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2	DEPARTMENT OF REAL ESTATE
3	By Jawa B. Clone
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. 8	BEFORE THE DEPARTMENT OF REAL ESTATE
9	STATE OF CALIFORNIA
10	* * *
11	In the Matter of the Accusation of ) NO. H-27584 LA
12	) ELROY RICHARD GIDDENS, )
13	Respondent. )
. 14	)
15	ORDER DENYING REINSTATEMENT OF LICENSE
16	On July 20, 1998, a Decision was rendered herein
17	revoking the real estate broker license of Respondent, but
18	granting Respondent the right to the issuance of a restricted
19	real estate broker license. A restricted real estate broker
. 20	license was issued to Respondent or about August 11, 1998.
21	On March 16, 2001, Respondent petitioned for
22	reinstatement of said license and the Attorney General of the
23	State of California has been given notice of the filing of the
24	petition.
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I have considered Respondent's petition and the 1 evidence and arguments in support thereof. Respondent has failed 2 to demonstrate to my satisfaction that Respondent has undergone 3 sufficient rehabilitation to warrant the reinstatement of 4 Respondent's real estate broker license, in that: 5 Ι 6 In the Decision which revoked Respondent's real estate 7 broker license, there was a Determination of Issues made that 8 Respondent had violated Business and Professions Code ("Code") 9 Section 10159.2, and that there was cause to revoke Respondent's 10 license pursuant to Code Section 10177(h). 11 Said violations were found during a Department of Real 12 Estate audit examination. Respondent was the designated officer 13 of a licensed real estate corporation (Diamond Coast Federal, 14 Inc.) at the time of the audit. 15 The Decision in Case No. H-27584 LA revoked the 16 corporation's license outright. In the Decision there was a 17 Determination of Issues that said corporation had violated Code 18 Sections 10145 and 10240 and Sections 2832, 2840, 2970 and 2972 19 of Title 10, Chapter 6, California Code of Regulations 20 ("Regulations"), and that there was cause to revoke the 21 corporation's license pursuant to Code Section 10177 (d). 22 111 23 /// 24 111 25 /// 26

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1	II
2	On August 15, 2001, Respondent was interviewed by
- 3	a Deputy Real Estate Commissioner ("Deputy"). During the
4	interview, the Deputy asked Respondent to discuss the
5	circumstances which led to the revocation of Respondent's
6	real estate broker license. Respondent's statements to the
7	Deputy indicate that he blamed others and did not take full
8	responsibility for his actions. This evidences a
9	lack of change in attitude, a lack of rehabilitation, and is
10	cause to deny Respondent's application pursuant to Regulations
11	2911(j) and 2911(m)(1).
12	NOW, THEREFORE, IT IS ORDERED that Respondent's
13	petition for reinstatement of Respondent's real estate broker
14	license is denied.
15	This Order shall become effective at 12 o'clock noon on
16	<u>November 5, 2001</u>
17	DATED: (Cfolle) 7, 200 1.
18	PAULA REDDISH ZINNEMANN
19	Real Estate Commissioner
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21	Hault Reyald
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24	
25	cc: Elroy Richard Giddens 15555 Main St., D4-145 Hospania Ch. 02245
26	Hesperia, CA 92345
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· 1	Department of Real Estate
. 2	State Bar No. 66674 107 South Broadway, Room 8107 Los Angeles, California 90012
3	DEPARTMENT OF REAL ESTATE
4	(213) 897-3937 Br Jana B. Orme
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8	DEPARTMENT OF REAL ESTATE
9	STATE OF CALIFORNIA
10	STATE OF CALIFORNIA
11	In the Matter of the Accusation of ) NO. H-27584 LA
12	
13	and ELROY RICHARD GIDDENS, ) individually and as
14	designated officer of, ) Diamond Coast Federal, Inc., )
15	)
16	Respondents.
17	It is hereby stipulated by and between DIAMOND COAST
18	FEDERAL, INC. and ELROY RICHARD GIDDENS individually and as
19	designated officer of Diamond Coast Federal, Inc. (sometimes
20	collectively referred to as Respondents), and the Complainant,
21	acting by and through Elliott Mac Lennan, Counsel for the
22	Department of Real Estate, as follows for the purpose of settling
23	and disposing of the Accusation filed on March, 1998, in this
24	matter:
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All issues which were to be contested and all
 evidence which was to be presented by Complainant and Respondents
 at a formal hearing on the Accusation, which hearing was to be
 held in accordance with the provisions of the Administrative
 Procedure Act (APA), shall instead and in place thereof be
 submitted solely on the basis of the provisions of this
 Stipulation and Agreement (Stipulation).

