

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  
JAN - 5 2005  
DEPARTMENT OF REAL ESTATE

By K. M. Schubert

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )

No. H-30545 LA

12 BYRNE MILLER, )

STIPULATION

13 Respondent. )

AND  
AGREEMENT

14  
15 It is hereby stipulated by and between BYRNE MILLER  
16 (sometimes referred to as Respondent) and his attorney, Richard  
17 W. Raynor, Esq., and the Complainant, acting by and through  
18 Elliott Mac Lennan, Counsel for the Department of Real Estate, as  
19 follows for the purpose of settling and disposing the Accusation  
20 filed in this matter on December 4, 2003:

21 1. All issues which were to be contested and all  
22 evidence which was to be presented by Complainant and Respondents  
23 at a formal hearing on the Accusation, which hearing was to be  
24 held in accordance with the provisions of the Administrative  
25 Procedure Act ("APA"), shall instead and in place  
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1 thereof be submitted solely on the basis of the provisions of  
2 this 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 timely filed a Notice of Defense  
8 pursuant to Section 11505 of the Government Code for the purpose  
9 of 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 defense of the allegations in the  
18 Accusation and the right to cross-examine witnesses.

19           4. This Stipulation is based on the factual  
20 allegations contained in the Accusation filed in this proceeding.  
21 In the interest of expedience and economy, Respondent chooses not  
22 to contest these factual allegations, but to remain silent and  
23 understands that, as a result thereof, these factual statements,  
24 will serve as a prima facie basis for the disciplinary action  
25 stipulated to herein. The Real Estate Commissioner shall not be  
26 required to provide further evidence to prove such allegations.  
27

1           5. This Stipulation and Respondent's decision not to  
2 contest the Accusation are made for the purpose of reaching an  
3 agreed disposition of this proceeding and are expressly limited  
4 to this proceeding and any other proceeding or case in which the  
5 Department of Real Estate ("Department"), the state or federal  
6 government, or an agency of this state, another state or the  
7 federal government is involved.

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

18           7. The Order or any subsequent Order of the Real  
19 Estate Commissioner made pursuant to this Stipulation shall not  
20 constitute an estoppel, merger or bar to any further  
21 administrative or civil proceedings by the Department of Real  
22 Estate with respect to any matters which were not specifically  
23 alleged to be causes for accusation in this proceeding.

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[illegible]

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1 Code and the following limitations, conditions and restrictions  
2 imposed under authority of Section 10156.6 of that Code:

3 1. The restricted license issued to Respondent may be  
4 suspended prior to hearing by Order of the Real Estate  
5 Commissioner in the event of Respondent's conviction or plea of  
6 nolo contendere to a crime which is substantially related to  
7 Respondent's fitness or capacity as a real estate licensee.

8 2. The restricted license issued to Respondent may  
9 be suspended prior to hearing by Order of the Real Estate  
10 Commissioner on evidence satisfactory to the Commissioner that  
11 Respondent has violated provisions of the California Real Estate  
12 Law, the Subdivided Lands Law, Regulations of the Real Estate  
13 Commissioner or conditions attaching to the restricted license.  
14

15 3. Respondent shall not be eligible to apply for the  
16 issuance of an unrestricted real estate license nor for the  
17 removal of any of the conditions, limitations or restrictions of  
18 a restricted license until two (2) years have elapsed from the  
19 effective date of this Decision.

20 4. Respondent shall, within nine (9) months from the  
21 effective date of this Decision, present evidence satisfactory to  
22 the Real Estate Commissioner that Respondent has, since the most  
23 recent issuance of an original or renewal real estate license,  
24 taken and successfully completed the continuing education  
25 requirements of Article 2.5 of Chapter 3 of the Real Estate Law  
26 for renewal of a real estate license. If Respondent fails to  
27

1 satisfy this condition, the Commissioner may order the suspension  
2 of the restricted license until the Respondent presents such  
3 evidence. The Commissioner shall afford Respondent the  
4 opportunity for a hearing pursuant to the Administrative  
5 Procedure Act to present such evidence.

