

SFACTS
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1 Department of Real Estate
2 320 W. 4TH Street, Suite 350
3 Los Angeles, CA 90013-1105
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9 Telephone: (213) 576-6982

OCT 10 2011

DEPARTMENT OF REAL ESTATE
BY: Dorothy M. Lewis

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11	In the Matter of the Accusation of)	No. H-36953 LA
12)	L-2011010117
13	LOTUS PROPERTIES & MORTGAGE INC)	
14	and FREDERICK GILBERT WENCK,)	<u>STIPULATION</u>
15	individually and as former)	<u>AND</u>
16	designated officer of Lotus)	<u>AGREEMENT</u>
17	Properties & Mortgage Inc and)	
18	<u>LAURA G. STOPANI,</u>)	
19	Respondents.)	

18 It is hereby stipulated by and between Respondent
19 LAURA G. STOPANI, represented by Frank M. Buda, Esq. and the
20 Complainant, acting by and through James A. Demus, Counsel for
21 the Department of Real Estate, as follows for the purpose of
22 settling and disposing of the Accusation filed on December 6,
23 2010, in this matter:

24 1. All issues which were to be contested and all
25 evidence which was to be presented by Complainant and Respondent
26 at a formal hearing on the Accusation, which hearing was to be
27 held in accordance with the provisions of the Administrative

1 Procedure Act ("APA"), shall instead and in place thereof be
2 submitted solely on the basis of the provisions of this
3 Stipulation and Agreement ("Stipulation").

4 2. Respondent has received, read and understands the
5 Statement to Respondent, the Discovery Provisions of the APA and
6 the Accusation filed by the Department of Real Estate in this
7 proceeding.

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

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

1 that the following determination of issues shall be made:

2 The conduct of LAURA G. STOPANI as described in
3 Paragraph 4, hereinabove, is a basis for discipline of
4 Respondent's license and license rights pursuant to Business and
5 Professions Code ("Code") Sections 10085, 10177(d) and 10177(g).

6 ORDER

7 WHEREFORE, THE FOLLOWING ORDER is hereby made:

8 All licenses and licensing rights of Respondent
9 LAURA G. STOPANI, under the Real Estate Law are revoked;
10 provided, however, a restricted real estate salesperson license
11 shall be issued to Respondent pursuant to Section 10156.5 of the
12 Business and Professions Code, if Respondent makes application
13 therefore and pays to the Department the appropriate fee within
14 90 days from the effective date of this Decision.

15 The restricted license issued to Respondent shall be
16 subject to all of the provisions of Section 10156.7 of the
17 Business and Professions Code and to the following limitations,
18 conditions and restrictions imposed under authority of Section
19 10156.6 of that code:

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

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

1 Respondent has violated provisions of the California Real Estate
2 Law, the Subdivided Lands Law, Regulations of the Real Estate
3 Commissioner, or conditions attaching to this restricted
4 license.

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

10 4. Respondent shall submit with any application for
11 license under an employing broker, or any application for
12 transfer to a new employing broker, a statement signed by the
13 prospective employing real estate broker on a form approved by
14 the Department of Real Estate which shall certify:

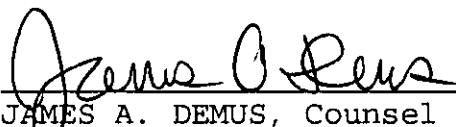
15 (a) That the employing broker has read the
16 Decision of the Commissioner which granted
17 the right to a restricted license; and

18 (b) That the employing broker will exercise
19 close supervision over the performance by
20 the restricted licensee relating to activities
21 for which a real estate license is required.

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

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

7
8
9 DATED: 9/19/11


10 JAMES A. DEMUS, Counsel for
the Department of Real Estate

11 * * *

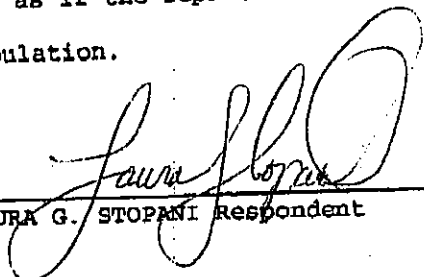
12 EXECUTION OF THE STIPULATION

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


24
25 Respondent can signify acceptance and approval of the
26 terms and conditions of this Stipulation by faxing a copy of its
27 signature page, as actually signed by Respondent, to the

1 Department at the following telephone/fax number: James A. Demus
 2 at (213) 576-6917. Respondent agrees, acknowledges and
 3 understands that by electronically sending to the Department a
 4 fax copy of Respondent's actual signature, as it appears on the
 5 Stipulation, that receipt of the faxed copy by the Department
 6 shall be as binding on Respondent as if the Department had
 7 received the original signed Stipulation.

