



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

**In the Matter of the Application of:**

**SHAWN DAVID BUCKWALTER,**

**Respondent.**

**File No. H-31597 LA**

**OAH No. L-2005020514**

**PROPOSED DECISION**

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on April 21, 2005, in Los Angeles, California. Complainant was represented by Darlene Averetta, Staff Counsel for the Department of Real Estate. Shawn David Buckwalter (Respondent) appeared and was represented by Tad R. Callister, attorney at law.

Oral and documentary evidence was received, the record was closed and the matter was submitted for decision on April 21, 2005.

**FACTUAL FINDINGS**

1. On December 23, 2004, Complainant Maria Suarez filed the Statement of Issues while acting in her official capacity as Deputy Real Estate Commissioner of the Department of Real Estate (Department), State of California.

2. On May 12, 2004, Respondent submitted to the Department an application for a real estate salesperson license, with the knowledge and understanding that any license issued as a result of that application would be subject to the conditions of Business and Professions Code section 10153.4.

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*Respondent's Convictions*

3a. On December 15, 1997, in the Superior Court for the State of California, County of San Bernardino, Case Number FCH02536, entitled *The People of the State of California v. Shawn David Buckwalter*, Respondent was convicted of violating California Vehicle Code section 10851, subdivision (a) (taking vehicle without owner's consent), and Penal Code section 496, subdivision (a) (receiving stolen property), both misdemeanors involving moral turpitude and substantially related to the qualifications, functions and duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a)(1) and (a)(8).<sup>1</sup>

3b. Respondent was placed on probation for 24 months and ordered to pay a \$427 fine. Respondent completed the terms of his probation.

3c. The facts and circumstances surrounding Respondent's December 15, 1997 convictions are as follows: Prior to the incident, Respondent's father had taken away the keys to Respondent's car as a punishment. On December 15, 1997, Respondent asked to borrow his father's vehicle, and his father said "No." Respondent then took his father's car without consent. He also took his mother's \$40 bracelet with the intent to sell it. However, his father, suspecting that Respondent had taken the vehicle, contacted the police to report the vehicle stolen. The police stopped Respondent in the stolen vehicle, and he was arrested.

4a. On December 28, 1998, in the Municipal Court for the State of California, County of Los Angeles, Pomona Judicial District, Case Number 8PM07194, entitled *The People of the State of California v. Shawn David Buckwalter*, Respondent was convicted of violating Health and Safety Code section 11364 (possession of drug paraphernalia) and California Vehicle Code section 12500, subdivision (a) (unlicensed driver), both misdemeanors. These crimes do not involve moral turpitude and, by themselves, are not substantially related to the qualifications, functions and duties of a real estate licensee.

4b. Respondent was placed on summary probation for three years and ordered to pay fines and fees totaling \$811, which he paid.

4c. On September 3, 1999, Respondent failed to appear for a probation violation hearing. His probation was revoked, based on the filing of Case Number 9PM02534 against him (see Factual Finding 5). On September 8, 1999, Respondent admitted to violating his probation. His probation was reinstated on the same terms and conditions.

4d. On May 24, 2001, Respondent admitted to violating his probation as a result of his conviction in Case Number 1PM02775 (see Factual Finding 7). His probation was revoked and reinstated with the modification that he serve 90 days in jail, to run concurrently with his time at a Court-ordered rehabilitation program in Case Number 1PM02775.

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<sup>1</sup> These crimes were initially charged as felonies, but were reduced to misdemeanors pursuant to Penal Code section 17, subdivision (b).

4e. The facts and circumstances surrounding Respondent's December 28, 1998 convictions are as follows: On November 4, 1998, Respondent drove a vehicle without a valid driver's license. When the police stopped his vehicle, Respondent had drug paraphernalia, a pipe, in his possession.

5a. On September 8, 1999, in the Municipal Court for the State of California, County of Los Angeles, Pomona Judicial District, Case Number 9PM02534, entitled *The People of the State of California v. Shawn David Buckwalter*, Respondent was convicted of violating Vehicle Code section 14601, subdivision (a) (driving with a suspended license). This crime does not involve moral turpitude and, by itself, is not substantially related to the qualifications, functions and duties of a real estate licensee.

5b. Respondent was placed on summary probation for three years and ordered to pay fines and fees totaling \$1,461, which he paid.

