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**FILED**

DEC 09 2008

DEPARTMENT OF REAL ESTATE

By L. Lust

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of  
RANDY EDWARD MARTIN,  
Respondent.

No. H-9524 SF

ORDER GRANTING UNRESTRICTED LICENSE

On June 12, 2006, a Decision was rendered herein denying the Respondent's application for a real estate salesperson license, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on August 26, 2006, and Respondent has operated as a restricted licensee since that time.

On August 28, 2008, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate salesperson license.

I have considered Respondent's petition and the evidence submitted in support thereof including Respondent's record as a restricted licensee. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate salesperson license and that it would not be against the public interest to issue said license to Respondent.

1                    NOW, THEREFORE, IT IS ORDERED that Respondent's petition for removal of  
2 restrictions is granted and that a real estate salesperson license be issued to Respondent subject to  
3 the following understanding and conditions:

4                    1. The license issued pursuant to this order shall be deemed to be the first renewal  
5 of respondent's real estate salesperson license for the purpose of applying the provisions of  
6 Section 10153.4.

7                    2. Within nine (9) months from the date of this order respondent shall:

8                    (a) Submit a completed application and pay the appropriate fee for a real estate  
9 salesperson license, and

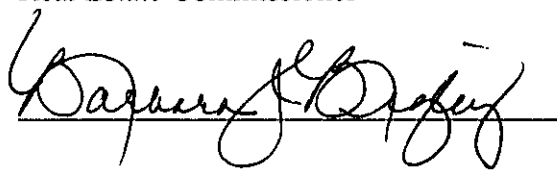
10                    (b) Submit evidence of having taken and successfully completed the courses  
11 specified in subdivisions (a) (1), (2), (3), (4) and (5) of Section 10170.5 of the Real Estate Law  
12 for renewal of a real estate license.

13                    3. Upon renewal of the license issued pursuant to this order, respondent shall  
14 submit evidence of having taken and successfully completed the continuing education  
15 requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate  
16 license.

17                    This Order shall become effective immediately.

18                    IT IS SO ORDERED 11-21-08

19                    JEFF DAVI  
20                    Real Estate Commissioner

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23                    BY: Barbara J. Bigby  
24                    Chief Deputy Commissioner  
25  
26  
27

JUN 20 2006

## DEPARTMENT OF REAL ESTATE

★ ★ ★

OAH No. N-2006030424

JEFF DAVIS  
Real Estate Commissioner

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

RANDY EDWARD MARTIN,

Respondent.

Case No. H-9524 SF

OAH No. N2006030424

**PROPOSED DECISION**

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Oakland, California, on May 16, 2006.

Complainant Charles W. Koenig, Deputy Real Estate Commissioner, was represented by Michael B. Rich, Counsel, Department of Real Estate.

Respondent Randy Martin represented himself.

The matter was submitted for decision on May 16, 2006.

**FACTUAL FINDINGS**

1. On June 3, 2005, respondent Randy Edward Martin submitted to the Department of Real Estate an application for a real estate salesperson license. Any license issued pursuant to that application would be subject to the provisions of Business and Professions Code section 10153.4. The department denied respondent's application and he appealed.

2. Respondent is 50 years old. He began drinking when he was 15 years old, and he developed what he described as a serious and progressive problem with alcohol, eventually causing him to suffer blackouts. Respondent's drinking contributed to all of the convictions set forth below.

3. a) In August 1973, respondent was convicted of a misdemeanor violation of former Penal Code section 606, defacing a public place of confinement. He was fined \$65 and was placed on one year's probation.

b) This conviction stemmed from respondent's arrest for driving under the influence of alcohol. He was 18 years old. Respondent's blood alcohol level was below the legal limit and he was eventually released without being charged with a DUI. However,

while he was in the holding cell respondent tore some tape off the wall (it was holding up padding) and consequently was charged with the section 606 violation.