8 2. Respondents have received, read and understand the
9 Statement to Respondent, the Discovery Provisions of the APA and
10 the Accusation filed by the Department of Real Estate in this
11 proceeding.

Respondents filed a Notice of Defense on March 18, 12 3. 1998, pursuant to Section 11506 of the Government Code for the 13 purpose of requesting a hearing on the allegations in the 14 Accusation. Respondents hereby freely and voluntarily withdraw 15 said Notice of Defense. Respondents acknowledge that they 16 understand that by withdrawing said Notice of Defense they thereby 17 waive their right to require the Commissioner to prove the 18 allegations in the Accusation at a contested hearing held in 19 accordance with the provisions of the APA and that they will waive 20 other rights afforded to them in connection with the hearing such 21 as the right to present evidence in their defense the right to 22 23 cross-examine witnesses.

4. This Stipulation is based on the factual allegations
contained in the Accusation. In the interest of expedience and
economy, Respondents choose not to contest these allegations, but
to remain silent and understand that, as a result thereof, these

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factual allegations, without being admitted or denied, will serve 1 as a prima facie basis for the disciplinary action stipulated to The Real Estate Commissioner shall not be required to 3 herein. provide further evidence to prove said factual allegations. 4

This Stipulation is based on Respondents' decision 5 5. not to contest the allegations set forth in the Accusation as a 6 result of the agreement negotiated between the parties. 7 This Stipulation is expressly limited to this proceeding and any 8 further proceeding initiated by or brought before the Department 9 of Real Estate based upon the facts and circumstances alleged in 10 the Accusation for the sole purpose of reaching an agreed 11 disposition of this proceeding without a hearing. The decision of 12 Respondents not to contest the allegations is made solely for the 13 purpose of effectuating this Stipulation. It is the intent and 14 understanding of the parties that this Stipulation shall not be 15 binding or admissible against Respondents in any actions against 16 17 Respondents by third parties.

18 It is understood by the parties that the Real Estate 6. Commissioner may adopt this Stipulation as his Decision in this 19 matter thereby imposing the penalty and sanctions on Respondents' 20 21 real estate licenses and license rights as set forth in the "Order" herein below. In the event that the Commissioner in his 22 discretion does not adopt the Stipulation, it shall be void and of 23 24 no effect and Respondents shall retain the right to a hearing and proceeding on the Accusation under the provisions of the APA and 25 shall not be bound by any stipulation or waiver made herein. 26

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The Order or any subsequent Order of the Real Estate 7. 1 Commissioner made pursuant to this Stipulation shall not 2 constitute an estoppel, merger or bar to any further 3 administrative or civil proceedings by the Department of Real 4 Estate with respect to any matters which were not specifically 5 alleged to be causes for accusation in this proceeding. 6 7 DETERMINATION OF ISSUES 8 By reason of the foregoing stipulations, it is 9 stipulated and agreed that the following determination of issues 10 shall be made: 11 Ι 12 The conduct of Respondent DIAMOND COAST FEDERAL, INC., 13 as described in Paragraph 4, is in violation of Sections 10145 and 14 10240 of the Business and Professions Code (Code) and Sections 15 2832, 2840, 2970 and 2972 of Title 10, Chapter 6 of the California 16 Code of Regulations (Regulations) and is a basis for the 17 suspension or revocation of Respondent's license and license 18 rights as a violation of the Real Estate Law pursuant to Section 19 <u>10177(d)</u> of the Code. 20 ΙI 21 The conduct of ELROY RICHARD GIDDENS, as described in 22 Paragraph 4, constitutes a failure to keep DIAMOND COAST FEDERAL, 23 INC., in compliance with the Real Estate Law during the time that 24 he was the officer designated by a corporate broker licensee and 25 further constitutes a failure to exercise reasonable supervision 26 and control over the licensed activities of DIAMOND COAST FEDERAL, 27