9 DATED: 9-8-2011


 LAURA G. STOPANI Respondent

13 DATED: 9-9-11


 FRANK M. BUDA
 Attorney for Respondents

15 * * *

17 The foregoing Stipulation and Agreement is hereby
 18 adopted as my Decision as to Respondent LAURA G. STOPANI and
 19 shall become effective at 12 o'clock noon on
 20 _____, 2011.

21 IT IS SO ORDERED _____, 2011.

22 BARBARA J. BIGBY
 23 Acting Real Estate Commissioner

24 _____

1 Department at the following telephone/fax number: James A. Demus
2 at (213) 576-6917. Respondent agrees, acknowledges and
3 understands that by electronically sending to the Department a
4 fax copy of Respondent's actual signature, as it appears on the
5 Stipulation, that receipt of the faxed copy by the Department
6 shall be as binding on Respondent as if the Department had
7 received the original signed Stipulation.

8
9
10 DATED: _____

LAURA G. STOPANI Respondent

11
12
13 DATED: _____

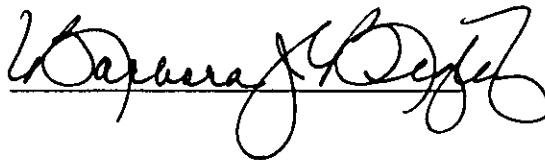
FRANK M. BUDA
Attorney for Respondents

14
15 * * *

16
17 The foregoing Stipulation and Agreement is hereby
18 adopted as my Decision as to Respondent LAURA G. STOPANI and
19 shall become effective at 12 o'clock noon on
20 OCT 31 2011, 2011.

21 IT IS SO ORDERED 10/4/11, 2011.

22
23 BARBARA J. BIGBY
Acting Real Estate Commissioner

24
25 
26
27

SACTO
Flag

FILED

OCT 10 2011

1 Department of Real Estate
2 320 W. 4TH Street, Suite 350
3 Los Angeles, CA 90013-1105
4
5 Telephone: (213) 576-6982
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8

DEPARTMENT OF REAL ESTATE
BY: *Guadalupe Velazquez*

9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 LOTUS PROPERTIES & MORTGAGE INC)
14 and FREDERICK GILBERT WENCK,)
15 individually and as former)
16 designated officer of Lotus)
17 Properties & Mortgage Inc and)
18 LAURA G. STOPANI,)
19 Respondents.)

No. H-36953 LA
L-2011010117

STIPULATION
AND
AGREEMENT

18 It is hereby stipulated by and between Respondent
19 FREDERICK GILBERT WENCK, represented by Frank M. Buda, Esq. and
20 the Complainant, acting by and through James A. Demus, Counsel
21 for the Department of Real Estate, as follows for the purpose of
22 settling and disposing of the Accusation filed on December 6,
23 2010, in this matter:

24 1. All issues which were to be contested and all
25 evidence which was to be presented by Complainant and Respondent
26 at a formal hearing on the Accusation, which hearing was to be
27 held in accordance with the provisions of the Administrative

1 Procedure Act ("APA"), shall instead and in place thereof be
2 submitted solely on the basis of the provisions of this
3 Stipulation and Agreement ("Stipulation").

4 2. Respondent has received, read and understands the
5 Statement to Respondent, the Discovery Provisions of the APA and
6 the Accusation filed by the Department of Real Estate in this
7 proceeding.

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

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

1 allegations.

2 5. This Stipulation is made for the purpose of
3 reaching an agreed disposition of this proceeding and is
4 expressly limited to this proceeding and any other proceeding or
5 case in which the Department of Real Estate ("Department"), the
6 state or federal government, or any agency of this state, another
7 state or federal government is a party.