5c. On May 23, 2001, Respondent's probation was revoked based on the filing of Case Number 1PM02775 against him (see Factual Finding 7). On May 24, 2001, Respondent admitted to violating his probation as a result of his conviction in Case Number 1PM02775. His probation was terminated and he was ordered to serve 180 days in jail, to run concurrent with the time he would serve at the Court-ordered rehabilitation program in Case Number 1PM02775.

5d. The facts and circumstances surrounding the September 8, 1999 conviction are that, on April 30, 1999, Respondent drove a vehicle while his driver's license was suspended.

6a. On January 25, 2001, in the Superior Court for the State of California, County of Orange, Case Number NB00HF1349, entitled *The People of the State of California v. Shawn David Buckwalter*, the Court entered a conviction against Respondent for violation of Health and Safety Code section 11377, subdivision (a) (possession of controlled substance-Ecstasy) a misdemeanor. This crime does not involve moral turpitude and, by itself, is not substantially related to the qualifications, functions and duties of a real estate licensee.

6b. Respondent was placed on informal probation for three years and ordered to pay fines and fees of \$150. Payment of \$150 was received by the Court on March 2, 2001.<sup>2</sup>

6c. The facts and circumstances surrounding the January 25, 2001 conviction are that, on October 19, 2000, Respondent was found in possession of Methylendioxyamphetamine (MDMA) commonly known as "Ecstasy."

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<sup>2</sup> Respondent testified that he was unaware of the conviction and insisted that the fines were paid by someone other than him. (See Factual Finding 11.)

7a. On June 7, 2001, in the Superior Court for the State of California, County of Los Angeles, Case Number 1PM02775, entitled *The People of the State of California v. Shawn David Buckwalter*, Respondent was convicted of violating Health and Safety Code section 11550, subdivision (a) (under the influence of controlled substance without a prescription), a misdemeanor. This crime does not involve moral turpitude and, by itself, is not substantially related to the qualifications, functions and duties of a real estate licensee.

7b. Respondent was placed on summary probation for three years and ordered to serve 180 days in jail, with jail time to be served at "Oasis Treatment Facility." Respondent was further ordered to pay a restitution fine of \$100. Respondent attended treatment at Cornerstone Alternative Sentencing Recovery Program. As of June 6, 2002, Respondent had failed to pay the restitution fine and the case was referred to the Department of Collections.<sup>3</sup>

7c. The facts and circumstances surrounding the June 7, 2001 conviction are that, on March 20, 2001, Respondent was arrested for being under the influence of a controlled substance.

8. Respondent's convictions, as set forth in Factual Findings 3 through 7, are substantially related to the qualifications, functions and duties of a licensee of the Department, in that they demonstrate a pattern of repeated and willful disregard for the law. [Cal. Code Regs., tit. 10, section 2910, subdivision (a)(10).]

#### *Respondent's Application*

9. Respondent's real estate salesperson license application form contained a series of questions to be answered by applicants, including Question 25, which stated,

Have you ever been convicted of any violation of law?  
Convictions expunged under Penal Code section 1203.4 must be disclosed. However, you may omit minor traffic citations which do not constitute a misdemeanor or felony offense.

Two boxes, one designated "No" and one designated "Yes," were provided on the application form, with space supplied under Question 27 for detailed conviction information.

10. In response to Question 25, Respondent marked the box designated "Yes" and, under Question 27, disclosed his convictions set forth in Factual Findings 3, 4, 5 and 7. Respondent did not disclose the conviction set forth in Factual Finding 6.

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<sup>3</sup> This fact was set forth in a docket sheet printed on September 7, 2004.

11a. Regarding his failure to disclose his January 25, 2001 conviction on his application, Respondent testified that he did not know the conviction existed and did not intend to hide it. Respondent admitted that he spoke to detectives on January 25, 2001. However, the detectives with whom he spoke offered to release him that day and dismiss the charges against him if he assisted them in a sting operation leading to the arrest of three other people. Before being released, Respondent signed a guilty plea form with the detectives present, but was not represented by an attorney. Respondent denied appearing at a hearing on January 25, 2001. Respondent later participated in a sting operation which led to the arrests of three other individuals. Given his participation in the undercover operation, Respondent believed that the charges were dismissed and were not part of his record. He was surprised to learn from the Department that a conviction had been entered against him on January 25, 2001.

11b. Respondent's explanation of his non-disclosure was credible, for the following reasons:

(1) His testimony was corroborated by his father's testimony that, while listening on a second phone extension, he heard telephone conversations Respondent had with police officers regarding the undercover operation. During those conversations, the detectives promised that the charges against Respondent would be dropped.