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1	INC., and its salespersons which require a real estate license.
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4	the Code.
5	ORDER
6	WHEREFORE THE FOLLOWING ORDER IS MADE PURSUANT
7	TO THE WRITTEN STIPULATION OF THE PARTIES:
8	I
9	
10	All licenses and licensed rights of Respondent DIAMOND
11	COAST FEDERAL, INC., under the Real Estate Law are revoked;
12	
13	II All licences and licences
;	All licenses and licensed rights of Respondent ELROY
14 :	RICHARD GIDDENS under the Real Estate Law are revoked; provided,
15	however, a restricted real estate broker license shall be issued
16	to Respondent pursuant to Section 10156.5 of the Business and
17 :	Professions Code if Respondent makes application therefor and
18 ]	pays to the Department of Real Estate the appropriate fee for the
19	restricted license within 90 days from the effective date of this
20	Decision. The restricted license issued to Respondent shall be
21	subject to all of the provisions of Section 10156.7 of the
22	Business and Professions Code and to the following limitations,
23	conditions and restrictions imposed under authority of Section
24	10156.6 of that Code:
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26	1. The restricted license issued to Respondent may be

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The restricted license issued to Respondent may be Ł. suspended prior to hearing by Order of the Real Estate

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Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to a Respondent's fitness or capacity as a real estate licensee.

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2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner 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 the restricted license.

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

4. Respondent ELROY RICHARD GIDDENS shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the

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Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Respondent ELROY RICHARD GIDDENS shall within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.

6. During the time respondent is licensed as a restricted real estate broker, respondent shall not serve as the designated broker at any corporate real estate broker unless Respondent's ownership interest is a minimum of fifty-one (51%) percent.

#### II

Pursuant to Section 10148 of the Code, Respondent ELROY RICHARD GIDDENS shall pay the Commissioner's reasonable cost for an audit to determine if Respondent is now conducting activities requiring a real estate license in compliance with the real estate law. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary

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1 for all persons performing audits of real estate brokers, and 2 shall include an allocation for travel time to and from the 3 auditor's place of work. Respondent shall pay such cost, not to 4 exceed \$2,300, within 45 days of receiving an invoice from the 5 Commissioner detailing the activities performed during the audit 6 and the amount of time spent performing those activities. The 7 Commissioner may suspend the restricted license issued to 8 Respondent pending a hearing held in accordance with Section 9 11500, et seq., of the Government Code, if payment is not timely 10 made as provided for herein, or as provided for in a subsequent 11 agreement between the Respondent and the Commissioner. The 12 suspension shall remain in effect until payment is made in full or 13 until Respondent enters into an agreement satisfactory to the 14 Commissioner to provide for payment, or until a decision providing 15 otherwise is adopted following a hearing held pursuant to this 16 condition. 17 18

TO	DATED:	ci y. cu
19 20		ELLIOTT MAC LENNAN Counsel for Complainant /
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2	We have read the Stipulation and Agreement and its terms
3	are understood by us and are agreeable and a state
4	understand that we are waiving rights given to us by the
5	California Administrative Procedure Act (including but not limited
6	to Sections 11506, 11508, 11509 and 11513 of the Government Code),
7	and we willingly, intelligently and voluntarily waive those
8	rights, including the right of requiring the Commissioner to prove
9	the allegations in the Accusation at a hearing at which we would
10	have the right to cross-examine witnesses against us and to
11	present evidence in defense and mitigation of the charges.
12	
13	DATED: 6-11-98
14	DLAMOND COAST FEDERAL, INC. Respondent,
15	BY: ELROY RICHARD GIDDENS, D.O.
16	DATED: 6-11-98
17	ELROY RICHARD GIDDENS, individually and as designated
18	officer of Diamond Coast Federal, Inc., Respondent
19	* * * *
20	The foregoing Stipulation and Agreement is hereby
21	adopted as my Decision and Order and shall become effective at 12
22	o' clock noon on <u>August 11</u> , 1998.
23 :	IT IS SO ORDERED7 20, 1998.
24	JIM ANTT JR. Real Estate Gommissioner
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BEFOR THE DEPA STATE O	ARTMENT OF REAL ESTATE C C C C C C C C C C C C C C C C C C C
In the Matter of the Accusation of	f ) Case No. H-27584 LAPR - 1 1998 ) OAH No. L- 1998030480
DIAMOND COAST FEDERAL INC., et al.,	By Jana B. Quona
Respondent	<u>ts.</u> )

# NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 107 South Broadway, 2nd Floor, Los Angeles, California, on JUNE 9, 1998, 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 upon you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of 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 subpenas 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: APR - 1 1998

## DEPARTMENT OF REAL ESTATE

By: <u>د ک د</u>

ELLIOTT MAC LENNAN, Counsel

cc: Diamond Coast Federal Inc. Elroy Richard Giddens Sacto. OAH

RE 501 (Rev. 8/97)

