

1 ELLIOTT MAC LENNAN, SBN 66674  
Department of Real Estate  
2 320 West 4th Street, Ste. 350  
Los Angeles, California 90013-1105

3 Telephone: (213) 576-6911 (direct)  
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FILED  
JAN 16 2004  
DEPARTMENT OF REAL ESTATE

By Knevelok

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11	In the Matter of the Accusation of	)	DRE No. H-29761 LA
12	MARK EDWARD ALSTON,	)	
13		)	
14	Respondent.	)	<u>STIPULATION</u>
15		)	<u>AND</u>
		)	<u>AGREEMENT</u>

16 It is hereby stipulated by and between MARK EDWARD  
17 ALSTON (sometimes referred to as "Respondent"), represented by  
18 Edward O. Lear, Esq., and the Complainant, acting by and through  
19 Elliott Mac Lennan, Counsel for the Department of Real Estate, as  
20 follows for the purpose of settling and disposing of the  
21 Accusation filed on November 1, 2002, in this matter:

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

3           2. Respondent has received, read and understands 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. Respondent filed a Notice of Defense pursuant to  
8 Section 11506 of the Government Code for the purpose of  
9 requesting a hearing on the allegations in the Accusation.  
10 Respondent hereby freely and voluntarily withdraws said Notice of  
11 Defense. Respondent acknowledges that he understands that by  
12 withdrawing said Notice of Defense he thereby waives his right to  
13 require the Commissioner to prove the allegations in the  
14 Accusation at a contested hearing held in accordance with the  
15 provisions of the APA and that he will waive other rights  
16 afforded to him in connection with the hearing such as the right  
17 to present evidence in his defense of the allegations in the  
18 Accusation and the right to cross-examine witnesses.

19           4. This Stipulation is based on the allegations  
20 contained in the Accusation. In the interest of expedience and  
21 economy, Respondent chooses not to contest these allegations, but  
22 to remain silent and understands that, as a result thereof, these  
23 allegations, without being admitted or denied, will serve as a  
24 prima facie basis for the disciplinary action stipulated to  
25 herein. The Real Estate Commissioner shall not be required to  
26 provide further evidence to prove said allegations.

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

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

24           7. The Order or any subsequent Order of the Real  
25 Estate Commissioner made pursuant to this Stipulation shall not  
26 constitute an estoppel, merger or bar to any further  
27 administrative or civil proceedings by the Department of Real

1 Estate with respect to any matters which were not specifically  
2 alleged to be causes for Accusation in this proceeding but do  
3 constitute a bar, estoppel and merger as to any allegations  
4 actually contained in the Accusation against Respondent herein.

5           8. This stipulation and the order made pursuant to  
6 this stipulation shall have no collateral estoppel or res  
7 judicata effect in any proceeding(s) in which MARK EDWARD ALSTON  
8 and the Department are not parties. This stipulation is made and  
9 accepted with the express understanding and agreement that it is  
10 for the purpose of settling these proceedings only, and is not  
11 intended as, nor shall be it be deemed, used, argued, or accepted  
12 as an acknowledgement or admission of fact in any other judicial,  
13 administrative, or other proceeding in which the Department is  
14 not a party.  
15

16           9. Respondent understands that by agreeing to this  
17 Stipulation, Respondent agrees to pay, pursuant to Business and  
18 Professions Code Section 10148, the cost of the audit of Home  
19 Services Unlimited, Inc. which led to this disciplinary action.  
20 The amount of said cost is \$6,459.20.

21           10. Respondent has received, read, and understands the  
22 "Notice Concerning Costs of Subsequent Audit". Respondent  
23 further understands that by agreeing to this Stipulation, the  
24 findings set forth below in the Determination of Issues become  
25 final, and the Commissioner may charge Respondent for the cost of  
26 any subsequent audit conducted pursuant to Business and  
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1 Professions Code Section 10148 to determine if the violations  
2 have been corrected. The maximum cost of the subsequent audit  
3 will not exceed \$6,459.20.