8 6. It is understood by the parties that the Real
9 Estate Commissioner may adopt this Stipulation as her Decision in
10 this matter thereby imposing the penalty and sanctions on
11 Respondent's real estate license and license rights as set forth
12 in the "Order" herein below. In the event that the Commissioner
13 in her discretion does not adopt the Stipulation, it shall be
14 void and of no effect and Respondent shall retain the right to a
15 hearing and proceeding on the Accusation under the provisions of
16 the APA and shall not be bound by any stipulation or waiver made
17 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 but do
24 constitute a bar, estoppel and merger as to any allegations
25 actually contained in the Accusation against Respondent herein.

26 8. Respondent understands that by agreeing to this
27 Stipulation, Respondent agrees to pay, pursuant to Business and

1 Professions Code Section 10148, the cost of the audit which led
2 to this disciplinary action. The amount of said cost is
3 \$5,796.15.

4 9. Respondent has received, read, and understands the
5 "Notice Concerning Costs of Subsequent Audit." Respondent
6 further understands that by agreeing to this Stipulation, the
7 findings set forth below in the Determination of Issues become
8 final, and the Commissioner may charge Respondent for the cost of
9 any subsequent audit conducted pursuant to Business and
10 Professions Code Section 10148 to determine if the violations
11 have been corrected. The maximum cost of the subsequent audit
12 will not exceed \$5,796.15.

13 DETERMINATION OF ISSUES

14 By reason of the foregoing, it is stipulated and agreed
15 that the following determination of issues shall be made:

16 The conduct of FREDERICK GILBERT WENCK as described in
17 Paragraph 4, hereinabove, is a basis for discipline of
18 Respondent's license and license rights pursuant to Business and
19 Professions Code ("Code") Sections 10085, 10176(e), 10177(d),
20 10177(g) and 10177(h).

21 ORDER

22 WHEREFORE, THE FOLLOWING ORDER is hereby made:

23 I.

24 All licenses and licensing rights of Respondent
25 FREDERICK GILBERT WENCK, under the Real Estate Law are revoked;
26 provided, however, a restricted real estate broker license shall
27 be issued to Respondent pursuant to Section 10156.5 of the

1 Business and Professions Code, if Respondent makes application
2 therefore and pays to the Department the appropriate fee within
3 90 days from the effective date of this Decision.

4 The restricted license issued to Respondent shall be
5 subject to all of the provisions of Section 10156.7 of the
6 Business and Professions Code and to the following limitations,
7 conditions and restrictions imposed under authority of Section
8 10156.6 of that code:

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

14 2. The restricted license issued to Respondent may be
15 suspended prior to hearing by Order of the Real Estate
16 Commissioner on evidence satisfactory to the Commissioner that
17 Respondent has violated provisions of the California Real Estate
18 Law, the Subdivided Lands Law, Regulations of the Real Estate
19 Commissioner, or conditions attaching to this restricted
20 license.

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

26 4. Respondent shall, within nine months from the
27

1 effective date of this Decision, present evidence satisfactory
2 to the Real Estate Commissioner that Respondent has, since the
3 most recent issuance of an original or renewal real estate
4 license, taken and successfully completed the continuing
5 education requirements of Article 2.5 of Chapter 3 of the Real
6 Estate Law for renewal of a real estate license. If Respondent
7 fails to satisfy this condition, the Commissioner may order the
8 suspension of the restricted license until the Respondent
9 presents such evidence. The Commissioner shall afford
10 Respondent the opportunity for a hearing pursuant to the
11 Administrative Procedure Act to present such evidence.

12 5. Pursuant to Section 10148 of the Business and
13 Professions Code, Respondent shall pay the Commissioner's
14 reasonable cost for: a) the audit which led to this disciplinary
15 action and b) a subsequent audit to determine if Respondent has
16 corrected the trust fund violations found in the Determination of
17 Issues. In calculating the amount of the Commissioner's
18 reasonable cost, the Commissioner may use the estimated average
19 hourly salary for all persons performing audits of real estate
20 brokers, and shall include an allocation for travel costs,
21 including mileage, time to and from the auditor's place of work
22 and per diem. Respondent shall pay such costs within 60 days of
23 receiving an invoice from the Commissioner detailing the
24 activities performed during the audit and the amount of time
25 spent performing those activities. The Commissioner may, in his
26 discretion, vacate and set aside the stay order, if payment is
27 not timely made as provided for herein, or as provided for in a

1 subsequent agreement between the Respondent and the Commissioner.
2 The vacation and the set aside of the stay shall remain in effect
3 until payment is made in full, or until Respondent enters into an
4 agreement satisfactory to the Commissioner to provide for
5 payment.