6 5. Six months after the issuance of the restricted  
7 license, and at six month intervals thereafter during the term of  
8 any restricted license issued pursuant to this Decision,  
9 Respondent shall provide proof acceptable to the Real Estate  
10 Commissioner that, during the preceding six months, Respondent  
11 has, each and every week, attended one or more sessions of  
12 Alcoholics Anonymous, or that such attendance in any week was  
13 impractical due to travel for work, the illness of Respondent or  
14 a member of Respondent's family, vacation, incarceration,  
15 residential treatment for substance abuse, extreme personal  
16 hardship for Respondent or a member of Respondent's family, or  
17 family emergency. Respondent shall submit such proof to the Los  
18 Angeles Crisis Response Team Manager of the Department of Real  
19 Estate. The Commissioner may suspend the restricted license  
20 issued to Respondent pending a hearing held in accordance with  
21 Section 11500, et seq., of the Government Code, if such proof is  
22 not timely submitted as provided for herein, or as provided for  
23 in a subsequent agreement between the Respondent and the  
24 Commissioner. The suspension shall remain in effect until such  
25 proof is submitted or until Respondent enters into an agreement  
26  
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1 satisfactory to the Commissioner to provide such proof, or until  
2 a decision providing otherwise is adopted following a hearing  
3 held pursuant to this condition.

4  
5 DATED: 7-21-04

e76  
ELLIOTT MAC LENNAN, Counsel for  
the Department of Real Estate

6  
7 \* \* \*

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

20 Respondent can signify acceptance and approval of the  
21 terms and conditions of this Stipulation and Agreement by faxing  
22 a copy of its signature page, as actually signed by Respondent,  
23 to the Elliott Mac Lennan, Esq. c/o the Department of Real Estate  
24 at the following telephone/fax number: (213) 576-6917.

25 Respondent agrees, acknowledges and understands that by  
26 electronically sending to the Department a fax copy of his actual  
27

Sep 03 04 08:48a

SENT BY: RAYNOR ;

000 000 0000;

SEP-2-04 4:54PM;

PAGE 9/9

P. 2

SEP-02-04 THU 03:56 PM

FAX NO. 2135788917

P. 09/08

signature as it appears on the Stipulation and Agreement, that  
receipt of the faxed copy by the Department shall be as binding  
on Respondent as if the Department had received the original  
signed Stipulation and Agreement.

DATED: 9-2-04  
BYRNE MILLER, RespondentDATED: 9/3/2004  
RICHARD W. RAYNOR, Attorney for  
Respondent  
Approved as to Form

The foregoing Stipulation and Agreement is hereby  
adopted as my Decision as to Respondent BYRNE MILLER and shall  
become effective at 12 o'clock noon  
on \_\_\_\_\_, 2004

IT IS SO ORDERED \_\_\_\_\_, 2004

JOHN R. LIBRATOR  
Acting Real Estate Commissioner



signature as it appears on the Stipulation and Agreement, that  
receipt of the faxed copy by the Department shall be as binding  
on Respondent as if the Department had received the original  
signed Stipulation and Agreement.

DATED: \_\_\_\_\_

BYRNE MILLER, Respondent

DATED: \_\_\_\_\_

RICHARD W. RAYNOR, Attorney for  
Respondent  
Approved as to Form

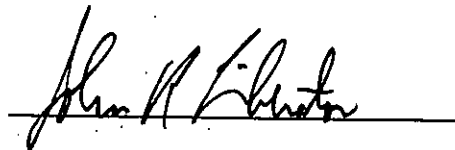
\* \* \*

The foregoing Stipulation and Agreement is hereby  
adopted as my Decision as to Respondent BYRNE MILLER and shall  
become effective at 12 o'clock noon