4 DETERMINATION OF ISSUES

5  
6 By reason of the foregoing, it is stipulated and agreed  
7 that the following determination of issues shall be made:

8 The conduct of MARK EDWARD ALSTON, as described in  
9 Paragraph 4, constitutes a violation of Business and Professions  
10 Code ("Code") Section 10145 and violations of Title 10, Chapter  
11 6, California Code of Regulations Sections 2725, 2731, 2831,  
12 2831.1, 2831.2, 2950(d), 2950(h) and 2951. This conduct is a  
13 basis for the suspension or revocation of Respondent's license  
14 pursuant to Section 10177(d) of the Business and Professions  
15 Code.

16 ORDER

17 WHEREFORE THE FOLLOWING ORDER IS HEREBY MADE:

18 All licenses and licensing rights of Respondent MARK  
19 EDWARD ALSTON under the Real Estate Law suspended for a period of  
20 one-hundred (120) days from the effective date of this Decision;  
21 provided, however, that if Respondent petitions, the initial  
22 sixty (60) days of said suspension (or a portion thereof) shall  
23 be stayed for three (3) years upon condition that::

24 1. Respondent pays a monetary penalty pursuant to  
25 Section 10175.2 of the Business and Professions Code at the rate  
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1 of \$166.67 per day for each day of the suspension for a total  
2 monetary penalty of \$10,000.

3 2. 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 3. No further cause for disciplinary action against  
9 the real estate license of Respondent occurs within three (3)  
10 years from the effective date of the Decision in this matter.

11 4. If Respondent fails to pay the monetary penalty in  
12 accordance with the terms of the Decision, the Commissioner may,  
13 without a hearing, order the immediate execution of all or any  
14 part of the stayed suspension, in which event the Respondent  
15 shall not be entitled to any repayment nor credit, prorated or  
16 otherwise, for money paid to the Department under the terms of  
17 this Decision.

18 5. If Respondent pays the monetary penalty and if no  
19 further cause for disciplinary action against the real estate  
20 license of Respondent occurs within three years from the  
21 effective date of the Decision, the stay hereby granted shall  
22 become permanent  
23

24 6. The remaining sixty (60) days of the one-hundred  
25 (120) day suspension shall be stayed for three (3) years upon the  
26 following terms and conditions:  
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1           (a) Respondent shall obey all laws, rules and regulations  
2 governing the rights, duties and responsibilities of a real  
3 estate licensee in the State of California; and

4           (b) That no final subsequent determination be made after  
5 hearing or upon stipulation, that cause for disciplinary action  
6 occurred within three (3) years of the effective date of this  
7 Decision. Should such a determination be made, the Commissioner  
8 may, in her discretion, vacate and set aside the stay order and  
9 reimpose all or a portion of the stayed suspension. Should no  
10 such determination be made, the stay imposed herein shall become  
11 permanent.

12           7. All licenses and licensing rights of Respondent  
13 MARK EDWARD ALSTON are indefinitely suspended unless or until  
14 Respondent provides proof satisfactory to the Commissioner, of  
15 having taken and successfully completed the continuing education  
16 course on trust fund accounting and handling specified in  
17 paragraph (3) of subdivision (a) of Section 10170.5 of the  
18 Business and Professions Code. Proof of satisfaction of this  
19 requirement includes evidence that respondent has successfully  
20 completed the trust fund account and handling continuing  
21 education course within 120 days prior to the effective date of  
22 the Decision in this matter.