6 II.

7 Respondent shall within six (6) months from the
8 effective date of the Decision herein, take and pass the
9 Professional Responsibility Examination administered by the
10 Department including the payment of the appropriate examination
11 fee. If Respondent fails to satisfy this condition,
12 the Commissioner may order suspension of Respondent's license
13 until Respondent passes the examination.

14
15
16 DATED: 9/9/11

James A. Demus
17 JAMES A. DEMUS, Counsel for
18 the Department of Real Estate

19 ***

20
21 EXECUTION OF THE STIPULATION


22 I have read the Stipulation and discussed it with my
23 counsel. Its terms are understood by me and are agreeable and
24 acceptable to me. I understand that I am waiving rights given to
25 me by the California Administrative Procedure Act (including but
26 not limited to Sections 11506, 11508, 11509 and 11513 of the
27

1 Government Code), and I willingly, intelligently and voluntarily
 2 waive those rights, including the right of requiring the
 3 Commissioner to prove the allegations in the Accusation at a
 4 hearing at which I would have the right to cross-examine
 5 witnesses against me and to present evidence in defense and
 6 mitigation of the charges.

7 Respondent can signify acceptance and approval of the
 8 terms and conditions of this Stipulation by faxing a copy of its
 9 signature page, as actually signed by Respondent, to the
 10 Department at the following telephone/fax number: James A. Demus
 11 at (213) 576-6917. Respondent agrees, acknowledges and
 12 understands that by electronically sending to the Department a
 13 fax copy of Respondent's actual signature, as it appears on the
 14 Stipulation, that receipt of the faxed copy by the Department
 15 shall be as binding on Respondent as if the Department had
 16 received the original signed Stipulation.

18
19 DATED:

9/9/11


~~FREDERICK GILBERT WENCK Respondent~~

21
22 DATED:

9-9-11


 FRANK M. BUDA
 Attorney for Respondents

23
24 ///

25 ///

26 ///

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1 Government Code), and I willingly, intelligently and voluntarily
2 waive those rights, including the right of requiring the
3 Commissioner to prove the allegations in the Accusation at a
4 hearing at which I would have the right to cross-examine
5 witnesses against me and to present evidence in defense and
6 mitigation of the charges.

7 Respondent can signify acceptance and approval of the
8 terms and conditions of this Stipulation by faxing a copy of its
9 signature page, as actually signed by Respondent, to the
10 Department at the following telephone/fax number: James A. Demus
11 at (213) 576-6917. Respondent agrees, acknowledges and
12 understands that by electronically sending to the Department a
13 fax copy of Respondent's actual signature, as it appears on the
14 Stipulation, that receipt of the faxed copy by the Department
15 shall be as binding on Respondent as if the Department had
16 received the original signed Stipulation.
17

18
19 DATED: _____

20 FREDERICK GILBERT WENCK Respondent

21
22 DATED: _____

23 FRANK M. BUDA
24 Attorney for Respondents

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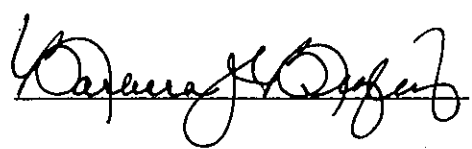
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* * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision as to Respondent FREDERICK GILBERT WENCK
and shall become effective at 12 o'clock noon on
OCT 31 2011, 2011.

IT IS SO ORDERED 10/4, 2011.

BARBARA J. BIGBY
Acting Real Estate Commissioner



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FILED

OCT 10 2011

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-36953 LA
)	L-2011010117
<u>LOTUS PROPERTIES & MORTGAGE INC,</u>)	
and <u>FREDERICK GILBERT WENCK,</u>)	
individually and as former)	
designated officer of Lotus)	
Properties & Mortgage Inc. and)	
LAURA G. STOPANI,)	
)	
)	
Respondents.)	

