

Floyd - daeto

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FILED

APR 08 2019

DEPT. OF REAL ESTATE
By *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of

No. H-41342 LA

12
13 RICK ALAN FLOYD

ACCUSATION

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16 Respondent.

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19 The Complainant, Maria Suarez, a Supervising Special Investigator of the State
20 of California, for cause of Accusation against RICK ALAN FLOYD, a.k.a. Rene Alan Floyd
21 a.k.a. Rich Alan Floyd ("FLOYD" or "Respondent") alleges as follows:

22 1.

23 The Complainant, Maria Suarez, a Supervising Special Investigator of the State
24 of California, makes this Accusation in her official capacity.

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27 DRE Accusation – RICK ALAN FLOYD

2.

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

LICENSE HISTORY

3.

RICK ALAN FLOYD

A. Respondent RICK ALAN FLOYD ("FLOYD") is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a real estate broker ("REB"), California Department of Real Estate ("Department" or "DRE") license ID 00696425.

B. FLOYD has been licensed as a REB by the Department since May 14, 1997.

C. Prior to his licensure as a REB, FLOYD was licensed by the Department as a real estate salesperson ("RES") on or about April 4, 1979.

D. According to DRE records to date, FLOYD's mailing address of record is: P.O. Box 9291, Newport Beach, CA 92658-9291 ("P.O. Box"), and FLOYD's main office address of record is: 15 Pine Valley Lane, Newport Beach, CA 92660 ("Pine Valley address").

E. According to DRE records to date, FLOYD has two (2) active DBAs under his DRE license:

1) American Bankers Mortgage ("ABM"), active as of August 1, 1997,
and

2) American Bankers Real Estate ("ABRE"), active as of June 21, 2012.

F. According to DRE records to date, FLOYD has no branch offices under his DRE license

G. According to DRE records to date, FLOYD has one (1) RES under his DRE license.

1 H. FLOYD holds Mortgage Loan Originator (“MLO”) License Endorsement,
2 Nationwide Multistate Licensing System (“NMLS”) ID 360323. According to
3 www.nmlsconsumeraccess.org, FLOYD’s NMLS is inactive and he is not authorized to conduct
4 business.

5 I. FLOYD’s DRE license will expire on May 18, 2021.

6 **APPLICABLE SECTIONS OF THE REAL ESTATE LAW**

7 **Real Estate Broker License Required - Code Sections 10130 and 10131(d)**

8 4.

9 Pursuant to Code Section 10130 *License Required*, “It is unlawful for any person
10 to engage in the business of, act in the capacity of, advertise as, or assume to act as a real estate
11 broker or a real estate salesperson within this state without first obtaining a real estate license
12 from the department, or to engage in the business of, act in the capacity of, advertise as, or
13 assume to act as a mortgage loan originator within this state without having obtained a license
14 endorsement. The commissioner may prefer a complaint for violation of this section before any
15 court of competent jurisdiction, and the commissioner and his or her counsel, deputies, or
16 assistants, may assist in presenting the law or facts at the trial. *Prosecution of Violations:* It is
17 the duty of the district attorney of each county in this state to prosecute all violations of this
18 section in their respective counties in which the violations occur.”

19 5.

20 Pursuant to Code Section 10131 *Broker Defined*, “A real estate broker within
21 this meaning of this part is a person who, for a compensation or in expectation of a
22 compensation, regardless of the form or time of payment, does or negotiates to do one or more
23 of the following acts for another or others: ... (d) Solicits borrowers or lenders for or negotiates
24 loans or collects payments or performs services for borrowers or lenders or note owners in
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1 connection with loans secured directly or collaterally by liens on real property or on a business
2 opportunity...”

3 **Retention of Funds - Code Section 10231.1**

4 6.

5 Pursuant to Code Section 10231.1 *Retention of Funds*, “No person in doing any
6 of the acts set forth in subdivision (d) of Section 10131, subdivision (e) of Section 10131, and
7 Section 10131.1 shall, as agent or principal, retain funds payable according to the terms of a
8 promissory note or real property sales contract secured directly or collaterally by a lien on real
9 property, for a period longer than 25 days, except pursuant to a written agreement with the
10 purchaser or lender.”