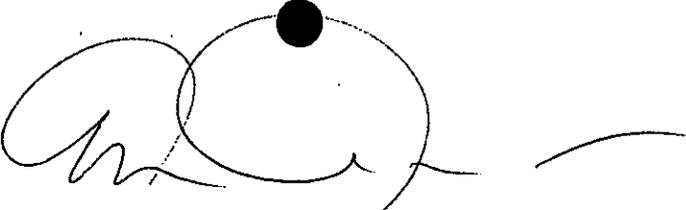
1                   8. Pursuant to Section 10148 of the Business and  
2 Professions Code, Respondent shall pay the Commissioner's  
3 reasonable cost for (a) the audit which led to this disciplinary  
4 action and (b) a subsequent audits to determine if Respondent  
5 MARK EDWARD ALSTON are now in compliance with the Real Estate  
6 Law. The cost of the audit which led to this disciplinary action  
7 is \$6,459.20. In calculating the amount of the Commissioner's  
8 reasonable cost, the Commissioner may use the estimated average  
9 hourly salary for all persons performing audits of real estate  
10 brokers, and shall include an allocation for travel time to and  
11 from the auditor's place of work. Said amount for the prior and  
12 subsequent audits shall not exceed \$12,918.40.

13                   Respondent shall pay such cost within 60 days of  
14 receiving an invoice from the Commissioner detailing the  
15 activities performed during the audit and the amount of time  
16 spent performing those activities.

17                   The Commissioner may suspend the license of Respondent  
18 pending a hearing held in accordance with Section 11500, et seq.,  
19 of the Government Code, if payment is not timely made as provided  
20 for herein, or as provided for in a subsequent agreement between  
21 the Respondent and the Commissioner. The suspension shall remain  
22 in effect until payment is made in full or until Respondent  
23 enters into an agreement satisfactory to the Commissioner to  
24 provide for payment, or until a decision providing otherwise is  
25 adopted following a hearing held pursuant to this condition.  
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1 DATED: 12.13.03



MARK EDWARD ALSTON, Respondent

2  
3 DATED: 12/16/03

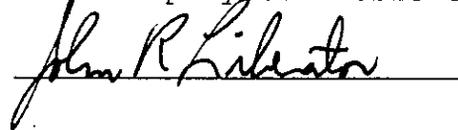
4 EDWARD O. LEAR,  
Attorney for Respondent

5 \* \* \*

6 The foregoing Stipulation and Agreement is hereby  
7 adopted as my Decision and shall become effective at  
8 12 o'clock noon on February 17, 2004

9 IT IS SO ORDERED January 12, 2004.

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13 JOHN R. LIBERATOR  
Chief Deputy Commissioner

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*Handwritten initials*

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

**FILED**  
MAY 20 2003  
DEPARTMENT OF REAL ESTATE

*In the Matter of the Accusation of*

By *[Signature]*

MARK EDWARD ALSTON, etc.,

Case No. H-29761 LA

OAH No. L-2003010824

*Respondent*

**NOTICE OF HEARING ON ACCUSATION**

**To the above named respondent:**

**You are hereby notified** that a hearing will be held before the Department of Real Estate at **320 W. Fourth Street, Ste. 630, Los Angeles, CA** on **August 11 & 12, 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.

DEPARTMENT OF REAL ESTATE

Dated: **MAY 20 2003**

By *[Signature]*  
**ELLIOTT MAC LENNAN, Counsel**

cc: Mark Edward Alston  
Edward O. Lear, Esq.  
Sacto/OAH/MLB

*Handwritten signature/initials*

1 ELLIOTT MAC LENNAN, SBN 66674  
2 Department of Real Estate  
3 320 West 4th Street, Ste. 350  
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6911 (direct)  
6 -or- (213) 576-6982 (office)

FILED  
NOV -1 2002  
DEPARTMENT OF REAL ESTATE

By *K. Wederholz*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11	In the Matter of the Accusation of	)	No. H-29761 LA
12	MARK EDWARD ALSTON, doing business	)	<u>ACCUSATION</u>
13	as Alston & Associates Mortgage	)	
14	Company, Mark Alston Realty and	)	
15	Skyway Realty,	)	
16		)	
17		)	
18		)	
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17 The Complainant, Maria Suarez, a Deputy Real Estate  
18 Commissioner of the State of California, acting in her official  
19 capacity, for cause of accusation against MARK EDWARD ALSTON  
20 doing business as Alston & Associates Mortgage Company, Mark  
21 Alston Realty and Skyway Realty, is informed and alleges as  
22 follows:

23 1.