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On December 6, 2010, an Accusation was filed in this matter against Respondent LOTUS PROPERTIES & MORTGAGE INC. On September 8, 2011, Respondent petitioned the Commissioner to voluntarily surrender its real estate broker license(s) pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent LOTUS PROPERTIES & MORTGAGE INC's petition for voluntary surrender of its real estate broker license(s) is accepted as of the effective date of this Order as set forth below, based upon the understanding and

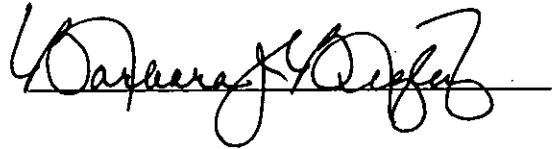
1 agreement expressed in Respondent's Declaration dated September 8,
2 2011 (attached as Exhibit "A" hereto). Respondent's license
3 certificate(s), pocket card(s) and any branch office license
4 certificate(s) shall be sent to the below listed address so that
5 they reach the Department on or before the effective date of this
6 Order:

7
8 DEPARTMENT OF REAL ESTATE
9 Attn: Licensing Flag Section
10 P. O. Box 187000
11 Sacramento, CA 95818-7000

12 This Order shall become effective at 12 o'clock noon
13 on OCT 31 2011

14 DATED: 10/4/11

15 BARBARA J. BIGBY
16 Acting Real Estate Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-36953 LA
)	L-2011010117
<u>LOTUS PROPERTIES & MORTGAGE INC</u>)	
and FREDERICK GILBERT WENCK,)	
individually and as former)	
designated officer of Lotus)	
Properties & Mortgage Inc and)	
LAURA G. STOPANI,)	
Respondents.)	

DECLARATION

My name is Frederick Gilbert Wenck and I am authorized and empowered to sign this declaration on behalf of LOTUS PROPERTIES & MORTGAGE INC, which is licensed as a real estate broker and/or has license rights with respect to said license. LOTUS PROPERTIES & MORTGAGE INC is represented in this matter by Frank M. Buda, Attorney at Law.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Government Code) LOTUS PROPERTIES & MORTGAGE INC wishes to voluntarily surrender its real estate

1 license issued by the Department of Real Estate ("Department"),
2 pursuant to Business and Professions Code Section 10100.2.

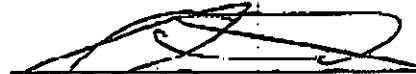
3 I understand that LOTUS PROPERTIES & MORTGAGE INC, by
4 so voluntarily surrendering its license, can only have it
5 reinstated in accordance with the provisions of Section 11522 of
6 the Government Code. I also understand that by so voluntarily
7 surrendering its license, LOTUS PROPERTIES & MORTGAGE INC agrees
8 to the following:

9 The filing of this Declaration shall be deemed as its
10 petition for voluntary surrender. It shall also be deemed to be
11 an understanding and agreement by LOTUS PROPERTIES & MORTGAGE INC
12 that it waives all rights it has to require the Commissioner to
13 prove the allegations contained in the Accusation filed in this
14 matter at a hearing held in accordance with the provisions of the
15 Administrative Procedure Act (Government Code Sections 11400 et
16 seq.), and that it also waives other rights afforded to it in
17 connection with the hearing such as the right to discovery, the
18 right to present evidence in defense of the allegations in the
19 Accusation and the right to cross-examine witnesses. I further
20 agree on behalf of LOTUS PROPERTIES & MORTGAGE INC that upon
21 acceptance by the Commissioner, as evidenced by an appropriate
22 order, all affidavits and all relevant evidence obtained by the
23 Department in this matter prior to the Commissioner's acceptance,
24 and all allegations contained in the Accusation filed in the
25 Department Case No. H-36953 LA, may be considered by the
26 Department to be true and correct for the purpose of deciding
27

1 whether or not to grant reinstatement of LOTUS PROPERTIES &
 2 MORTGAGE INC's license pursuant to Government Code Section 11522.