(2) The Court docket does not establish that Respondent was present at the January 25, 2001 hearing. Rather, the docket indicated that the entry "Defendant present" was "entered in error." While the docket also confusingly indicated that Respondent was "appearing in pro per," there was no clarification regarding whether the appearance was in person or via the signed guilty plea.

(3) Given that Respondent disclosed his four other convictions, it is unlikely that he intentionally withheld disclosure of his January 25, 2001 conviction.

(4) While Orange County Superior Court records documenting his conviction were available to Respondent upon request, Respondent had no reason to seek those records, given his belief that he had no criminal convictions in Orange County. Consequently, Respondent's failure to search Orange County Superior Court records for conviction information was not unreasonable.

12. In answering Question 27, Respondent did not intend to deceive the Department. Therefore, Respondent's answer to Question 27 did not constitute an intentional misrepresentation.

13. Respondent's answer to Question 27 did not constitute a negligent misrepresentation, because Respondent reasonably believed that charges against him were dismissed and that no conviction had resulted.

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### *Mitigation and Rehabilitation*

14. Respondent is 26 years old. He admitted full responsibility for his criminal actions. During his senior year of high school, he began "hanging out with the wrong people" and using illegal drugs, which led to his criminal activities. However, he has "turned his life around" since that time. In June of 2001, he entered a court-ordered, six-month rehabilitation program and thereafter attended Alcoholics Anonymous meetings for about a year. Since entering the rehabilitation program in 2001, Respondent has not used any drugs or alcohol.

15. After leaving the rehabilitation program, Respondent began working full time. He was first employed doing maintenance for an apartment management company. He is currently employed with Tarbell Realtors, acting as an assistant for the manager and the assistant manager. His duties include preparation and delivery of marketing materials and putting together real estate files. Respondent's manager and assistant manager both testified on his behalf, collectively describing him as dependable, honest and diligent.

16. Since changing his life for the better, Respondent has a good relationship with his family. He assists in babysitting his nieces and helps around his parents' home. Respondent's father and sister testified on his behalf, collectively characterizing Respondent as dependable and a helpful family member.

17. Respondent served as an assistant scout master with his church's Boy Scout program for over a year. The scout master testified on Respondent's behalf, describing him as honest and dependable and a good moral example for the boys.

18. In addition to the witnesses testifying on his behalf, Respondent submitted several reference letters from family and friends. They collectively portrayed Respondent as reliable, honest, trustworthy, and a person of good character and integrity.

### **LEGAL CONCLUSIONS**

1. Cause exists to deny Respondent's application for a real estate salesperson license, pursuant to Business and Professions Code section 480, subdivision (a)(1), and California Code of Regulations, title 10, section 2910, subdivisions (a)(1), (a)(8) and (a)(10), for his criminal convictions, which are substantially related to the duties, qualifications, and functions of a real estate licensee, as set forth in Factual Findings 3, 4, 5, 6, 7 and 8.

2. Cause exists to deny Respondent's application for a real estate salesperson license, pursuant to Business and Professions Code section 10177, subdivision (b), for his criminal convictions involving moral turpitude, which are substantially related to the duties, qualifications, and functions of a real estate licensee, as set forth in Factual Finding 3.

3. Cause exists to deny Respondent's application for a real estate salesperson license, pursuant to Business and Professions Code section 10177, subdivision (a), in that Respondent made a material misstatement of fact in an application for a real estate license, as set forth in Factual Findings 6, 9, 10, 11, 12 and 13. Complete and accurate disclosure of the requested information in an application is essential in order for the Department to evaluate the applicant. Therefore, the language of the statute establishes grounds for denial even where the misstatement of fact was innocent, as in this case.

4. Cause does not exist to deny Respondent's application for a real estate salesperson license, pursuant to Business and Professions Code section 480, subdivision (c), in that Respondent did not knowingly make a false statement of fact, as set forth in Factual Findings 9, 10, 11, 12 and 13.