11 **Disclosure Statement - Code Section 10232.5**

12 7.

13 Pursuant to Code Section 10232.5 *Disclosure Statement Content*, “(a) If the real
14 estate broker is performing acts described in subdivision (d) of Section 10131 in negotiating a
15 loan to be secured by a lien on real property or on a business opportunity, the statement required
16 to be given to the prospective lender shall include, but shall not necessarily be limited to, the
17 following information:

18 (1) Address or other means of identification of the real property that is to
19 be the security for the borrower’s obligation.

20 (2) Estimated fair market value of the securing property as determined by
21 an appraisal, a copy of which shall be provided to the lender. However, a
22 lender may waive the requirement of an independent appraisal in writing,
23 on a case-by-case basis, in which case, the real estate broker shall provide
24 the broker’s written estimated fair market value of the securing property,
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1 which shall include the objective data upon which the broker's estimate
2 is based.

3 (3) Age, size, type of construction, and a description of improvements to
4 the property if contained in the appraisal or as represented to the broker
5 by the prospective borrower."

6 (4) Identity, occupation, employment, income, and credit data about the
7 prospective borrower or borrowers as represented to the broker by the
8 prospective borrower or borrowers.

9 (5) Terms of the promissory note to be given to the lender.

10 (6) Pertinent information concerning all encumbrances which constitute
11 liens against the securing property and, to the extent of actual knowledge
12 of the broker, pertinent information about other loans that the borrower
13 expects or anticipates will result in a lien being recorded against the
14 property securing the promissory note to be created in favor of the
15 prospective lender. As used in this paragraph, actual knowledge with
16 respect to any anticipated or expected loan, means knowledge gained by
17 the broker through arranging that other loan or receipt of written
18 notification of that other loan. In this regard, the broker shall also
19 provide to the prospective lender the option to apply to purchase a title
20 insurance policy or an endorsement to an existing title insurance policy
21 covering the securing property, and a copy of a written loan application,
22 and a credit report.

23 (7) Provisions for servicing of the loan, if any, including disposition of
24 the late charge and prepayment penalty fees paid by the borrower.

1 (8) Detailed information concerning any proposed arrangement under
2 which the prospective lender along with persons not otherwise associated
3 with him or her will be joint beneficiaries or obliges.

4 (9) If the solicitation is subject to the provisions of Section 10231.2, a
5 detailed statement of the intended use and disposition of the funds being
6 solicited including an explanation of the nature and extent of the benefits
7 to be directly or indirectly derived by the broker...

8 **Authorization – Promissory Note - Code Sections 10233 and 10238**

9 8.

10 Pursuant to Code Section 10233 *Authorization Required to Service Promissory*
11 *Note*, “A real estate licensee who undertakes to service a promissory note secured directly or
12 collaterally by a lien on real property or a real property sales contract shall comply with each of
13 the following requirements:

14 (a) The licensee shall have a written authorization from the borrower, the lender,
15 or the owner of the note or contract, that is included within the terms of a written servicing
16 agreement that satisfies the requirements of paragraphs (1), (2), (4), and (5) of subdivision (k)
17 of Section 10238...”

18 9.

19 Pursuant to Code Section 10238(k) (Exemption from Securities Qualification),
20 “The notes or interests shall be sold subject to a written agreement that obligates a licensed real
21 estate broker, or a person exempted from the licensing requirement for real estate brokers under
22 this chapter, to act as agent for the purchasers or lenders to service the note or notes and deed of
23 trust, including the receipt and transmission of payments and the institution of foreclosure
24 proceedings in the event of a default. A copy of this servicing agreement shall be delivered to
25 each purchaser. The broker shall offer to the lenders or purchasers the services of the broker or
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1 one or more affiliates of the broker, or both, as servicing agent for each transaction conducted
2 pursuant to this article. The agreement shall require all of the following:

3 (1)(A) That payments received on the note or notes be deposited
4 immediately to a trust account maintained in accordance with this section
5 and with the provisions for trust accounts of licensed real estate brokers
6 contained in Section 10145 and Article 15 (commencing with Section
7 2830.1) of Chapter 6 of Title 10 of the California Code of Regulations.