3 I declare under penalty of perjury under the laws of
 4 the State of California that the above is true and correct and
 5 that I am acting freely and voluntarily on behalf of LOTUS
 6 PROPERTIES & MORTGAGE INC to surrender its license and all
 7 license rights attached thereto.

8 a/s/11
 9 Date and Place


 10 LOTUS PROPERTIES & MORTGAGE
 11 INC by
 12 FREDERICK GILBERT WENCK

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1 whether or not to grant reinstatement of LOTUS PROPERTIES &
2 MORTGAGE INC's license pursuant to Government Code Section 11522.

3 I declare under penalty of perjury under the laws of
4 the State of California that the above is true and correct and
5 that I am acting freely and voluntarily on behalf of LOTUS
6 PROPERTIES & MORTGAGE INC to surrender its license and all
7 license rights attached thereto.

8

9 _____
Date and Place

_____ LOTUS PROPERTIES & MORTGAGE
INC by
FREDERICK GILBERT WENCK

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FILED

DEC - 6 2010

1 JAMES DEMUS, Counsel (SBN 225005)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

DEPARTMENT OF REAL ESTATE
BY: James B. Demus

5 Telephone: (213) 576-6982
6 (Direct) (213) 576-6910
7

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11	In the Matter of the Accusation of)	No. H-36953 LA
12	LOTUS PROPERTIES & MORTGAGE INC,)	<u>A C C U S A T I O N</u>
13	and FREDERICK GILBERT WENCK,)	
14	individually, and as former)	
15	designated officer of Lotus)	
16	Properties & Mortgage Inc and)	
17	LAURA G. STOPANI,)	
	Respondents.)	

18 The Complainant, Robin Trujillo, a Deputy Real Estate
19 Commissioner of the State of California, for cause of Accusation
20 against LOTUS PROPERTIES & MORTGAGE INC and FREDERICK GILBERT
21 WENCK, individually, and as former designated officer of Lotus
22 Properties & Mortgage Inc and LAURA G. STOPANI alleges as
23 follows:

24 1.

25 The Complainant, Robin Trujillo, acting in her official
26 capacity as a Deputy Real Estate Commissioner of the State of
27

1 California, makes this Accusation against LOTUS PROPERTIES &
2 MORTGAGE INC and FREDERICK GILBERT WENCK, individually, and as
3 former designated officer of Lotus Properties & Mortgage Inc and
4 LAURA G. STOPANI.

5 2.

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

9 LICENSE HISTORY

10 3.

11 A. At all times mentioned, LOTUS PROPERTIES & MORTGAGE
12 INC ("LOTUS") and FREDERICK GILBERT WENCK ("WENCK") were licensed
13 or had license rights issued by the Department of Real Estate
14 ("Department") as real estate brokers.

15 B. LOTUS was licensed by the Department as a corporate
16 real estate broker by and through WENCK, as the designated
17 officer and broker responsible, pursuant to Code Section 10159.2
18 for supervising the activities requiring a real estate license
19 conducted on behalf of LOTUS, or by LOTUS's officers, agents and
20 employees, including WENCK. LOTUS's license expired on September
21 29, 2009. Pursuant to Business and Professions Code Section
22 10201, Respondent retains renewal rights for two years. The
23 Department of Real Estate holds jurisdiction over the lapsed
24 license, pursuant to Business and Professions Code Section 10103.

25 C. At all times mentioned, FREDERICK GILBERT WENCK
26 ("WENCK") was licensed or had license rights issued by the
27 Department as a real estate broker. On September 30, 2005,

1 WENCK was licensed as the designated officer of LOTUS. WENCK
2 expired as designated officer of LOTUS on September 29, 2009.

3 D. At all times mentioned, LAURA G. STOPANI
4 ("STOPANI") was licensed or had license rights issued by the
5 Department as a real estate salesperson. From January 31, 2005
6 to January 14, 2009, STOPANI was employed by WENCK. From March
7 18, 2009 to February 15, 2010, STOPANI was employed by LOTUS.

8 BROKERAGE

9 LOTUS PROPERTIES & MORTGAGE INC

10 4.

11 At all times mentioned, LOTUS and WENCK acted as real
12 estate brokers conducting licensed activities within the meaning
13 of Code Sections 10131(a) and 10131(d) by selling or offering to
14 sell real property, and by collecting payments or performing
15 services for borrowers in connection with loans secured directly
16 or collaterally by liens on real property.