4. a) On February 6, 1996, respondent was convicted, on his plea of guilty, of six crimes: three felony counts of Penal Code section 422, threatening to commit a crime resulting in death or great bodily injury; one felony count of violating Penal Code section 646.9, subdivision (a), stalking; one misdemeanor count of violating Penal Code section 12025, subdivision (a)(2), carrying a concealed firearm; and one misdemeanor count of violating Penal Code section 12031, subdivision (a)(1), carrying a loaded firearm.

b) Imposition of sentence was suspended and respondent was placed on probation for five years on conditions that included six months in jail to be followed by at least six months in a substance abuse program, payment of fines, and prohibitions against annoying, molesting or threatening his neighbors, playing electronic music at his property, and going onto his neighbors' property.

c) These convictions stemmed from ongoing problems respondent was having with his neighbors. Respondent candidly admits he "was being a bad neighbor." His neighbors called the police a number of times because respondent was playing loud music. Respondent's drinking led him to escalate these complaints into a major dispute. He made threatening phone calls to his neighbors, some of which were recorded. When he was arrested after a series of incidents, respondent was found to be in possession of a loaded handgun.

5. a) On January 21, 1997, respondent was convicted, on his plea of nolo contendere, of misdemeanor violations of Penal Code sections 166, subdivision (a)(4), willful disobedience of a court order, and 273.6, subdivision (a), violation of a protective order.

b) Probation was denied and respondent was sentenced to 90 days in jail. A jail sentence was also imposed for violation of the probation that had been imposed in February 1996. As a result, respondent spent nearly six months in jail.

c) Respondent violated his probation and the court orders when he again played loud music to disturb his neighbors.

6. a) On July 14, 1999, respondent was convicted, on his plea of guilty, of a misdemeanor violation of Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol.

b) Imposition of sentence was suspended and respondent was placed on probation for three years on conditions that included 10 days in jail, payment of fines, and enrollment in a First Offender Alcohol Program.

c) This conviction stemmed from respondent's arrest on May 30, 1999. He was returning from a party after having about 10 drinks when he was stopped for erratic driving.

7. Respondent describes his DUI arrest as a wake-up call for him. He realized he had finally "had enough" of alcohol. The day after his arrest, respondent went to an AA meeting. Respondent had attended AA meetings before – while in a six-month treatment program after his 1997 conviction respondent had been required to attend three meetings a week. He says he went to those meetings in 1997 but "didn't participate." This changed after his DUI arrest. Respondent has attended meetings nearly every day since his 1999 arrest. He currently attends at least one AA meeting every day of the week. He has a sponsor, and he has sponsored other men in AA. On May 31, 2006, respondent will mark seven years of sobriety.

8. Respondent testified that until he got into AA in 1999 he "didn't have a firm foundation on what alcoholism really was." Now he does. Respondent knows that alcohol is "life threatening" to him and that he must remain totally abstinent. He is committed to doing that.

9. Respondent worked for more than 25 years as a production supervisor or production manager in the semiconductor industry. However, most of the fabrication plants have moved from the Silicon Valley to overseas and respondent has been unemployed for the past four years. He supports himself by managing income properties he owns and by helping his girlfriend maintain her income properties. If licensed, respondent intends to work in the area of residential sales. Real estate broker Lino Amarante submitted a letter in support of respondent's application. He has known respondent for about a year, is aware of respondent's background, and is willing to employ him as a salesperson.

10. In May 2005, the court granted respondent's motion to expunge his 1996 convictions pursuant to Penal Code section 1203.4. Respondent has paid all fines associated with his convictions. And he has made face-to-face amends with those he harmed during his years of drinking – his parents, his ex-wife, his son, and his neighbors. Respondent still owns the property he lived in when he was a "bad neighbor." Although he no longer lives there – it is now one of his rental properties – he has maintained good relationships with the neighbors over the past eight years.

### LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a), provides that a professional license may be denied if the applicant has been convicted of a crime that is substantially related to the qualifications, functions or duties of the profession for which application is made. As required by Business and Professions Code section 481, the department has developed criteria to be used in considering whether a crime is substantially related to the qualifications, functions and duties of a real estate licensee. Those criteria are found in California Code of Regulations, title 10, section 2910.

2. Respondent's convictions are all substantially related under the department's criteria. Respondent's 1996 convictions involved unlawful acts with the threat of doing substantial injury to the person or property of another. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) Respondent's 1997 convictions involved willful failure to comply with a court order. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(10).) Taken together, all of respondent's convictions involved the use of alcohol, and at least one of them involved driving and the use of alcohol. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(11).) Cause for denial thereby exists pursuant to Business and Professions Code section 480, subdivision (a).

3. Business and Professions Code section 10177, subdivision (b), provides that a real estate license may be denied if the applicant has been convicted of a felony or a crime involving moral turpitude. Three of respondent's 1996 convictions were felonies, and all six convictions involved moral turpitude. Under the circumstances – driving after 10 drinks and knowing he had experienced alcohol-related blackouts – respondent's DUI conviction also involved moral turpitude. For those crimes, cause for denial exists pursuant to section 10177, subdivision (b).

4. It has now been almost seven years since respondent's last conviction. He has successfully completed probation and has paid all fines associated with his convictions. He has had his most serious crimes expunged. Respondent has made personal amends to those he harmed by his drinking and related behavior. Most importantly, respondent has demonstrated a significant change in attitude from that which existed before 1999. Since his arrest that year respondent has completely turned his life around. He has stopped drinking, has become active in AA, and has remained abstinent for seven years. There is no reason to believe he will not maintain this abstinence. All of the foregoing facts show that respondent has rehabilitated himself in conformity with the department's Criteria of Rehabilitation. (Cal. Code Regs., tit. 10, § 2911.) It would not be against the public interest to permit respondent to hold a real estate salesperson license upon a restricted basis.

#### ORDER

The application of respondent Randy Edward Martin for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of said Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of respondent (including a plea of nolo

contendere) of a crime that is substantially related to respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence that respondent has violated provisions of the California Real Estate Law, the subdivided lands law, regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to respondent.

3. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate, which shall certify as follows:

(a) That the employing broker has read the decision which is the basis for the issuance of the restricted license; and


(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

4. Respondent's restricted real estate license is issued subject to the provisions of section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen months of issuance of the restricted license, submit evidence satisfactory to the commissioner of successful completion, at an accredited institution, of a course in real estate practices and one of the courses listed in section 10153.2 other than real estate principles, advanced legal aspects of real estate, advanced real estate finance, or advanced real estate appraisal. If respondent fails to present satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen months after the date of its issuance. This suspension shall not be lifted unless, prior to the expiration of the restricted license, respondent has submitted the required evidence of course completion and the commissioner has given written notice to respondent of lifting of the suspension.



5. Pursuant to Section 10154, if respondent has not satisfied the requirements for an unqualified license under section 10153.4, respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to section 10153.4 until four years after the date of the issuance of the preceding restricted license.

DATED: May 18, 2006

  
MICHAEL C. COHN  
Administrative Law Judge  
Office of Administrative Hearings

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2 State Bar No. 84257  
3 Department of Real Estate  
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5 Sacramento, CA 95818-7007  
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FILED  
FEB 18 2006

DEPARTMENT OF REAL ESTATE

By H. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

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11 In the Matter of the Application of )  
12 RANDY EDWARD MARTIN, ) H-9524 SF  
13 ) STATEMENT OF ISSUES  
14 Respondent. )

15  
16 The Complainant, CHARLES W. KOENIG, a Deputy Real  
17 Estate Commissioner of the State of California, for Statement of  
18 Issues against RANDY EDWARD MARTIN (hereinafter "Respondent"),  
19 is informed and alleges as follows:

20 I

21 Respondent made application to the Department of Real  
22 Estate of the State of California for a real estate salesperson  
23 license on or about June 3, 2005, with the knowledge and  
24 understanding that any license issued as a result of said  
25 application would be subject to the conditions of Section  
26 10153.4 of the Business and Professions Code.