8 (B) That payments deposited pursuant to subparagraph (A) shall not be
9 commingled with the assets of the servicing agent or used for any
10 transaction other than the transaction for which the funds are received.

11 (2) That payments received on the note or notes shall be transmitted to
12 the purchasers or lenders pro rata according to their respective interests
13 within 25 days after receipt thereof by the agent. If the source for the
14 payment is not the maker of the note, the agent shall inform the
15 purchasers or lenders in writing of the source for payment. A broker or
16 servicing agent who transmits to the purchaser or lenders the broker's or
17 servicing agent's own funds to cover payments due from the borrower
18 but unpaid as a result of a dishonored check may recover the amount of
19 the advances from the trust fund when the past due payment is received.
20 However, this article does not authorize the broker, servicing agent, or
21 any other person to issue, or to engage in any practice constituting, any
22 guarantee or to engage in the practice of advancing payments on behalf of
23 the borrower.

24 ...

1 (4) Unless the servicing agent will receive notice pursuant to Section
2 2924b of the Civil Code, the servicing agent shall file a written request
3 for notice of default upon any prior encumbrances and promptly notify
4 the purchasers or lenders of any default on the prior encumbrances or on
5 the note or notes subject to the servicing agreement.

6 (5) The servicing agent shall promptly forward copies of the following to
7 each purchaser or lender:

8 (A) Any notice of trustee sale filed on behalf of the purchasers or
9 lenders.

10 (B) Any request for reconveyance of the deed of trust received on
11 behalf of the purchasers or lenders.”

12 **Recordation of Trust Deeds, Assignments – Code Section 10234**

13 10.

14 Pursuant to Code Section 10234 *Recordation of Trust Deeds, Assignments*, “(a)
15 Except as provided in subdivision (d), every real estate licensee who negotiates a loan secured
16 by a trust deed on real property shall cause the trust deed to be recorded, naming as beneficiary
17 the lender or his or her nominee (who shall not be the licensee or the licensee’s nominee), with
18 the county recorder of the county in which the real property is located prior to the time that any
19 funds are disbursed, except when the lender has given written authorization for prior
20 release...(c) Every real state licensee who sells, exchanges, or negotiates the sale or exchange of
21 a real property sales contract or a promissory note secured by a trust deed on real property shall
22 cause a proper assignment of the real property sales contract or trust deed to be executed and
23 shall cause the assignment to be recorded, naming as assignee the purchase or his or her
24 nominee (who shall not be the licensee or the licensee’s nominee), with the county recorder of
25 the county in which the real property is located within 10 working days after the licensee or
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1 seller receives any funds from the buyer or after close of escrow; or shall deliver the real
2 property sales contract or trust deed to the purchaser with a written recommendation that the
3 assignment thereof be recorded forthwith...”

4 **Delivery of Deed of Trust – Code Section 10234.5**

5 11.

6 Pursuant to Code Section 10234.5 *Delivery of Copies of Deed of Trust*, “In
7 addition to the requirements of Section 10234, in the placing of any loan, a broker shall deliver
8 or cause to be delivered conformed copies of any deed of trust to both the investor or lender and
9 the borrower within a reasonable amount of time from the date of recording.”

10 **Disclosure Statements – Code Section 10240 and Regulation 2840**

11 12.

12 Pursuant to Code Section 10240 *Written Disclosure Statement*, “(a) Every real
13 estate broker, upon acting within the meaning of subdivision (d) of Section 10131, who
14 negotiates a loan to be secured directly or collaterally by a lien on real property shall, within
15 three business days after receipt of a completed written loan application or before the borrower
16 becomes obligated on the note, whichever is earlier, cause to be delivered to the borrower a
17 statement in writing, containing all the information required by Section 10241. It shall be
18 personally signed by the borrower and by the real estate broker negotiating the loan or by a real
19 estate licensee acting for the broker in negotiating the loan. When so executed, an exact copy
20 thereof shall be delivered to the borrower at the time of its execution. The real estate broker
21 negotiating the loan shall retain on file for a period of three years a true and correct copy of the
22 statement as signed by the borrower. No real estate licensee shall permit the statement to be
23 signed by a borrower if any information required by Section 10241 is missing...”

