

**FILED**

DEC - 4 2012

1 Department of Real Estate  
2 320 West 4th Street, Suite 350  
3 Los Angeles, California 90013-1105

DEPARTMENT OF REAL ESTATE

BY: James B. Demus

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6  
7 DEPARTMENT OF REAL ESTATE

8 STATE OF CALIFORNIA

9 \* \* \* \*

10  
11 In the Matter of the Accusation of )  
12 LRP CAPITAL CORP and DANIEL J. )  
13 KELLY, individually, and formerly )  
14 as designated officer of LRP )  
15 Capital Corp, )  
16 Respondents. )

DRE NO: H-37755 LA  
OAH NO: 2012010915

STIPULATION AND  
AGREEMENT

17  
18 It is hereby stipulated by and between DANIEL J. KELLY,  
19 represented in this matter by Mary E. Work, 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 in this matter:

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

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  
13 to 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 and the right to cross-examine  
18 witnesses.

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

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 factual allegations in the  
7 Accusation and is made for the sole purpose of reaching an agreed  
8 disposition of this proceeding. The decision of Respondent not  
9 to contest the allegations contained in the "Order" herein below,  
10 is made solely for the purpose of effectuating this Stipulation.  
11 It is the intent and understanding of the parties that this  
12 Stipulation shall not be binding or admissible against Respondent  
13 in any actions against Respondent by third parties.

14           6. It is understood by the parties that the Real  
15 Estate Commissioner may adopt the Stipulation as his 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 his 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 APA and shall not be bound by any admission or waiver made  
23 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.

3 DETERMINATION OF ISSUES

4 By reason of the foregoing stipulations and solely for  
5 the purpose of settlement of the Accusation without a hearing, it  
6 is stipulated and agreed that the following determination of  
7 issues shall be made:

8 The conduct of DANIEL J. KELLY, as described in  
9 Paragraph 4, above is a basis for discipline of Respondent's  
10 license and license rights pursuant to California Business and  
11 Profession Code Section 10177(h).

12 ORDER

13 WHEREFORE THE FOLLOWING ORDER IS MADE PURSUANT TO THE  
14 WRITTEN STIPULATION OF THE PARTIES:

15 I

16 Respondent DANIEL J. KELLY is publicly reprovded.

17 II

18 Respondent DANIEL J. KELLY shall within six (6) months  
19 from the effective date of the Decision herein, take and pass the  
20 Professional Responsibility Examination administered by the  
21 Department including the payment of the appropriate examination  
22 fee. If Respondent fails to satisfy this condition,  
23 the Commissioner may order suspension of Respondent DANIEL J.  
24 KELLY's license until Respondent passes the examination.

25 III

26 Respondent DANIEL J. KELLY shall, by the effective of  
27 the Decision herein, provide proof satisfactory to the

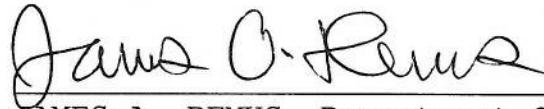


1 Commissioner of restitution of \$2,500 to Richard and Donna Kilgo.  
2 If Respondent fails to satisfy this condition, the Commissioner  
3 may order suspension of Respondent's license until Respondent  
4 provides proof satisfactory to the Commissioner.

5 IV

6 All proof of payment and completed coursework shall be  
7 submitted to Department Counsel James A. Demus, Attention: Legal  
8 Section, Department of Real Estate, 320 W. Fourth St., Suite 350,  
9 Los Angeles, California 90013-1105, on or before the dates set  
10 forth above.

11 DATED: 8/29/12



12 JAMES A. DEMUS, Department Counsel

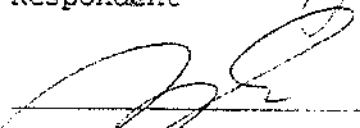
13 EXECUTION OF THE STIPULATION

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

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

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

8  
9 DATED: 8/29/12   
10 DANIEL J. KELLY  
11 Respondent

12 DATED: 8/29/12   
13 MARY E. WORK  
14 Counsel for Respondent

15 \* \* \* \*

16 The foregoing Stipulation and Agreement is hereby  
17 adopted as my Decision and shall become effective at 12 o' clock  
18 noon on \_\_\_\_\_, 2012.

19 IT IS SO ORDERED \_\_\_\_\_, 2012.  
20 Real Estate Commissioner  
21 \_\_\_\_\_  
22 \_\_\_\_\_  
23 \_\_\_\_\_  
24 \_\_\_\_\_  
25 \_\_\_\_\_  
26 \_\_\_\_\_  
27 \_\_\_\_\_

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5 faxed copy by the Department shall be as binding on Respondent as  
6 if the Department had received the original signed Stipulation  
7 and Agreement.

8  
9 DATED: \_\_\_\_\_ DANIEL J. KELLY  
10 Respondent

11  
12 DATED: \_\_\_\_\_ MARY E. WORK  
13 Counsel for Respondent  
14

15 \* \* \* \*

16 The foregoing Stipulation and Agreement is hereby  
17 adopted as my Decision and shall become effective at 12 o' clock  
18 noon on DEC 24 2012, 2012.

19 IT IS SO ORDERED October 24, 2012.

20 Real Estate Commissioner

21  
22 

23 By WAYNE S. BELL  
Chief Counsel