17 AUDIT

18 LOTUS PROPERTIES & MORTGAGE INC

19 5.

20 On April 26, 2010, the Department completed an audit
21 examination of the books and records of LOTUS, pertaining to the
22 mortgage and loan activities described in Paragraph 4 which
23 require a real estate license. The audit examination covered a
24 period of time beginning on January 1, 2007 to December 31, 2009.
25 The audit examination revealed violations of the Code and the
26 Regulations as set forth in the following paragraphs, and as more
27 fully discussed in Audit Report LA090103 and the exhibits and

1 workpapers attached to said audit report.

2 TRUST ACCOUNT

3 6.

4 During the audit period LOTUS did not maintain a trust
5 account.

6 VIOLATIONS OF THE REAL ESTATE LAW

7 7.

8 In the course of activities described in Paragraph 4
9 above, and during the examination period described in Paragraph
10 5, Respondents LOTUS and WENCK acted in violation of the Code and
11 the Regulations in that:

12 (a) Advance fees received were not deposited into a
13 trust account. Instead, advance fees were deposited and
14 commingled with LOTUS's funds in its general account, in
15 violation of Code Sections 10145 and 10176(e), as well as
16 Regulation 2835(b).

17 (b) LOTUS and WENCK did not maintain control records
18 for each account into which trust funds collected from loan
19 modifications were deposited, in violation of Code Section
20 10145(a) and Regulation 2831.

21 (c) LOTUS and WENCK did not maintain a separate record
22 of trust funds received and disbursed for each borrower in loan
23 modification transactions, in violation of Code Section 10145 and
24 Regulation 2831.1.

25 (d) LOTUS and WENCK did not maintain a written monthly
26 reconciliation of receipt and disbursement records, with the
27 total balance of separate beneficiary records for the bank

1 account used to handle advance fees. This violated Code Section
2 10145 and Regulation 2831.2.

3 (e) Bank account No. 020280044, which was used for
4 real estate activities, was not designated as a trust account
5 during the audit period. This violated Code Section 10145 and
6 Regulation 2832.

7 (f) LOTUS received advance fees for the purpose of
8 performing loan modification services prior to obtaining an
9 approved advance fee agreement from the Real Estate Commissioner,
10 in violation of Code Section 10085 and Regulation 2970.

11 (g) LOTUS deposited advance fees collected from
12 borrowers into a general business account which was not in the
13 broker's name as trustee and was not designated as a trust
14 account, in violation of Code Section 10146.

15 (h) LOTUS collected advance fees from borrowers in
16 loan modification transactions without maintaining accounting
17 content for borrowers that showed: services to be rendered; the
18 trust account into which funds were deposited; and details of how
19 the funds were disbursed. This violated Regulation 2972.

20 (i) LOTUS collected an advance fee for a loan
21 modification on October 17, 2009, after receiving the SB94
22 "Advance Fee Prohibition" letter issued by the Department, in
23 violation of Code Section 10085.6.

24 (j) The mortgage loan disclosures found in seven out
25 of ten loan files examined revealed that LOTUS did not disclose
26 its license number to borrowers, in violation of Code Section
27 10236.4.

1 (k) The mortgage loan disclosures in some loan files
2 did not contain the term and/or type of loan and did not disclose
3 the anticipated and/or current amount of line that was on the
4 secured real property. The mortgage loan disclosures were also
5 inaccurate, in listing broker fees under "paid to others." This
6 violated Code Section 10240 and Regulation 2840

7 (l) The salesperson license certificates of Vu T. Huynh
8 and Kenneth Marc Moss were not retained at LOTUS's main business
9 office and were not available for inspection during the audit, in
10 violation of Code Section 10160 and Regulation 2753.

11 (m) LOTUS and WENCK failed to notify the Department of
12 the termination of employment of Michael Norton and Christina
13 Williams within ten (10) days, in violation of Code Section
14 10161.8 and Regulation 2752.

15 (n) LOTUS used the fictitious business names "Lotus
16 Ventures Real Estate & Development LLC", "Lotus Properties &
17 Mortgage" and "Lotus Properties & MTG" in connection with
18 mortgage loan activities during the audit period without first
19 obtaining a license from the Department bearing the fictitious
20 names, in violation of Code Section 10159.5 and Regulation 2731.