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Pursuant to Regulation 2840 *Approved Borrower Disclosure Statements*, "(a) The Commissioner shall publish and make available to interested persons as official forms of the Bureau of Real Estate Forms RE 882 (Rev. 8/08) and RE 883 (Rev. 8/08) which are incorporated by referenced. Forms RE 882 and RE 883 contain approved format and content for the disclosure statement required by subdivision (a) of Section 10240 of the Code and Section 10241 of the Code. (b) The publication of the forms pursuant to subdivision (a) hereof is for the purpose of aiding real estate licensees in providing the disclosure of material information to prospective borrowers in a uniform and effective manner. (c) A real estate broker must obtain the prior written approval of the Commissioner if he/she wishes to use forms different than those referred to in (a). Forms that do not adequately provide the information required by the forms in subsection (a) above, as appropriate, and in a format that is easily used by the Bureau will not be approved."

Chargeable Costs and Expenses -- Regulation 2843

Pursuant to Regulation 2843 *Restrictions on Chargeable Costs and Expenses*, "No "costs and expenses of making the loan" referred to in Section 10241(a) which have not been paid, incurred or reasonably earned by the broker shall be charged to the borrower. No fee may be charged to a borrower as part of the costs and expenses of making the loan which exceeds the fee customarily charged for the same or comparable service in the community where the service was rendered. If the escrow depositary for a loan transaction is a licensed escrow agent, a title insurance company, a bank or trust company or a savings and loan association, and a fee is charged to the borrower by the escrow depositary for the escrow function, no additional fee may be charged by the broker, a salesperson licensed to the broker or any entity controlled by the broker for services related to the conduct of an escrow."

1 (b) The commissioner shall charge a real estate broker for the cost of any audit,
2 if the commissioner has found, in a final desist and refrain order issued under Section 10086 or
3 in a final decision following a disciplinary hearing held in accordance with Chapter 5
4 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code
5 that the broker has violated Section 10145 or a regulation or rule of the commissioner
6 interpreting Section 10145.

7 (c) If a broker fails to pay for the cost of an audit as described in subdivision (b)
8 within 60 days of mailing a notice of billing, the commissioner may suspend or revoke the
9 broker's license or deny renewal of the broker's license. The suspension or denial shall remain
10 in effect until the cost is paid or until the broker's right to renew a license has expired.

11 (d) The commissioner may maintain an action for the recovery of the cost of an
12 audit in any court of competent jurisdiction. In determining the cost incurred by the
13 commissioner for an audit, the commissioner may use the estimated average hourly cost for all
14 persons performing audits of real estate brokers.

15 (e) The Department may suspend or revoke the license of any real estate broker,
16 real estate salesperson, or corporation licensed as a real estate broker, if the real estate broker,
17 real estate salesperson, or any director, officer, employee, or agent of the corporation licensed as
18 a real estate broker knowingly destroys, alters, conceals, mutilates, or falsifies any of the books,
19 papers, writings, documents, or tangible objects that are required to be maintained by this
20 section or that have been sought in connection with an investigation, audit, or examination of a
21 real estate licensee by the commissioner.”

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1 VIOLATIONS OF THE REAL ESTATE LAW – CAUSES FOR DISCIPLINE

2 American Bankers, LLC

3 16.

4 A. On or about February 20, 2014, FLOYD signed and filed Articles of
5 Organization of a Limited Liability Company (LLC) for American Bankers, LLC (“AB”) with
6 the California Secretary of State (“SoS”). FLOYD signed as the agent for service of process as
7 well as the sole organizer.

8 B. On or about June 2, 2014, FLOYD signed and filed a Statement of
9 Information (“Statement”) for American Bankers, LLC, with the SoS, and listed himself as the
10 Chief Executive Officer and his Pine Valley address as its principal office. The business was
11 described on the Statement as “mortgage brokerage.” FLOYD signed as the manager.

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J.W. Loan Transactions

17.

