

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

4 Telephone: (916) 227-0789

FILED
OCT -4 2007

DEPARTMENT OF REAL ESTATE

By *[Signature]*

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) NO. H-9750 SF
12)
13 MICHAEL BARRY KENNEY and) STIPULATION AND AGREEMENT
14 UNITED HOME LOAN CO.,) IN SETTLEMENT
Respondents.) AND ORDER

15
16 It is hereby stipulated by and between UNITED HOME
17 LOAN CO. and MICHAEL BARRY KENNEY (hereinafter "Respondents")
18 and their attorney of record, James H. Vernon, and the
19 Complainant, acting by and through David B. Seals, Counsel for
20 the Department of Real Estate, as follows for the purpose of
21 settling and disposing of the Accusation filed on November 7,
22 2006, in this matter:

23 1. All issues which were to be contested and all
24 evidence which was to be presented by Complainant and
25 Respondents at a formal hearing on the Accusation, which hearing
26 was to be held in accordance with the provisions of the
27 Administrative Procedure Act (APA), shall instead and in place

1 thereof be submitted solely on the basis of the provisions of
2 this Stipulation and Agreement in Settlement.

3 2. Respondents have received, read and understand the
4 Statement to Respondent, the Discovery Provisions of the APA and
5 the Accusation filed by the Department of Real Estate in this
6 proceeding.

7 3. A Notice of Defense was filed on November 27, 2006
8 by Respondents, pursuant to Section 11505 of the Government Code
9 for the purpose of requesting a hearing on the allegations in
10 the Accusation. Respondents hereby freely and voluntarily
11 withdraw said Notice of Defense. Respondents acknowledge that
12 they understand that by withdrawing said Notice of Defense they
13 will thereby waive their right to require the Commissioner to
14 prove the allegations in the Accusation at a contested hearing
15 held in accordance with the provisions of the APA and that they
16 will waive other rights afforded to them in connection with the
17 hearing such as the right to present evidence in defense of the
18 allegations in the Accusation and the right to cross-examine
19 witnesses.

20 4. This Stipulation is based on the factual
21 allegations contained in the Accusation. In the interests of
22 expedience and economy, Respondents choose not to contest these
23 allegations, but to remain silent and understand that, as a
24 result thereof, these factual allegations, without being
25 admitted or denied, will serve as a prima facie basis for the
26 disciplinary action stipulated to herein. The Real Estate

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1 Commissioner shall not be required to provide further evidence
2 to prove said factual allegations.

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

14 6. The Order or any subsequent Order of the Real
15 Estate Commissioner made pursuant to this Stipulation and
16 Agreement in Settlement shall not constitute an estoppel, merger
17 or bar to any further administrative or civil proceedings by the
18 Department of Real Estate with respect to any matters which were
19 not specifically alleged to be causes for accusation in this
20 proceeding.

21 7. Respondents have received, read and understand the
22 "Notice Concerning Costs of Subsequent Audits". Respondents
23 understand that by agreeing to this Stipulation and Agreement in
24 Settlement, the findings set forth below in the DETERMINATION OF
25 ISSUES become final, and that the Commissioner may charge
26 Respondents for the costs of any audit for which they are
27 charged pursuant to Section 10148 of the Business and

1 Professions Code (hereinafter the "Code"). The reasonable cost
2 of the audits which led to this disciplinary action is \$4762.80.
3 The maximum cost of the subsequent audits will not exceed
4 \$4762.80.

5
6 DETERMINATION OF ISSUES

7 I

8 By reason of the foregoing stipulations, admissions
9 and waivers and solely for the purpose of settlement of the
10 pending Accusation without a hearing, it is stipulated and
11 agreed that the facts alleged above are grounds for the
12 suspension or revocation of the licenses and license rights of
13 Respondent MICHAEL BARRY KENNEY under Section 10177(h) of the
14 Code and Section 2725 of the Regulations in conjunction with
15 Section 10177(d) of the Code and, as to Respondent UNITED HOME
16 LOAN CO. under Section 10176(e) of the Code in conjunction with
17 Section 2835 of the Regulations and Section 10177(d) of the Code
18 in conjunction with Section 10145 of the Code and Section 2832.1
19 of the Regulations.