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1 II

2 Complainant, CHARLES W. KOENIG, a Deputy Real Estate  
3 Commissioner of the State of California, makes this Statement of  
4 Issues in his official capacity and not otherwise.

5 III

6 On or about August 23, 1973, in the Municipal Court,  
7 County of Santa Clara, State of California, Respondent was  
8 convicted of violating Section 606 of the California Penal Code  
9 (Defacing or injury a public place of confinement), a crime  
10 involving moral turpitude and/or a crime which bears a  
11 substantial relationship under Section 2910, Title 10,  
12 California Code of Regulations, to the qualifications,  
13 functions, or duties of a real estate licensee.

14 IV

15 On or about February 6, 1996, in the Superior Court,  
16 County of Santa Clara, State of California, in case number  
17 185147, Respondent was convicted of three counts of violating  
18 Section 422 of the California Penal Code (Willfully threaten to  
19 commit a crime which will result in death or great bodily injury  
20 to another), felonies, one count of violating Section 646.9(a)  
21 of the California Penal Code (Willfully, maliciously, and  
22 repeatedly follows or harasses another person and makes a  
23 credible threat with intent to place the person in reasonable  
24 fear for safety), a felony, one count of violating Section  
25 12025(a)(2) of the California Penal Code (Carry concealed upon  
26 his person any pistol or firearm capable of concealment upon the  
27 person), and one count of violating Section 12031(a)(1) of the

1 California Penal Code (Unlawfully carry loaded firearm in a  
2 vehicle in a public place or on a public street), crimes  
3 involving moral turpitude and/or crimes which bear a substantial  
4 relationship under Section 2910, Title 10, California Code of  
5 Regulations, to the qualifications, functions, or duties of a  
6 real estate licensee.

7 V

8 On or about January 21, 1997, in the Municipal Court,  
9 County of Santa Clara, State of California, in case number  
10 C9604850, Respondent was convicted of violating Section  
11 166(a)(4) of the California Penal Code (Willful disobedience of  
12 a lawful order of any court) and Section 273.6(a) of the  
13 California Penal Code (Intentional and knowing violation of  
14 protective order to prevent domestic violence), crimes involving  
15 moral turpitude and/or crimes which bear a substantial  
16 relationship under Section 2910, Title 10, California Code of  
17 Regulations, to the qualifications, functions, or duties of a  
18 real estate licensee.

19 VI

20 On or about July 14, 1999, in the Superior Court,  
21 County of Santa Clara, State of California, in case number  
22 C9933957, Respondent was convicted of violating Section 23152(a)  
23 of the California Vehicle Code (Unlawfully driving a vehicle  
24 while under the influence of alcohol), a crime involving moral  
25 turpitude and/or a crime which bears a substantial relationship  
26 under Section 2910, Title 10, California Code of Regulations, to

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1 the qualifications, functions, or duties of a real estate  
2 licensee.

3 VII

4 The crimes of which Respondent was convicted, as  
5 allege in Paragraphs III, IV, V and VI, above, either  
6 individually or collectively, constitutes cause for denial of  
7 Respondent's application for a real estate license under  
8 Sections 480(a) and/or 10177(b) of the California Business and  
9 Professions Code.

10 WHEREFORE, the Complainant prays that the above-  
11 entitled matter be set for hearing and, upon proof of the  
12 charges contained herein, that the Commissioner refuse to  
13 authorize the issuance of, and deny the issuance of, a real  
14 estate salesperson license to Respondent, and for such other and  
15 further relief as may be proper under other provisions of law.

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18   
19 CHARLES W. KOENIG  
20 Deputy Real Estate Commissioner

21 Dated at Sacramento, California,  
22 this 6<sup>th</sup> day of February, 2006.  
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