Between on or about May 27, 2014 and continuing until August 18, 2016, FLOYD conducted real estate activities which required a real estate license pursuant to Code Section 10131(d). According to the loan servicing agreements between FLOYD (A.B.) and J.W., FLOYD collected funds from and originated eight (8) mortgage loans with John W. ("J.W.") as the lender to a third-party borrower, and the loans secured by real property. FLOYD represented to J.W. that he would perform due diligence in evaluating borrowers' credit and ability to repay the loans and that the loans would be constructed to reflect J.W. as the owner of the funds. FLOYD would negotiate the interest rates and loan terms and conduct title searches for each property to identify existing liens. The properties through which FLOYD arranged loans with J.W. are:

<u>Property</u>	<u>Check Date</u>	<u>Amount</u>	<u>Loan Maturity Date</u>
769 Wilson St.	8/18/16	\$50,000	December 2019
3061 Capri Ln.	8/8/16	\$55,000	N/A
817 Louise St.	6/23/14	\$60,000	June 2019
30269 Callaway Circle	4/7/16	\$110,000	May 2019
58 Candeloria	5/27/14	\$180,000	June 2019
653 Sunset Ave.	4/27/16	\$160,000	June 2019
653 Sunset Ave. (additional payment)	8/18/16	\$20,000	
427-429 W. 93 rd St.	8/8/16	\$30,000	June 2019
1 Half Moon Bay Dr.	8/18/16	\$150,000	December 2019
Total		\$815,000	

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2 A. FLOYD provided to J.W. a copy of a RE 851A Lender/Purchaser Statement
3 ("Form RE 851A form") for the 30269 Callaway Circle loan. FLOYD did not provide to J.W. a
4 RE 851A form for the other seven (7) properties. FLOYD provided to J.W. a loan cover sheet
5 for some of the loans that included general loan terms, investor rate of return, borrowers'
6 qualifications, existing liens and purpose of the loan; however, the loan cover sheets provided
7 failed to meet the Department's requirements of a Lender Purchaser Disclosure Statement, as no
8 language was included that pertained to:

- 9 1) the occupation, employment, income and credit data of the borrower;
10 2) the estimated fair market value as determined by an independent
11 appraisal (with a copy of said appraisal), or a written waiver by the lender
12 of said appraisal;
13 3) terms of servicing the loan, including late charges and prepayment
14 penalties; and
15 4) information concerning any arrangement between multiple lenders that
16 will be joint beneficiaries.

17 B. Disclosures: FLOYD did not provide loan cover sheets or other documents
18 that provided to the lender the information required on a Lender Purchase Disclosure Statement
19 for the following properties: 3061 Capri Lane; 653 Sunset Ave.; and 427-429 W. 93rd Street.
20 FLOYD's failure to provide loan cover sheets or other documents that provided to the lender
21 the information required on a Lender Purchase Disclosure Statement for the Capri Lane, Sunset
22 and W. 93rd Street properties is in violation of **Code Section 10232.5(a)(1), (2), (3), (4), (5),**
23 **(6), (7), (8) and (9).**

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19.

Recordation of Trust Deeds and Assignments (769 Wilson St.)

FLOYD recorded and/or assigned J.W.'s interest in the loan for the 769 Wilson St. property. The Deed of Trust dated September 8, 2016 identified AB as the lender and beneficiary. An unrecorded copy of this Deed of Trust was provided to J.W. A subsequent Assignment of Deed of Trust was recorded over ten (10) days later that assigned to J.W. (October 26, 2016). A recorded copy of this Assignment of Deed of Trust was provided to J.W. The Deed of Trust in the name of AB (FLOYD, a DRE licensee) and not in the name of the lender (J.W.) is in violation of **Code Section 10234(a)**. The timing of the recording of the Assignment of Deed of Trust is in violation of **Code Section 10234(c)**. FLOYD's delayed delivery of both the [unrecorded] Deed of Trust to J.W. and the recorded Assignment of Deed of Trust to J.W. is in violation of **Code Section 10234.5**.

20.