21 (o) LOTUS engaged in the business of a real estate
22 broker when it was not in good legal standing with the Secretary
23 of State for the State of California, in violation of Regulation
24 2742(c).

25 (p) LOTUS performed a loan modification after its
26 corporate license expired on September 29, 2009, in violation of
27 Code Section 10130.

8.

The conduct of Respondents LOTUS and WENCK, as described in Paragraph 7, above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
7(a)	Code Sections 10145 and 10176(e) and Regulation 2835(b)
7(b)	Code Section 10145(a) and Regulation 2831
7(c)	Code Section 10145 and Regulation 2831.1
7(d)	Code Section 10145 and Regulation 2831.2
7(e)	Code Sections 10145 and Regulation 2832
7(f)	Code Section 10085 and Regulation 2970
7(g)	Code Section 10146
7(h)	Regulation 2972

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- 7(i) Code Section 10085.6
- 7(j) Code Section 10236.4
- 7(k) Code Section 10240 and Regulation 2840
- 7(l) Code Section 10160 and Regulation 2753
- 7(m) Code Section 10161.8 and Regulation 2752
- 7(n) Code Section 10159.5 and Regulation 2731
- 7(o) Regulation 2742(c)
- 7(p) Regulation 10130

The foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of LOTUS and WENCK, under the provisions of Code Sections 10085, 10176(e), 10177(d) and/or 10177(g).

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///

1 NEGLIGENCE

2 9.

3 The overall conduct of Respondents LOTUS and WENCK
4 constitutes negligence or incompetence. This conduct is cause
5 for the suspension or revocation of the real estate license and
6 license rights of said Respondents pursuant to Code Section
7 10177(g).

8 SUPERVISION AND COMPLIANCE

9 10.

10 The overall conduct of Respondent WENCK constitutes a
11 failure on his part, as officer designated by a corporate broker
12 licensee, to exercise the reasonable supervision and control over
13 the licensed activities of LOTUS as required by Code Section
14 10159.2, and to keep LOTUS in compliance with the Real Estate
15 Law, and is cause for the suspension or revocation of the real
16 estate license and license rights of WENCK pursuant to the
17 provisions of Code Sections 10177(d), 10177(g) and 10177(h).

18 ADVANCE FEES COLLECTED BY STOPANI

19 11.

20 On October 13, 2008 and October 18, 2008, STOPANI
21 collected two separate \$1,000 checks from Flavia Rodriguez De
22 Haro as advance fees for a loan modification to be performed by
23 LOTUS on behalf of Ms. De Haro.

24 12.

25 On December 16, 2008, STOPANI collected advance fees of
26 \$2,000 from Marta Penate for the right to enter into a Short
27 Sale/ Loan Modification contract with LOTUS.

13.

2 The fees collected by STOPANI, as described in
3 Paragraphs 11 and 12 above, constitute advance fee agreements
4 within the meaning of Code Section 10026. STOPANI and LOTUS
5 failed to submit the advance fee agreements referred to in
6 Paragraphs 11 and 12 above, to the Commissioner ten days before
7 using them, in violation of Code Section 10085 and Regulation
8 2970. This provides cause for the suspension or revocation of
9 the licenses and license rights of STOPANI pursuant to Code
10 Sections 10085, 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 Respondents
5 LOTUS PROPERTIES & MORTGAGE INC and FREDERICK GILBERT WENCK,
6 individually, and as designated officer of Lotus Properties &
7 Mortgage Inc and LAURA G. STOPANI under the Real Estate Law (Part
8 1 of Division 4 of the Business and Professions Code) and for
9 such other and further relief as may be proper under other
10 applicable provisions of law.

11 Dated at Los Angeles, California

12
13 this 7 day of October, 2010.

14 
15 _____
16 Robin Trujillo
17 Deputy Real Estate Commissioner

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24 CC: LOTUS PROPERTIES & MORTGAGE INC
25 c/o FREDERICK GILBERT WENCK D.O.
26 LAURA G. STOPANI
27 Robin Trujillo
Sacto
Audits (Daryl M. Thomas)