, acted in the capacity of, advertised, or  
17 assumed to act as real estate brokers within the State of  
18 California within the meaning of Sections 10131(d) and 10131(e)  
19 of the Code, including the operation and conduct of a mortgage  
20 loan brokerage with the public wherein, on behalf of others, for  
21 compensation or in expectation of compensation, Respondents  
22 solicited lenders and borrowers for loans secured directly or  
23 collaterally by liens on real property, wherein Respondents  
24 arranged, negotiated, processed, and consummated such loans,  
25 wherein Respondents serviced and collected payments on such  
26 loans, and wherein Respondents sold or offered to sell, bought  
27 or offered to buy, or exchanged or offered to exchange

1 promissory notes secured directly or collaterally by a lien on  
2 real property and performed services for the holders thereof,  
3 including servicing and collecting payments on such promissory  
4 notes.

5 VIII

6 In so acting as real estate brokers, as described in  
7 Paragraph VII, above, Respondents accepted or received funds in  
8 trust (herein "trust funds") from or on behalf of lenders,  
9 investors, borrowers and others in connection with the mortgage  
10 loan brokerage activities described in Paragraph VI, above, and  
11 thereafter from time to time made disbursements of said trust  
12 funds.

13 IX

14 The aforesaid trust funds accepted or received by  
15 Respondents were deposited or caused to be deposited by  
16 Respondents into one or more bank accounts (herein "trust fund  
17 accounts") maintained by Respondents for the handling of trust  
18 funds, including but not necessarily limited to the "F. E.  
19 Forbes Company, Inc. Trust Account", Account Number 18004598,  
20 maintained by Respondents at the Berkeley, California, branch of  
21 Mechanics Bank (hereinafter "Trust #1").

22 X

23 Between December 15, 2001 and March 11, 2002,  
24 following the expiration and prior to the renewal of Respondent  
25 FEFC's corporate real estate broker license, Respondent FEFC and  
26 Respondent FORBES, acting as an agent of Respondent FEFC,  
27 conducted mortgage loan origination and mortgage loan servicing

1 activities described in Paragraph VII, above, including but not  
2 limited to:

3 (a) Collecting payments from borrowers on behalf of  
4 investors and lenders on loans secured by real property and  
5 making disbursements of said funds;

6 (b) On or about September 26, 2001, negotiating and  
7 arranging a \$185,000 mortgage loan from Capitol Commerce  
8 Mortgage as lender to John Spain as borrower secured by real  
9 property at 410 Balra Drive, El Cerrito, California;

10 (c) On or about January 17, 2002, negotiating and  
11 arranging a \$90,000 mortgage loan from Capitol Commerce Mortgage  
12 as lender to Steven Villata as borrower secured by real property  
13 at 507 Napa Avenue, Rodeo, California;

14 (d) On or about February 5, 2002, negotiating and  
15 arranging a \$352,000 mortgage loan from Capitol Commerce  
16 Mortgage as lender to George Hasa et ux as borrowers secured by  
17 real property at 218 Alderbrook Place, Moraga, California; and

18 (e) On or about February 14, 2002, negotiating and  
19 arranging a \$180,000 mortgage loan from Capitol Commerce  
20 Mortgage as lender to Randy Berrett et ux. as borrowers secured  
21 by real property at 5356 Rosalind Avenue, El Cerrito,  
22 California.

23 XI

24 In acting as described in Paragraph X, above,  
25 Respondent FEFC violated Section 10130 of the Code, and  
26 Respondent FORBES willfully caused, suffered and permitted  
27 Respondent FEFC to violate Section 10130 of the Code.

1 XII

2 At all times mentioned herein between January 1, 2001  
3 and January 31, 2002, in connection with the collection and  
4 disbursement of said trust funds, Respondents:

5 (a) Failed to keep a columnar record in chronological  
6 sequence of all trust funds received and disbursed from Trust #1  
7 containing all the information required by Section 2831 of Title  
8 10, California Code of Regulations (hereinafter "the  
9 Regulations");

10 (b) Failed to keep a separate record for each  
11 beneficiary or transaction, accounting therein for all funds  
12 which have been deposited into Trust #1, containing all  
13 information required by Section 2831.1 of the Regulations; and

14 (c) Commingled funds received and held by Respondent  
15 FEFC in trust for others in Trust #1 with funds belonging to  
16 Respondent FEFC deposited in said account.