20 ORDER

21 I

22 All licenses and licensing rights of Respondent UNITED
23 HOME LOAN CO. under the Real Estate Law are suspended for a
24 period of thirty (30) days from the effective date of this
25 Order; provided, however, that:

26 ///

27 ///

1 1. Fifteen (15) days of said suspension shall be
2 stayed for two (2) years upon the following terms and
3 conditions:

4 A. Respondent shall obey all laws, rules and
5 regulations governing the rights, duties and
6 responsibilities of a real estate licensee in the
7 State of California; and

8 B. That no final subsequent determination be made,
9 after hearing or upon stipulation, that cause for
10 disciplinary action occurred within two (2) years
11 from the effective date of this Order. Should
12 such a determination be made, the Commissioner
13 may, in his discretion, vacate and set aside the
14 stay order and reimpose all or a portion of the
15 stayed suspension. Should no such determination
16 be made, the stay imposed herein shall become
17 permanent.

18 2. The remaining fifteen (15) days of said 30-day
19 suspension shall be stayed upon the condition that Respondent
20 UNITED HOME LOAN CO. petition pursuant to Section 10175.2 of the
21 Business and Professions Code and pays a monetary penalty
22 pursuant to Section 10175.2 of the Business and Professions Code
23 at a rate of \$50 for each day of the suspension for a total
24 monetary penalty of \$750:

25 A. Said payment shall be in the form of a cashier's
26 check or certified check made payable to the
27 Recovery Account of the Real Estate Fund. Said

1 check must be delivered to the Department prior
2 to the effective date of the Order in this
3 matter.

4 B. No further cause for disciplinary action against
5 the Real Estate licenses of said Respondent
6 occurs within two (2) years from the effective
7 date of the decision in this matter.

8 C. If Respondent UNITED HOME LOAN CO. fails to pay
9 the monetary penalty as provided above prior to
10 the effective date of this Order, the stay of the
11 suspension shall be vacated as to Respondent
12 UNITED HOME LOAN CO. and the order of suspension
13 shall be immediately executed, under this
14 Paragraph I of this Order, in which event
15 Respondent UNITED HOME LOAN CO. shall not be
16 entitled to any repayment nor credit, prorated or
17 otherwise, for the money paid to the Department
18 under the terms of this Order.

19 D. If Respondent UNITED HOME LOAN CO. pays the
20 monetary penalty and any other moneys due under
21 this Stipulation and Agreement and if no further
22 cause for disciplinary action against the real
23 estate licenses of Respondent UNITED HOME LOAN
24 CO. occurs within two (2) years from the
25 effective date of this Order, the entire stay
26 hereby granted under Paragraphs I and II of this

1 Order, as to Respondent UNITED HOME LOAN CO.
2 only, shall become permanent.

3 3. Pursuant to Section 10148 of the Business and
4 Professions Code, Respondents MICHAEL BARRY KENNEY and UNITED
5 HOME LOAN CO. shall pay the Commissioner's reasonable cost for
6 the audit which led to this disciplinary action (\$4,762.80) and
7 a subsequent audit (not to exceed \$4,762.80) to determine if
8 Respondent UNITED HOME LOAN CO. has corrected the trust fund
9 violation(s) found in Paragraph I of the Determination of
10 Issues. In calculating the amount of the Commissioner's
11 reasonable cost, the Commissioner may use the estimated average
12 hourly salary for all persons performing audits of real estate
13 brokers, and shall include an allocation for travel time to and
14 from the auditor's place of work. Respondents MICHAEL BARRY
15 KENNEY and UNITED HOME LOAN CO. shall pay such cost within 60
16 days of receiving an invoice from the Commissioner detailing the
17 activities performed during the audit and the amount of time
18 spent performing those activities. The Commissioner may suspend
19 the licenses of Respondents MICHAEL BARRY KENNEY and UNITED HOME
20 LOAN CO. pending a hearing held in accordance with Section
21 11500, et seq., of the Government Code, if payment is not timely
22 made as provided for herein, or as provided for in a subsequent
23 agreement between Respondents MICHAEL BARRY KENNEY and UNITED
24 HOME LOAN CO. and the Commissioner. The suspension shall remain
25 in effect until payment is made in full or until Respondents
26 MICHAEL BARRY KENNEY and UNITED HOME LOAN CO. enter into an
27 agreement satisfactory to the Commissioner to provide for