Disclosures and Recordation of Trust Deeds and Assignments (30269 Callaway Circle)

FLOYD recorded a Deed of Trust dated July 26, 2016 that identified AB as the lender and beneficiary and secured a loan for \$150,000, and not the \$110,000 that J.W. issued to Floyd's borrower (AB). The source of the \$40,000 difference in the loan amount was not disclosed to J.W. A subsequent Assignment of Deed of Trust was recorded on August 18, 2016, over ten (10) days later that assigned to William L. and Scott L. A recorded copy of this Assignment of Deed of Trust was provided to J.W. FLOYD's non-disclosure of the source of the \$40,000 differential and/or possible joint beneficiary is in violation of **Code Section 10232.5(a)(8)**. The Deed of Trust in the name of AB (FLOYD, a DRE licensee) and not in the name of the lender (J.W.) is in violation of **Code Section 10234(a)**. The timing of the recording of the Assignment of Deed of Trust is in violation of **Code Section 10234(c)**.

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1 FLOYD's delayed delivery of both the [unrecorded] Deed of Trust to J.W. and the recorded
 2 Assignment of Deed of Trust to J.W. is in violation of **Code Section 10234.5.**

3 21.

4 Recordation of Trust Deeds and Assignments

5 The eight (8) mortgage loans from J.W. were to be secured by real property by
 6 way of an assignment (Assignment of Deed of Trust) to J.W. However, of the eight (8) loans,
 7 FLOYD assigned only two (2) to J.W.: 769 Wilson St. and 1 Half Moon Bay Dr. Of these two
 8 assignments, only the Wilson St. property assignment to J.W. was actually recorded. FLOYD
 9 neither assigned J.W. nor recorded assignments to J.W. with respect to the following properties:

Property	Deed of Trust Date	Recorded	Beneficiary	Assignment	Date of Assignment	Recording Date of Assignment
769 Wilson St.	9/18/16	11/15/16	AB	J.W.	9/8/16	11/15/16
3061 Capri Ln.	None	N/A	N/A	N/A	N/A	N/A
817 Louise St.	6/12/14	6/24/14	AB	None	N/A	N/A
30269 Callaway Circle	None	N/A	N/A	N/A	N/A	N/A
58 Candeloria	6/3/14	7/2/14	AB	N/A	N/A	N/A
653 Sunset Ave.	5/10/16	5/31/16	AB	N/A	N/A	N/A
427-429 W. 93 rd St.	5/10/16	5/31/16	AB	N/A	N/A	N/A
1 Half Moon Bay Dr.	11/15/16	N/A	N/A	J.W.	11/15/16	N/A

22 FLOYD's failure to record J.W.'s interest in the above-referenced properties is in violation of
 23 **Code Section 10234(a) and (c).**

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Loan Servicing Authorization

The eight (8) mortgage loans from J.W. were to be serviced by FLOYD, including, but not limited to the collection of payments from borrowers and subsequent transfer of payment funds to J.W. FLOYD did not provide or have written authorizations in place to service the loans for the following properties: 3061 Capri Ln.; 653 Sunset Ave.; 427-429 W. 93rd St.; and 769 Wilson St. FLOYD's failure to have a written authorization to service the aforementioned loans is in violation of **Code Section 10233(a)**.

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Retention of Funds

FLOYD issued monthly payments on the loans despite not having recorded J.W.'s interest in each of the properties. Initially, FLOYD issued separate payments on each loan; eventually, FLOYD consolidated them into one payment to J.W. Although the loans did not mature until 2019, FLOYD ceased to make payments to J.W. beginning in March 2018. According to J.W.'s personal ledger documenting all payments received from FLOYD, there is an outstanding total amount of \$1,223,809.74 in principal and interest on the loans that still owing J.W.

<u>Property</u>	<u>Monthly Payment Amount</u>	<u>First Payment</u>	<u>Last Payment</u>	<u>Balance Owing</u>	<u>Sale Date</u>
769 Wilson St.	\$366.55	9/30/16	2/15/18	\$49,749.16	5/30/18
3061 Capri Ln.	\$366.57	10/28/16	3/21/18	\$42,529.45	11/3/17
817 Louise St.	\$1,245.67	8/12/14	3/15/18	\$23,368.77	12/6/18
30269 Callaway Circle	\$945.07	4/28/16	3/21/18	\$108,830.04	N/A
58 Candeloria	\$1,448.83	7/16/14	3/5/18	\$186,109.10	N/A
653 Sunset Ave.	\$1,533.34	7/28/16	3/21/18	\$179,505.54	N/A
427-429 W. 93 rd St.	\$261.95	8/29/16	3/21/18	\$31,898.82	N/A
1 Half Moon Bay Dr.	\$2,240.42	10/28/16	3/21/18	\$300,909.43	N/A
Total Principal & Interest				\$1,223,809.74	

FLOYD's retainment of funds payable to J.W. in accordance with the terms of promissory notes secured by liens on the respective real properties for more than twenty-five (25) days is in violation of **Code Section 10231.1**.