5. Respondent has substantially complied with the Department's rehabilitation criteria set forth in California Code of Regulations, title 10, section 2911, as follows:

- (1) More than two years have lapsed since Respondent's last conviction.  
(Subdivision (a).)
- (2) Respondent has completed his probation.  
(Subdivision (e).)
- (3) Respondent has abstained from the use of controlled substances for over two years.  
(Subdivision (f).)
- (4) Respondent has a stable family life, as set forth in Factual Finding 16.  
(Subdivision (h).)
- (5) Respondent has significant, conscientious involvement in community programs designed to provide social benefits and ameliorate social problems, as set forth in Factual Finding 17.  
(Subdivision (l).)
- (6) Respondent has different social and business relationships from those which existed at the time of the conduct that is the basis for his convictions, as set forth in Factual Findings 14, 15 and 17.  
(Subsection (m).)
- (7) Respondent has had a change in attitude since his convictions, as set forth in Factual Findings 14, 15, 16, 17 and 18.  
(Subsection (n).)

6. Notwithstanding Legal Conclusions Numbers 1, 2 and 3 above, Respondent has demonstrated sufficient rehabilitation following his convictions, such that the public should be adequately protected by the issuance of a restricted real estate salesperson's license to Respondent. Although Respondent argued for issuance of an unrestricted license, Respondent has not established a sufficient history of rehabilitation to warrant the issuance of that type of license. While Respondent has apparently refrained from any further criminal activity since his June 7, 2001 conviction, his good behavior is tempered by the fact that he was on probation for three years. Since people have a strong incentive to obey the law while



under the supervision of the criminal justice system, little weight is generally placed on the fact that an applicant has engaged in good behavior while on probation. (See, *In re Gossage* (2000) 23 Cal.4th 1080.) Since lesser weight has been given to Respondent's rehabilitation efforts while on probation, he has established less than one year of rehabilitation outside the constraints of the criminal justice system.

### ORDER

Respondent's application for a real estate salesperson license is denied; provided,  
however, a restricted real estate salesperson license shall be issued to Respondent pursuant to  
Section 10156.5 of the Business and Professions Code. The restricted license issued to the  
Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and  
Professions Code and to the following limitations, conditions and restrictions imposed under  
authority of Section 10156.6 of that Code:

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

(a) The conviction of Respondent (including a plea of nolo contendere) of a crime  
which is substantially related to Respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence that Respondent has violated provisions of the  
California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate  
Commissioner or conditions attaching to this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real  
estate license nor the removal of any of the conditions, limitations or restrictions attaching to  
the restricted license until two (2) years have elapsed from the date of issuance of the  
restricted license to Respondent.

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

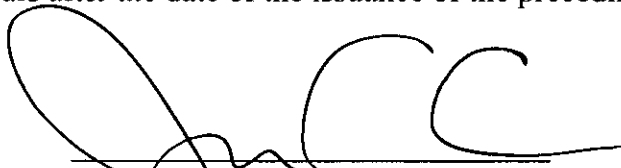
(a) That the employing broker has read the Decision which is the basis for the  
issuance of the restricted license; and

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

4. Respondent's restricted real estate salesperson license is issued subject to the requirements of Section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of a course in real estate practices and one of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension.

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

DATED: May 19, 2005



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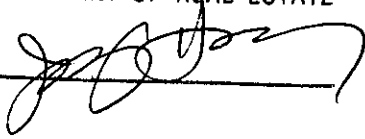
JULIE CABOS-OWEN  
Administrative Law Judge  
Office of Administrative Hearings

SBN 212459

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**FILED**  
DEC 23 2004  
DEPARTMENT OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11		
12	In the Matter of the Application of )	NO. H- 31597 LA
13	SHAWN DAVID BUCKWALTER, )	
14	)	<u>STATEMENT OF ISSUES</u>
15	Respondent. )	

16 The Complainant, Maria Suarez, a Deputy Real Estate  
17 Commissioner of the State of California, for cause of Statement  
18 of Issues against SHAWN DAVID BUCKWALTER, ("Respondent"), is  
19 informed and alleges as follows:

20 1.

21 The Complainant, Maria Suarez, a Deputy Real Estate  
22 Commissioner of the State of California, makes this Statement  
23 of Issues against Respondent in her official capacity.

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2.

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2 Respondent made application to the Department of Real  
3 Estate of the State of California for a real estate salesperson  
4 license on or about May 12, 2004, with the knowledge and  
5 understanding that any license issued as a result of said  
6 application would be subject to the conditions of Business and  
7 Professions Code ("Code") Section 10153.4.

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3.