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

3 II

4 All licenses and licensing rights of Respondent
5 MICHAEL BARRY KENNEY under the Real Estate Law are suspended for
6 a period of thirty (30) days from the effective date of this
7 Order; provided, however, that:

8 1. Fifteen (15) days of said suspension shall be
9 stayed for two (2) years upon the following terms and
10 conditions:

- 11 A. Respondent shall obey all laws, rules and
12 regulations governing the rights, duties and
13 responsibilities of a real estate licensee in the
14 State of California; and,
- 15 B. That no final subsequent determination be made,
16 after hearing or upon stipulation, that cause for
17 disciplinary action occurred within two (2) years
18 from the effective date of this Order. Should
19 such a determination be made, the Commissioner
20 may, in his discretion, vacate and set aside the
21 stay order and reimpose all or a portion of the
22 stayed suspension. Should no such determination
23 be made, the stay imposed herein shall become
24 permanent.

25 2. The remaining fifteen (15) days of said 30-day
26 suspension shall be stayed upon the condition that Respondent
27 MICHAEL BARRY KENNEY petition pursuant to Section 10175.2 of the

1 Business and Professions Code and pays a monetary penalty
2 pursuant to Section 10175.2 of the Business and Professions Code
3 at a rate of \$50 for each day of the suspension for a total
4 monetary penalty of \$750:

- 5 A. Said payment shall be in the form of a cashier's
6 check or certified check made payable to the
7 Recovery Account of the Real Estate Fund. Said
8 check must be delivered to the Department prior
9 to the effective date of the Order in this
10 matter.
- 11 B. No further cause for disciplinary action against
12 the Real Estate licenses of said Respondent
13 MICHAEL BARRY KENNEY occurs within two (2) years
14 from the effective date of the decision in this
15 matter.
- 16 C. If Respondent MICHAEL BARRY KENNEY fails to pay
17 the monetary penalty as provided above prior to
18 the effective date of this Order, the stay of the
19 suspension shall be vacated as to Respondent
20 MICHAEL BARRY KENNEY and the order of suspension
21 shall be immediately executed, under this
22 Paragraph II of this Order, in which event
23 Respondent MICHAEL BARRY KENNEY shall not be
24 entitled to any repayment nor credit, prorated or
25 otherwise, for the money paid to the Department
26 under the terms of this Order.

1 D. If Respondent MICHAEL BARRY KENNEY pays the
2 monetary penalty and any other moneys due under
3 this Stipulation and Agreement and if no further
4 cause for disciplinary action against the real
5 estate licenses of Respondent MICHAEL BARRY
6 KENNEY occurs within two (2) years from the
7 effective date of this Order, the entire stay
8 hereby granted under Paragraphs I and II of this
9 Order, as to Respondent MICHAEL BARRY KENNEY
10 only, shall become permanent.

11 3. Pursuant to Section 10148 of the Business and
12 Professions Code, Respondents MICHAEL BARRY KENNEY and UNITED
13 HOME LOAN CO. shall pay the Commissioner's reasonable cost for
14 the audit which led to this disciplinary action (\$4,762.80) and
15 a subsequent audit (not to exceed \$4,762.80) to determine if
16 Respondent UNITED HOME LOAN CO. has corrected the trust fund
17 violation(s) found in Paragraph I of the Determination of
18 Issues. In calculating the amount of the Commissioner's
19 reasonable cost, the Commissioner may use the estimated average
20 hourly salary for all persons performing audits of real estate
21 brokers, and shall include an allocation for travel time to and
22 from the auditor's place of work. Respondents MICHAEL BARRY
23 KENNEY and UNITED HOME LOAN CO. shall pay such cost within 60
24 days of receiving an invoice from the Commissioner detailing the
25 activities performed during the audit and the amount of time
26 spent performing those activities. The Commissioner may suspend
27 the licenses of Respondents MICHAEL BARRY KENNEY and UNITED HOME