24 MARK EDWARD ALSTON (ALSTON) sometimes referred to as  
25 Respondent, is presently licensed and/or has license rights under  
26 the Real Estate Law (Part 1 of Division 4 of the California  
27

Business and Professions Code).

2.

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.

3.

At all times mentioned, ALSTON was licensed or had license rights issued by the Department of Real Estate (Department) as a real estate broker. ALSTON was originally licensed as a real estate salesperson on July 15, 1991, and as a real estate broker on May 27, 2000.

4.

At all times mentioned, in the City and County of Los Angeles, State of California, ALSTON acted as real estate broker within the meaning of Section 10131(d) of the Code in that he operated as a mortgage and loan broker dba Alston & Associates Mortgage Company, Mark Alston Realty and Skyway Realty, including soliciting borrowers and lenders and negotiating and servicing loans secured directly or collaterally by liens on real property. In addition, ALSTON conducted broker controlled escrows under the exemption set forth in Section 17006(a) (4) of the California Financial Code under the dba Skyway Escrow for Countrywide Home Loans, and dba Mark Alston & Associates Mortgage Escrow Division.

5.

1 At all times mentioned, in connection with the  
2 activities described in Paragraph 4, ALSTON accepted or received  
3 funds in trust (trust funds) from or on behalf of borrowers and  
4 lenders. Thereafter ALSTON made disposition of such funds.  
5 ALSTON maintained the following trust accounts for his broker  
6 escrow activities into which he deposited certain of these funds:

7 "Alston and Associates Escrow Trust Account (T/A #1)  
8 Account No. 62400068020"  
9 Union Bank of California  
5245 W. Centinela Ave. Suite 601  
Los Angeles, California

10 "Mark E. Alston Skyway Escrow Trust Account (T/A #2)  
11 Account No. 6240009712"  
12 Union Bank of California  
6719 La Tijerra Blvd.  
Los Angeles, California

13 6.

14 On February 27, 2002 the Department completed an audit  
15 examination of the books and records of ALSTON, pertaining to the  
16 activities described in Paragraph 4 that require a real estate  
17 license. The audit examination covered a period of time  
18 beginning on January 1, 2001 and terminating on October 31, 2001.  
19 The audit examination revealed violations of the Code and the  
20 Regulations as set forth below, and more fully  
21 discussed in Audit Report LA 010120 and exhibits/workpapers  
22 attached to said audit report.  
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7.

With respect to the trust funds referred to in Paragraph 5, it is alleged that ALSTON:

(a) Failed to maintain an adequate and complete control record in the form of a columnar record in chronological order of all escrowed trust funds received for both trust accounts, as required by Code Section 10145 and Regulations 2831, 2950(d) and 2951.

(b) Failed to maintain a separate record for each beneficiary or transaction, thereby failing to account for all trust funds received, deposited into, and disbursed from both trust accounts, as required by Code Section 10145 and Regulations 2831.1, 2950(d) and 2951.

(c) Failed to perform a monthly reconciliation of the balance of all separate beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all trust funds received and disbursed from both trust accounts, as required by Code Section 10145 and Regulations 2831.2, 2950(d) and 2951.

(d) Had no system in place for regularly monitoring his escrow division compliance with the Real Estate Law or for the supervision of his escrow division or its escrow record keeping, in violation of Regulation 2725.

1 (e) Performed escrows under the fictitious business  
2 name of "Skyway Escrow" without holding a license bearing this  
3 fictitious business name, in violation of Regulation 2731.