- 1) On or about May 30, 2018, escrow for the 769 Wilson property closed with the seller's existing liens paid off. Escrow received a

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payoff demand from FLOYD on May 14, 2018 requesting a total of \$74,306.91 on a principal loan amount of \$50,000. The demanded \$74,306.91 was wired to FLOYD's AB bank account on May 30, 2018. J.W. received none of said funds.

2) On or about November 3, 2017, escrow for the 3061 Capri Ln. property closed. The Seller's Closing Statement did not identify any loan payoff in relation to the funds that originated from J.W. According to the county recorder's office, sellers Bradley and Phoebe B. purchased the property from Raymond and Jerilynn G. on June 25, 2015. Raymond and Jerilynn G. were the borrowers of the funds according to the November 20, 2014 recorded Deed of Trust in favor of AB as beneficiary.

3) On or about December 6, 2018, escrow for the 817 N. Louise St. property closed. The Seller's Closing Statement did not identify any loan payoff in relation to the funds that originated from J.W. However, the closing statement did identify a \$123,620 debit to seller for a bond related to FLOYD's loan payoff demand of November 15, 2018. FLOYD's payoff demand instructed escrow to wire \$103,357.97 to FLOYD's AB bank account. A subsequent payoff demand on November 20, 2018 instructed escrow to forward J.W. the amount \$18,604.05 with the balance to be wired as previously instructed on November 15, 2018. A bond was obtained after escrow could not release the funds to AB for lack of good standing with the California SoS.

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1 M.A. Transaction

2 24.

3 Prior to June 2, 2016, M.A. contacted FLOYD for loan options on her non-
4 owner occupied investment property located at 31911 Crestwood Place in Laguna Beach
5 (“Crestwood property”) in order to complete the listing and sale of the property. FLOYD had
6 originated construction loans for M.A. on the Crestwood property during his employ with other
7 brokerages.

8 25.

9 Mortgage Loan Disclosure Statement

10 Escrow on the Crestwood property opened or about June 10, 2016 and was
11 scheduled to close on or about July 11, 2016. The Escrow Instructions indicated that M.A. was
12 to obtain a \$750,000. The Amended Escrow Instructions dated July 8, 2016 indicated that M.A.
13 would obtain a loan in the amount of \$750,000 secured by a first deed of trust in favor of AB
14 payable at an interest rate of 9.5% per annum for two (2) years. The escrow file provided no
15 Mortgage Loan Disclosure Statement provided by FLOYD, in violation of **Code Section**
16 **102240(a) and Regulation 2840.**

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According to the Truth-In-Lending Disclosure Statement in the escrow file, M.A. signed (signature date July 8, 2016) on to the following loan terms:

Annual Percentage Rate	11.505%
Finance Charge	\$166,873.08
Amount Financed	\$723,307.25
Total Payments	\$892,180.33
Interest Rate	9.5%
Monthly Principal + Interest	\$6,075.46
Balloon Payment (due 8/1/18)	\$752,444.75

FLOYD did not provide to M.A. the specific loan terms, fees and charges prior to or on July 8, 2016, in violation of **Code Section 10176(a) and (c)**.

27.

Balloon Payment

The Truth-In-Lending Disclosure Statement of July 8, 2016 identified a balloon payment in the amount of \$752,444.75 that would be due on August 1, 2018, in violation of **Code Section 10244**.