ELLIOTT MAC LENNAN, Counsel State Bar No. 66674 Department of Real Estate 107 South Broadway, Room 8107 3 Los Angeles, California 90012 DEPARTMENT OF REAL ESTATE Telephone: (213) 897-3937 4 B. Duna 5 6 7 8 THE DEPARTMENT OF REAL ESTATE - 9 STATE OF CALIFORNIA 10 11 In the Matter of the Accusation of DIAMOND COAST FEDERAL, INC. 12 a California corporate broker; 13 and ELROY RICHARD GIDDENS, individually and as, designated officer of 14 No. H-27584 LA Diamond Coast Federal, Inc. 15 ACCUSATION 16 Respondents. 17 18 The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation 19 20 against DIAMOND COAST FEDERAL, INC. a California corporate broker and ELROY RICHARD GIDDENS, individually and as designated officer 21 of Diamond Coast Federal, Inc., is informed and alleges in his 22 23 official capacity as follows: 24 25 26 27 . . . CALIFORNIA STD. 13 (REV. 3-95) -1-

DIAMOND COAST FEDERAL, INC. (DCFI) and ELROY RICHARD GIDDENS (GIDDENS), individually and as designated officer of Diamond Coast Federal, Inc., sometimes collectively referred to as Respondents, are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code).

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II

All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

III

At all times mentioned, DCFI was licensed by the Department of Real Estate of the State of California (Department) as a corporate real estate broker. DCFI was originally licensed on February 18, 1983.

IV

At all times mentioned, GIDDENS was licensed by the Department as designated officer of DCFI to qualify DCFI and to act for DCFI as a real estate broker and, as provided by Section 10159.2 of the Code, was responsible for the supervision and control of the activities conducted on behalf of DCFI by its officers, managers and employees as necessary to secure full compliance with the provisions of the Real Estate Law including the supervision of the salespersons licensed to the corporation in the performance of acts for which a real estate license is

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required. GIDDENS was originally licensed as a real estate broker on August 9, 1995.

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Whenever reference is made in an allegation in the Accusation to an act or omission of DCFI such allegation shall be deemed to mean that the officers, directors, managers, employees, agents and real estate licensees employed by or associated with DCFI and including GIDDENS, committed such act or omission while engaged in the furtherance of the business or operation of DCFI and while acting within the course and scope of its corporate authority, agency and employment.

VI

At all times mentioned, DCFI and GIDDENS were acting as the agent or employee of the other and within the course and scope of such agency or employment.

#### VII

At all times mentioned, in the City of Heperia, San Bernardino County, Respondent DCFI and Respondent GIDDENS acted as real estate brokers in the State of California within this meaning of Section 10131(d) of the Code, including the operation of a mortgage and loan brokerage with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed, and consummated on behalf of others for compensation or in expectation of compensation and for fees often collected in advance.

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On June 27, 1997, the Department completed a field audit examination of the books and records of DCFI pertaining to its mortgage loan activities described in Paragraph IX, below. The audit examination covered a period of time beginning on June 1, 1996 and ending on April 30, 1997. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs.

#### IX

At all times mentioned, in connection with the
activities described in Paragraph VII, above, Respondents DCFI and
GIDDENS accepted or received funds in trust (trust funds) from or
on behalf of actual or prospective borrowers and lenders.
Thereafter they made disposition of such funds. DCFI and GIDDENS
did not maintain a trust account during the audit period.

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With respect to the trust funds referred to in Paragraph VII, it is alleged that DCFI and GIDDENS:

(a) Placed Title I lender funds into the High Desert National Bank DCFI used for Title I loan processing and which was not designated as a trust account, as required by Section 2832 of the Regulations.

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The conduct of Respondents DCFI and GIDDENS, described in Paragraph X, violated Code and the Regulations sections:

<u>PARAGRAPH</u>	PROVISIONS VIOLATED
X(a)	Section 10145 & 10159.2 of the Code, and
	Section 2832 of the Regulations

The foregoing violation constitutes cause for the suspension or revocation of the real estate licenses and license rights of Respondents DCFI and GIDDENS under the provisions of Section 10177(d) of the Code.

#### XII

The audit examination revealed that DCFI and GIDDENS failed to establish and maintain a trust account at a bank or other recognized financial institution in the name of the broker for deposit of advance fees in the form of loan discount fees from borrowers, including borrowers Alfred Jackson and Victor and Margaret Boka, collected in advance by DCFI and GIDDENS, in violation of Section 10146 of the Code. Said conduct is cause to suspend or revoke all licenses and license rights of the Respondents under Section 10177(d) of the Code.