on JAN 25 2005

IT IS SO ORDERED December 22, 2004

JOHN R. LIBERATOR  
Acting Real Estate Commissioner



*Handwritten signature*

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

**FILED**  
MAY - 5 2004  
DEPARTMENT OF REAL ESTATE

*In the Matter of the Accusation of*

BYRNE MILLER,

} By *K. Neiderholt*  
Case No. H-30545 LA  
OAH No. L-2004020104

\_\_\_\_\_  
*Respondent*

**CONTINUED  
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 **September 7, 2004**, at the hour of **1:30 p.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 - 5 2004

By *E. MacLennan*  
ELLIOTT MAC LENNAN, Counsel

cc: Byrne Miller  
Richard W. Raynor, Esq.  
Sacto/OAH/LF

*Sacto*

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

**FILED**  
MAR 11 2004  
DEPARTMENT OF REAL ESTATE

*In the Matter of the Accusation of*

By *K. Medelhoff*

BYRNE MILLER,

}

Case No. H-30545 LA

OAH No. L-2004020104

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 April 29, 2004, at the hour of 1:30 p.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: MAR 11 2004

By *ELI*  
ELLIOTT MAC LENNAN, Counsel

cc: Byrne Miller  
Richard W. Raynor, Esq.  
Sacto/OAH/LF

*Stamps  
log*

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)  
7

**FILED**  
DEC - 4 2003  
DEPARTMENT OF REAL ESTATE  
By *R. Huderholt*

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of	)	No. H-30545 LA
12 BYRNE MILLER,	)	<u>ACCUSATION</u>
13 Respondent.	)	
14	)	

15 The Complainant, Maria Suarez, a Deputy Real Estate  
16 Commissioner of the State of California, for cause of accusation  
17 against BYRNE MILLER, is informed and alleges in her official  
18 capacity as follows:

19 1.

20 Respondent is presently licensed and/or has license  
21 rights as a real estate broker under the Real Estate Law (Part 1  
22 of Division 4 of the California Business and Professions Code)  
23 (Code).

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2.

Respondent was originally licensed by the Department of Real Estate of the State California as a real estate licensee on January 10, 1990.

3.

On December 8, 2000, in the Superior Court of California, Harbor Justice District, County of Orange, in Case No. LG00HM05277, respondent was convicted upon a guilty plea to one count of California Vehicle Code Section 23152(a) (D.U.I.), misdemeanor crime.

4.

On December 8, 2000, in the Superior Court of California, Harbor Justice District, County of Orange, in Case No. LG00HM06652, respondent was convicted by judge or jury to one count of California Vehicle Code Section 23152(a) (D.U.I.), misdemeanor crime.

5.

These crimes, by their facts and circumstances, are substantially related under Section 2910, Chapter 6, Title 10 of the California Code of Regulations "Regulations"), to the qualifications, functions or duties of a real estate licensee.

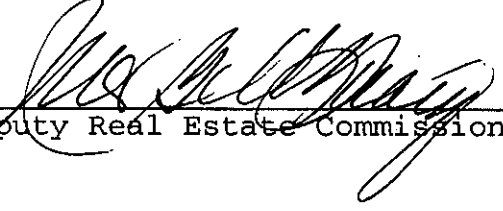
6.

The crimes alleged above, constitute cause for the suspension or revocation of the license and license rights of respondent under Code Section 490.

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 action  
4 against the license and license rights of respondent BYRNE MILLER  
5 under the Real Estate Law (Part 1 of Division 4 of the Business  
6 and Professions Code) and for such other and further relief as  
7 may be proper under other applicable provision of law.

8 Dated at Los Angeles, California

9 This *2<sup>nd</sup> day of December 2003*

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11   
12 Deputy Real Estate Commissioner  
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22

23 cc: Byrne Miller  
24 Sacto  
25 Maria Suarez  
26 LF  
27