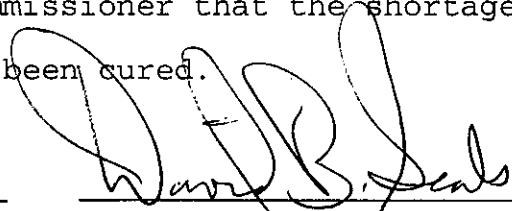
1 LOAN CO. pending a hearing held in accordance with Section
2 11500, et seq., of the Government Code, if payment is not timely
3 made as provided for herein, or as provided for in a subsequent
4 agreement between Respondents MICHAEL BARRY KENNEY and UNITED
5 HOME LOAN CO. and the Commissioner. The suspension shall remain
6 in effect until payment is made in full or until Respondents
7 MICHAEL BARRY KENNEY and UNITED HOME LOAN CO. enter into an
8 agreement satisfactory to the Commissioner to provide for
9 payment, or until a decision providing otherwise is adopted
10 following a hearing held pursuant to this condition.

11 4. Respondent MICHAEL BARRY KENNEY shall, prior to
12 the date this Stipulation becomes effective, submit proof
13 satisfactory to the Commissioner of having taken and
14 successfully completed the continuing education course on trust
15 fund accounting and handling specified in subdivision (a) of
16 Section 10170.5 of the Business and Professions Code. Proof of
17 satisfaction of this requirement includes evidence that
18 Respondent MICHAEL BARRY KENNEY has successfully completed the
19 trust fund account and handling continuing education course
20 within 120 days prior to the effective date of the Stipulation
21 in this matter. If Respondent MICHAEL BARRY KENNEY fails to
22 satisfy this condition, the Commissioner may order suspension of
23 Respondent's license until Respondent MICHAEL BARRY KENNEY
24 submits satisfactory proof of completion of the course.

25 5. Prior to the date this Stipulation becomes
26 effective, Respondent MICHAEL BARRY KENNEY or UNITED HOME LOAN
27 CO. shall provide evidence satisfactory to the Real Estate

1 Commissioner that the shortages alleged in the Accusation have
2 been cured. If Respondent fails to provide such evidence prior
3 to the effective date of this Order all licenses of Respondents
4 MICHAEL BARRY KENNEY and UNITED HOME LOAN CO. shall be
5 immediately suspended until satisfactory evidence has been
6 provided to the Real Estate Commissioner that the shortages
7 alleged in the Accusation have been cured.

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9 DATED: Aug. 15, 2007

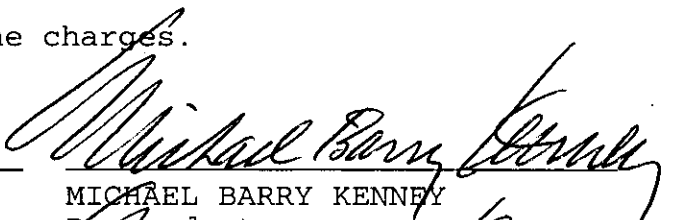


DAVID B. SEALS, Counsel
DEPARTMENT OF REAL ESTATE

11 * * *

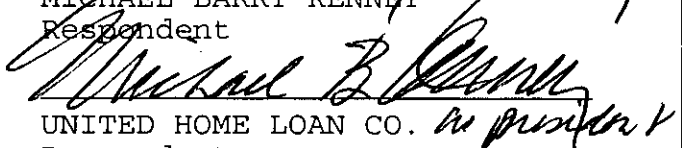
12 I have read the Stipulation and Agreement, have
13 discussed it with my counsel, and its terms are understood by me
14 and are agreeable and acceptable to me. I understand that I am
15 waiving rights given to me by the California Administrative
16 Procedure Act (including but not limited to Sections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