### XIII

In connection with the Alfred Jackson and Victor and Margaret Boka loan transactions described above in Paragraph XII, DCFI and GIDDENS collected advance fees within the meaning of Section 10026 of the Code in the form of loan discount fees or interest buydowns from Title I loans from the aforesaid borrowers.

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Said advance fees collected from the aforesaid borrowers and other similar advance fees from other borrowers were collected by each would-be borrower when submitting a loan application to DCFI and before the commencement of any loan processing, which constitutes an advance fee agreement within the meaning of Sections 10026 and 10085 of the Code and Section 2970 of the Regulations. The failure of DCFI and GIDDENS to submit an advance fee agreement to the Commissioner of Real Estate ten days prior to its use is a violation of Section 10085 of the Code and Section 2970 of the Regulations and is cause to suspend or revoke the licenses and license rights of the Respondents by Section 10177(d) of the Code.

XIV

In connection with the activities described above in 13 Paragraphs XII and XIII and with reference to the lack of an 14 advance fee agreement, DCFI and GIDDENS, failed to provide a 15 complete description of services to be rendered to each would-be borrower, including but not limited to Alfred Jackson and Victor and Margaret Boka; 10 point type font; and, an allocation and disbursement of the amount(s) collected as the advance fee, in violation of Section 2972 of the Regulations. This conduct and violation are cause to suspend or revoke the real estate license and license rights of Respondents by Section 10177(d) of the Code.

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The Department attempted to complete a field audit examination of the books and records of DCFI and GIDDENS pertaining to the activities described in Paragraph VII. The field audit examination revealed that Respondent failed to retain the records of their activities requiring a real estate license for the period of time beginning on June 1996 until closing business on June 31, 1996, including bank statements for account #106151801 at the DCFI's general account at the Desert Community Bank; bank statements for account #1045326 used for Title I loan processing at the High Desert National Bank, and cancelled check #2595 and #3694 at the High Desert National Bank. This conduct is in violation of Section 10148 of the Code and constitutes cause for the suspension or revocation of the real estate license and license rights of Respondents under the provisions of Section 10177(d) of the Code.

XV

## XVI

The audit examination revealed that DCFI and GIDDENS failed to provide a statement in writing, a Mortgage Loan Disclosure Statement, containing all the information required by Section 10241 of the Code to various borrower(s) including but not limited to Hanevik loan before this borrower became obligated to perform under the terms of his loans. This omission is a violation of Section 10240 of the Code and Section 2840 of the Regulations. This omission constitutes cause for the suspension or revocation of the real estate license and license rights of Respondents DCFI and GIDDENS under Section 10177(d) of the Code.

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The overall conduct of Respondents DCFI and GIDDENS, as described above, constitutes negligence and/or incompetence. This conduct and violations are cause to suspend or revoke the real estate license and license rights of Respondents pursuant to Section 10177(g) of the Code.

### XVIII

The overall conduct of Respondent GIDDENS, constitutes a failure on the part of GIDDENS, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of DCFI as required by Section 10159.2 of the Code, and to keep it in compliance with the Real Estate Law, is cause for the suspension or revocation of the real estate license and license rights of GIDDENS pursuant to the provisions of Sections 10159.2 and 10177(h) of the Code.

## Prior Discipline

#### XIX

On April 24, 1995, in Case No. H-2005 SA, an Accusation was filed against Respondent DIAMOND COAST FEDERAL, INC. that resulted in discipline for said Respondent for violations of Sections 10145 of the Code and Sections 2831 and 2831.2 of the Regulations.

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· , 1	WHEREFORE, Complainant prays that a hearing be conducted
	on the allegations made by the Accusation and, that upon proof
3	thereof, a decision be rendered imposing disciplinary action
4	against the license and license rights of DIAMOND COAST FEDERAL,
5	INC., a California corporate broker; and ELROY RICHARD GIDDENS,
6	individually and as designated officer of Diamond Coast Federal,
7	Inc. under the Real Estate Law (Part 1 of Division 4 of the
8	". Business and Professions Code) and for such other and further
·) 9	relief as may be proper under other applicable provisions of law.
10	Dated at Los Angeles, California
11	this 9th day of March, 1998.
12	The Mach
13	Deputy Real Estate Commissioner
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25	cc: Diamond Coast Federal, Inc
26	c/o Elroy Richard Giddens, D.O. Sacto.
27	AK
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