17 XIII

18 At all times mentioned herein between January 1, 2001  
19 and January 31, 2002, FEFC was a real estate broker which  
20 offered to sell and sold notes subject to Section 10229 of the  
21 Code secured directly by an interest in the same real property  
22 or undivided interests in notes secured directly by real  
23 property equivalent to a series transaction.

24 XIV

25 Between January 1, 2001 and January 31, 2002, in  
26 course of the mortgage loan and multi-lender loan origination  
27 described in Paragraphs VII and XIII, above, Respondents:

1 (a) Sold such a note or interests therein to more  
2 than ten persons in violation of Section 10229(e)(1) of the  
3 Code;

4 (b) Failed to comply with Section 10229(e)(1) of the  
5 Code, in that FEFC failed, in course of the sale of notes  
6 subject to Section 10229 of the Code, to timely obtain the  
7 signature of purchasers on the statement described in Section  
8 10229(e) containing the information prescribed thereby, and/or  
9 failed to retain on file for a period of four years a true and  
10 correct copy of such statement signed by the purchasers;

11 (c) Failed to cause proper assignments of trust  
12 deeds, naming as assignee the purchaser or a nominee other than  
13 Respondent, to be executed and recorded with the county recorder  
14 of the county in which the real property is located within the  
15 time specified in Section 10234 of the Code; and

16 (d) Failed to provide lenders and/or purchasers the  
17 statement required by Sections 10232.4(a) and 10229(k) of the  
18 Code, and failed to provide lenders and/or purchasers such  
19 statement within the time specified in Section 10232.4(a) of the  
20 Code.

21 XV

22 Between January 1, 2001 and January 31, 2002, in  
23 course of the mortgage loan origination activities described in  
24 Paragraph VII, above, Respondents failed to comply with Section  
25 10240 of the Code, in that Respondents:

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1 (a) Failed to obtain the signature of the borrowers  
2 on the statement required by Section 10240 (hereinafter "Written  
3 Disclosure Statement");

4 (b) Failed to deliver a copy of the required Written  
5 Disclosure Statement to the borrowers; and/or

6 (c) Failed to retain on file for a period of three  
7 years a true and correct copy of the required Written Disclosure  
8 Statement signed by the borrowers.

9 XVI

10 Respondent FORBES failed to exercise reasonable  
11 supervision over the acts of FEFC in such a manner as to allow  
12 the acts and omissions on the part of FEFC described above, to  
13 occur.

14 XVII

15 The facts alleged above are grounds for the suspension  
16 or revocation of the licenses and license rights of Respondents  
17 FEFC and FORBES under the following provisions of the Code  
18 and/or the Regulations:

19 (a) As to Paragraph XI, under Section 10130 of the  
20 code in conjunction with Section 10177(d) of the Code;

21 (b) As to Paragraph XII(a), under Section 10145 of  
22 the Code and Section 2831 of the Regulations in conjunction with  
23 Section 10177(d) of the Code;

24 (c) As to Paragraph XII(b), under Section 10145 of  
25 the Code and Section 2831.1 of the Regulations in conjunction  
26 with Section 10177(d) of the Code;

27 ///

1 (d) As to Paragraph XII(c), under Section 10176(e) of  
2 the Code;

3 (e) As to Paragraphs XIV(a) and XIV(b), under Section  
4 10229(e)(1) of the Code in conjunction with Sections 10177(d)  
5 and 10177(p) of the Code;

6 (f) As to Paragraph XIV(c), under Section 10234 of  
7 the Code in conjunction with Section 10177(d) of the Code;

8 (g) As to Paragraph XIV(b), under Sections 10229(k)  
9 and 10232.4(a) of the Code in conjunction with Sections 10177(d)  
10 and 10177(p) of the Code; and

11 (h) As to Paragraph XV, under Section 10240 of the  
12 Code in conjunction with Section 10177(d) of the Code.

13 XVIII

14 The facts alleged above as to Paragraph XVI of the  
15 Accusation are grounds for the suspension or revocation of the  
16 licenses and license rights of FORBES under Section 10177(g)  
17 and/or Section 10177(h) of the Code and Section 10159.2 of the  
18 Code in conjunction with Section 10177(d) of the Code.

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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 licenses and license rights of Respondent 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.

  
LES R. BETTENCOURT  
Deputy Real Estate Commissioner

Dated at Oakland, California,  
this 19<sup>th</sup> day of November, 2002.