23 DATED: 8/9/07



MICHAEL BARRY KENNEY
Respondent

25 DATED: 8/9/07



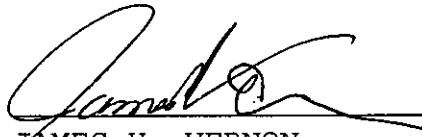
UNITED HOME LOAN CO. *in presence of*
Respondent

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

DATED: 8/9/07



JAMES H. VERNON
Attorney for Respondents

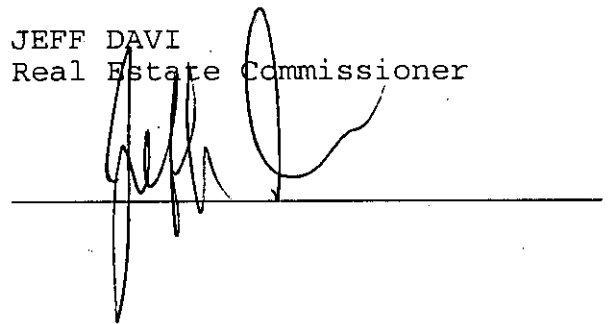
* * *

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 **OCT 24 2007**

IT IS SO ORDERED

9/28/07

JEFF DAVI
Real Estate Commissioner



1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

FILED
NOV -7 2008

4 Telephone: (916) 227-0789
5 -or- (916) 227-0792 (Direct)

DEPARTMENT OF REAL ESTATE
By K. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 MICHAEL BARRY KENNEY and) No. H-9750 SF
13 UNITED HOME LOAN CO.,) ACCUSATION
14 Respondents.)

15 The Complainant, Charles W. Koenig, a Deputy Real
16 Estate Commissioner of the State of California for cause of
17 Accusation against MICHAEL BARRY KENNEY (hereinafter "Respondent
18 KENNEY") and UNITED HOME LOAN CO. (hereinafter "Respondent
19 UNITED"), is informed and alleges as follows:

20 I

21 The Complainant, Charles W. Koenig, a Deputy Real
22 Estate Commissioner of the State of California, makes this
23 Accusation in his official capacity.

24 II

25 Respondents are licensed and/or have license rights
26 under the Real Estate Law, Part 1 of Division 4 of the California
27 Business and Professions Code (hereinafter "Code") as follows:

1 (a) Respondent UNITED as a corporate real estate
2 broker, through Respondent KENNEY as the
3 designated officer.

4 (b) Respondent KENNEY as a real estate broker and as
5 the designated officer for Respondent UNITED.

6 III

7 At all times mentioned herein, as the designated
8 officer of Respondent UNITED, Respondent KENNEY was responsible
9 for the supervision and control of the activities conducted on
10 behalf of Respondent UNITED by its officers and employees as
11 necessary to secure full compliance with the provisions of the
12 Real Estate Law.

13 IV

14 Whenever reference is made in an allegation in this
15 Accusation to an act or omission of Respondent UNITED, such
16 allegation shall be deemed to mean that the officers, directors,
17 employees, agents and real estate licensees employed by or
18 associated with Respondent UNITED committed such act or omissions
19 while engaged in furtherance of the business or operation of
20 Respondent UNITED and while acting within the course and scope of
21 their corporate authority and employment.

22 V

23 That at all times herein mentioned, Respondent UNITED,
24 engaged in the business of, acted in the capacity of, advertised,
25 or assumed to act as a real estate broker in the State of
26 California within the meaning of Section 10131(d) of the Code, by
27 soliciting borrowers or lenders for or negotiating loans or

1 collecting payments or performing services for borrowers or
2 lenders or note owners in connection with loans secured directly
3 or collaterally by liens on real property or on a business
4 opportunity, for or in expectation of compensation and within the
5 meaning of Section 10131(b) of the Code, for or in expectation of
6 a compensation by soliciting prospective tenants for, negotiating
7 rental agreements for and collecting rents from real properties
8 owned by another or others.

9 VI

10 That at all times mentioned herein, Respondent UNITED
11 accepted or received funds in trust (hereafter trust funds) from
12 and on behalf of its principals placing them in bank accounts and
13 at times thereafter made disbursements of such funds.