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Chargeable Costs and Expenses

A. On June 30, 2016, FLOYD requested escrow to generate an Estimated Closing Statement with the following charges to be collected by FLOYD (AB) on a \$750,000 loan secured by a first deed of trust to AB:

1. Loan Origination	\$15,000
2. Loan Discount	\$7,500
3. Underwriting	\$595
4. Processing	\$495
5. Administration	\$395
6. Funding	\$250
7. Tax Service	\$72
8. Document Preparation	\$625
9. Wire	\$60
10. Credit	\$20
11. Other	\$75
12. 9.5% Interest for 7/11/16 to 8/1/16	\$4,4099.32

Although escrow generated this document, M.A. did not sign it.

B. On or about July 8, 2016, M.A. signed a subsequent Estimated Closing Statement that included the same items and amounts as listed above as line items 1. through 10., in Paragraph 26, however, with the line item 11. modified to reflect "Courier: \$80" and line item 12. modified to reflect "\$195.20 per diem Interest from 7/15/16 to 8/1/16." FLOYD provided no evidence that substantiated the underwriting, processing, administration and document preparation fees were earned or not duplicated, in violation of **Regulation 2843**.

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29.

On or about July 12, 2016, M.A. e-mailed both the escrow company and FLOYD demanded to cancel escrow: "as of this e@mail I am demanding a cancellation of my escrow that is pending." On July 15, 2016, M.A. signed Cancellation Instructions. However, FLOYD caused the deposit of loan funds into escrow on or about July 14, 2016, in violation of **Code Section 10176(m)**.

30.

Subpoena Duces Tecum

A. On or about October 16, 2018, the Department attempted to [but was unsuccessful in its attempt] personally serve a *subpoena duces tecum* to FLOYD at his Pine Valley address (main office address of record) to produce on November 6, 2018 for inspection and copying the complete transaction files, promissory notes and security instruments, compensation records and loan servicing records regarding the following properties:

- 1) 17404 Prondall Court, Carson 90746;
- 2) 1777 Bahama Pl., Costa Mesa, CA 92626;
- 3) 817 Louise Street, Santa Ana, CA 92703;
- 4) 769 Wilson Ave., Costa Mesa, CA 92627;
- 5) 58 Candelorie, Trabuco Canyon, CA 92679;
- 6) 30269 Callaway Circle, Murrieta, CA 92563;
- 7) 653 Sunset Ave., Venice, CA 90291;
- 8) 427-429 W. 93rd Street, Inglewood, CA 90301;
- 9) 3061 Capri Lane, Costa Mesa, CA 92626;
- 10) 1 Half Moon Bay Dr., Corona Del Mar, CA 92625; and
- 11) 31911 Crestwood Pl., Laguna Beach, CA 92651.

B. On the same day, the Department prepared and mailed said *subpoena duces tecum* via Certified Mail to FLOYD's Pine Valley address (main office address of record). To

1 date, FLOYD has not provided the records. The failure by FLOYD to make available the
2 records and documents requested by the Department's *subpoena duces tecum* is in violation of
3 **Code Section 10148.**

4 31.

5 **Further Grounds for Discipline**

6 In the course of the activities described above, and based on the facts discovered
7 by the Department in Paragraphs 16 through 30, the conduct of FLOYD violated the Code and
8 constitutes cause for discipline of his real estate license and license rights under the provisions
9 **Code Sections 10177(d)** for willful disregard of the Real Estate Law and **Code Section**
10 **10177(g)** for negligence.

11 **COSTS**

12 **Investigation and Enforcement Costs**

13 32.

14 **Code Section 10106** provides, in pertinent part, that in any order issued in
15 resolution of a disciplinary proceeding before the Department of Real Estate, the Commissioner
16 may request the administrative law judge to direct a licensee found to have committed a
17 violation of this part to pay a sum not to exceed the reasonable costs of the investigation and
18 enforcement of the case.

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against the licenses and license rights of Respondents RICK ALAN FLOYD under the Real Estate Law (Part 1 of vision 4 of the Business and Professions Code), for the cost of investigation and enforcement as permitted by law, and for such other and further relief as may be proper under other provisions of law.

Dated at Los Angeles, California

this 5th day of April, 2019.


Maria Suarez
Supervising Special Investigator

cc: RICK ALAN FLOYD
Enforcement – M. Suarez
Sacto.