(CRIMINAL CONVICTIONS)

On or around December 15, 1997, in the Superior Court  
of California, County of San Bernardino, in Case No. FCH02536,  
Respondent, SHAWN DAVID BUCKWALTER, was convicted of violating  
California Vehicle Code Section 10851(A) (Take Vehicle Without  
Owner's Consent/Vehicle Theft), and convicted of violating  
California Penal Code Section 496(A) (Receiving Stolen  
Property). These are crimes involving moral turpitude which  
bear a substantial relationship under Title 10, Chapter 6,  
Section 2910, California Code of Regulations, to the  
qualifications, functions or duties of a real estate licensee.

4.

On or around December 28, 1998, in the Municipal Court  
of Pomona Judicial District, County of Los Angeles, State of  
California, in Case No. 8PM07194, Respondent, SHAWN DAVID  
BUCKWALTER, was convicted of violating California Health and  
Safety Code Section 11364 (Possession Pipe/Drug Paraphernalia),  
and convicted of violating California Vehicle Code Section

1 12500(A) (Unlicensed Driver). These are crimes involving moral  
2 turpitude which bear a substantial relationship under Title 10,  
3 Chapter 6, Section 2910, California Code of Regulations, to the  
4 qualifications, functions or duties of a real estate licensee.

5 5.

6 On or around September 8, 1999, in the Municipal Court  
7 of Pomona Judicial District, County of Los Angeles, State of  
8 California, in Case No. 9PM02534, Respondent, SHAWN DAVID  
9 BUCKWALTER, was convicted of violating California Health and  
10 Safety Code Section 14601 (Driving With A Suspended License).  
11 This is a crime involving moral turpitude which bears a  
12 substantial relationship under Title 10, Chapter 6, Section  
13 2910, California Code of Regulations, to the qualifications,  
14 functions or duties of a real estate licensee.

15 6.

16 On or around January 25, 2001, in the Superior Court  
17 of California, County of Orange, in Case No. NB00HF1349,  
18 Respondent, SHAWN DAVID BUCKWALTER, was convicted of violating  
19 California Health and Safety Code Section 11377(a) (Possession  
20 of Controlled Substance - Ecstasy(MDA)). This is a crime  
21 involving moral turpitude which bears a substantial relationship  
22 under Title 10, Chapter 6, Section 2910, California Code of  
23 Regulations, to the qualifications, functions or duties of a  
24 real estate licensee.

25 7.

26 On or around June 7, 2001, in the Superior Court of  
27

1 California, Pomona Division, County of Los Angeles, in Case No.  
2 1PM02775, Respondent, SHAWN DAVID BUCKWALTER, was convicted of  
3 violating California Health and Safety Code Section 11550(A)  
4 (Use/Under Influence of A Controlled Substance). This is a  
5 crime involving moral turpitude which bears a substantial  
6 relationship under Title 10, Chapter 6, Section 2910, California  
7 Code of Regulations, to the qualifications, functions or duties  
8 of a real estate licensee.

9 8.

10 The crimes of which Respondent was convicted as  
11 alleged herein above in Paragraphs 3, 4, 5, 6, and 7 constitutes  
12 cause for denial of Respondent's application for a real estate  
13 license under Code Sections 475(a)(2); 480 (a)(1) and/or  
14 10177(b).

15 9.

16 (FAILURE TO REVEAL CONVICTION)

17 In response to Question 25 of his license application,  
18 to wit: "HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW?  
19 CONVICTION EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE  
20 DISCLOSED. HOWEVER, YOU MAY OMIT MINOR TRAFFIC CITATIONS WHICH  
21 DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE". Respondent  
22 answered "Yes", but failed to reveal the conviction described in  
23 Paragraph 6 above.  
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25 Respondent's failure to reveal the conviction set  
26 forth herein in Paragraph 6, above, in his license application,  
27 constitutes, knowingly making a false statement of material fact

1 required to be revealed in said application, which is grounds  
2 for denial of the issuance of a license under Business and  
3 Professions Code Sections 480(c) and/or 10177(a).

4 The Statement of Issues is brought under the  
5 provisions of Section 10100, Division 4 of the Business and  
6 Professions Code of the State of California and Sections 11500  
7 and 11529 of the Government Code.

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

15 Dated at Los Angeles, California

16 this 24<sup>th</sup> day of December, 2004.

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19   
20 Maria Suarez  
21 Deputy Real Estate Commissioner

22 Cc: SHAWN DAVID BUCKWALTER  
23 Valentina Jimon - FM Tarbell Co.  
24 Maria Suarez  
25 Sacto.  
26 LF  
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