14 VII

15 From December 9, 2004 through December 14, 2002 two
16 investigative audits (OK040048 and OK040057) were performed by
17 the Department of the records and bank records of Respondent
18 UNITED for the period from January 1, 2004 to October 29, 2004,
19 as said records related to its activities as a real estate
20 broker.

21 VIII

22 Respondent UNITED maintained two bank accounts into
23 which trust funds were placed as follows:

24 1. BANK OF WALNUT CREEK, 1941 San Ramon Valley Blvd.,
25 San Ramon, CA 94583, Account No. 3014630 in the name of United
26 Home Loan Inc Trust Account (Trust #1).

27 ///

1 2. BANK OF WALNUT CREEK, 1941 San Ramon Valley Blvd.,
2 San Ramon, CA 94583, Account No. 3010910 in the name of United
3 Home Loan Inc Trust Account (Trust #2).

4 IX

5 The adjusted balance of Trust #1 as of October 29,
6 2004 was a negative balance of Two Thousand Six Hundred Eleven
7 and 21/100 Dollars (-\$2,611.21) and the trust fund
8 accountability as of October 29, 2004 was Nine Hundred Sixty-
9 Nine and 81/100 Dollars (\$969.81). Therefore, Respondent
10 UNITED, as of October 29, 2004, had a trust fund shortage of
11 Three Thousand Five Hundred Eighty-One and 02/100 Dollars
12 (\$3,581.02).

13 X

14 The shortage in Trust #1 was due to a \$3,580.96 non-
15 sufficient funds check and an additional \$.06 which could not be
16 identified.

17 XI

18 All of the \$17,070.06 in Trust #2 as of October 29,
19 2004 were broker management fees earned by Respondent UNITED
20 and/or Respondent KENNEY and were not disbursed within 25 days
21 of such funds being earned by Respondent's UNITED and KENNEY in
22 violation of Section 2835, Title 10, California Code of
23 Regulations (hereinafter the "Regulations") and Section 10176(e)
24 of the Code.

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XII

Respondent UNITED caused the disbursement of trust funds from Trust #1 without the written consent of every principal who was an owner of the funds, causing the balance of the funds in the account to be an amount less than the existing aggregate trust fund liability of Respondent UNITED to all owners of said funds in violation of Section 10145 of the Code and Section 2832.1, Title 10, California Code of Regulations (hereinafter the "Regulations").

XIII

At all times mentioned herein, Respondent KENNEY failed to exercise reasonable supervision over the activities of Respondent UNITED, and permitted, ratified and/or caused the conduct described above. Respondent KENNEY failed to reasonably or adequately review, oversee, inspect and manage the personnel and activities of Respondent UNITED, and/or to establish reasonable policies, rules, procedures and systems for such review, oversight, inspection and management.

XIV

The acts and/or omissions of Respondents described above are grounds for the revocation or suspension of Respondents' licenses under the following sections of the Business and Professions Code and the Regulations:

(a) As to Respondent UNITED HOME LOAN CO., under Section 10176(e) of the Code in conjunction with Section 2835 of the Regulations and Section 10177(d) of the Code in

///

1 conjunction with Section 10145 of the Code and Section 2832.1 of
2 the Regulations;

3 (b) As to Respondent MICHAEL BARRY KENNEY only, under
4 Section 10177(h) of the Code and Section 2725 of the Regulations
5 in conjunction with Section 10177(d) of the Code.

6 WHEREFORE, Complainant prays that a hearing be
7 conducted on the allegations of this Accusation and that upon
8 proof thereof, a decision be rendered imposing disciplinary
9 action against all licenses and license rights of Respondents,
10 and each of them, under the Real Estate Law (Part 1 of Division
11 4 of the Business and Professions Code) and for such other and
12 further relief as may be proper under other provisions of law.

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14 
15 _____
16 CHARLES W. KOENIG
17 Deputy Real Estate Commissioner

18 Dated at Sacramento, California,
19 this 2nd day of November, 2006.
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