4 (f) Failed to advise all parties to the escrow  
5 operations of Skyway Escrow and Mark Alston & Associates Mortgage  
6 Escrow Division of his ownership of said escrow companies, in  
7 violation of Regulation 2950(h).

8 (g) Failed to provide and/or maintain a statement in  
9 writing containing all the information required by Section 10241  
10 of the Code to various borrowers including rebates for yield  
11 spread premiums in the total amount of \$12,512.38 to the  
12 following borrowers: Gail Smith, Brown, Madden, McKinley, and  
13 Hughzetta Smith before these borrowers became obligated to  
14 perform under the terms of their loans, in violation of Code  
15 Section 10240 and Regulation 2840.

16 (h) Failed to provide a statement in writing containing  
17 all the information required by Section 10241 of the Code to  
18 borrowers Nicholas and Kay Flores before these borrowers became  
19 obligated to perform under the terms of their loan, in violation  
20 of Code Section 10240 and Regulation 2840.

21 (i) Received undisclosed compensation in the form of  
22 rebates from lenders pertaining to yield spread premiums earned  
23 in connection with Respondent's mortgage loan activities  
24 requiring a real estate license. The premiums were not disclosed  
25 in the Mortgage Loan Disclosure Statements/Good Faith Estimates  
26  
27

1 provided to various borrowers including but not limited to Gail  
2 Smith, Zuniga, Madden, McKinley, and Hughzetta Smith, for  
3 \$12,512.38 in undisclosed compensation. The conduct of taking a  
4 secret profit undisclosed to borrowers subjects Respondent to  
5 discipline pursuant to Code Section 10176(g); and

6 (j) Made substantial misrepresentations concerning the  
7 total escrow fees initially represented and then ultimately  
8 charged to certain borrowers including Gail Smith, Zuniga, Madden  
9 and McKinley, in total amount of \$5,683. \$5,683 represents the  
10 difference between the amount disclosed on the Mortgage Loan  
11 Disclosure Statement and the actual Escrow Closing Statement for  
12 these borrowers, thereby subjecting Respondent to discipline  
13 pursuant to Code Sections 10176(a) and 10176(i).

14 8.

15 The conduct of Respondent ALSTON, described in  
16 Paragraph 7, above, violated the Code and the Regulations as set  
17 forth below:  
18

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
19 7(a)	20 Code Section 10145 and 21 Regulations 2831, 2950(d), and 2951 22
23 7(b)	24 Code Section 10145 and Regulations 25 2831.1, 2950(d), and 2951 26 27

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7(c) Code Section 10145 and Regulations  
2831.2, 2950(d), and 2951

7(d) Regulation 2725

7(e) Regulation 2731

7(f) Regulation 2950(h)

7(g) Code Section 10240(c) and Regulation  
2840

7(h) Code Section 10240(a) and Regulation  
.2840

7(i) Code Section 10176(g), and

7(j) Code Section 10176(a) and 10176(i)

The foregoing violations set forth in Paragraph 7 constitute  
cause for the suspension or revocation of the real estate license  
and license rights of ROWE under the provisions of Code Sections  
10176(a), 10176(g), 10176(i), 10177(d) and/or 10177(g).

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1 WHEREFORE, Complainant prays that a hearing be  
2 conducted on the allegations of this Accusation and that upon  
3 proof thereof, a decision be rendered imposing disciplinary  
4 action against the license and license rights of Respondent MARK  
5 EDWARD ALSTON, under the Real Estate Law (Part 1 of Division 4 of  
6 the Business and Professions Code) and for such other and further  
7 relief as may be proper under other applicable provisions of law.

8 Dated at Los Angeles, California

9 this *24<sup>th</sup>* day of *October* 2002.

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12 \_\_\_\_\_  
13 Deputy Real Estate Commissioner  
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24 cc: Mark Edward Alston  
25 Sacto  
26 Maria Suarez  
27 MLB