

*File Facts*

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Julie L. To (SBN 219482)  
Department of Real Estate  
320 West 4th Street, Suite. 350  
Los Angeles, California 90013-1105

Telephone: (213) 576-6916 (direct)  
-or- (213) 576-6982 (office)

**FILED**

OCT 09 2010

DEPT. OF REAL ESTATE

*[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\*\*\*

In the Matter of the Accusation of

No. H-41519 LA

LINH DUC PHAM,

ACCUSATION

Respondent.

The Complainant, Maria Suarez, a Supervising Special Investigator of the State of California, for cause of Accusation against LINH DUC PHAM, alleges as follows:

1.

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

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.

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1 DEPARTMENT OF REAL ESTATE LICENSE HISTORY

2 3.

3 LINH DUC PHAM

4 A. Respondent LINH DUC PHAM ("PHAM") is presently licensed and/or has  
5 license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a real estate broker  
6 ("REB") California Department of Real Estate ("DRE" or "Department") license ID 00853731.

7 B. PHAM was originally licensed by the DRE as a real estate salesperson ("RES")  
8 on or about September 2, 1983, and as a REB on or about August 30, 1988.

9 C. According to the DRE's records, PHAM's main and mailing address of record  
10 are the same: 15496 Magnolia Street, Suite 212, Westminster, CA 92683 ("Westminster  
11 address")

12 C. According to the DRE's records, PHAM's license includes the current DBA  
13 First Services, active as of August 30, 1992.

14 D. According to the DRE's records, PHAM has two (2) branch offices at: (1)  
15 14351 Euclid St., #1K, Garden Grove, CA 92843 and (2) 23022 La Cadena #205, Laguna Hills,  
16 CA 92653.

17 E. According to the DRE's records, the following RES are licensed under  
18 PHAM's DRE license:

- 19 1. Tony Trong Do, DRE license ID 01382148;
  - 20 2. Thomas Tam Van Duong, DRE license ID 01961808;
  - 21 3. Heinz Otto Neubauer, DRE license ID 01933243;
  - 22 4. Emily Mai Nguyen, DRE license ID 01912809;
  - 23 5. Xuan Dong Nguyen, DRE license ID 01254437;
  - 24 6. Lyly Thi Tran, DRE license ID 01118747; and
  - 25 7. Paulina Phuong Tuyet Trieu, DRE license ID 01757910.
- 26  
27

1 F. Respondent PHAM's REB license will expire on August 29, 2020.

2 APPLICABLE SECTIONS OF THE REAL ESTATE LAW

3 Trust Fund Handling –

4 Code Section 10145 and Regulations 2831, 2831.1, 2831.2, and 2832.1

5 4.

6 Pursuant to Code Section 10145 *Handling of Trust Funds* (selected portions):

7 “(a)(1): A real estate broker who accepts funds belonging to others in connection  
8 with a transaction subject to this part shall deposit all those funds that are not immediately placed  
9 into a neutral escrow depository or into the hands of the broker's principal, into a trust fund  
10 account maintained by the broker in a bank or recognized depository in this state. All funds  
11 deposited by the broker in a trust account shall be maintained there until disbursed by the broker  
12 in accordance with instructions from the person entitled to the funds.

13 (2) Withdrawals may be made from a trust fund account of an individual broker  
14 only upon the signature of that broker, or in the case of a corporate broker, only upon the  
15 signature of an officer through whom the corporation is licensed pursuant to Section 10158 or  
16 10211, or one, or more, of the following persons if specifically authorized in writing by the  
17 individual broker or officer:

18 (A) A real estate salesperson licensed to the broker.

19 (B) Another broker acting pursuant to a written agreement with the  
20 individual broker that conforms to the requirements of this part and any  
21 regulations promulgated pursuant to this part.

22 (C) An unlicensed employee of the individual broker, if the broker has  
23 fidelity bond coverage equal to at least the maximum amount of the trust  
24 funds to which the unlicensed employee has access at any time. For  
25 purposes of this section, bonds providing coverage may be written with a  
26

1 deductible of up to 5 percent of the coverage amount. For bonds with a  
2 deductible, the employing broker shall have evidence of financial  
3 responsibility that is sufficient to protect members of the public against a  
4 loss subject to the deductible amount.

5 Evidence of financial responsibility shall include one or more of the  
6 following:

7 (i) Separate fidelity bond coverage adequate to cover the amount  
8 of the fidelity bond deductible.

9 (ii) A cash deposit held in a separate account, apart from other  
10 funds of the broker, the broker's employees, or the broker's  
11 principals, in a bank or recognized depository in this state adequate  
12 to cover the amount of the fidelity bond deductible and held  
13 exclusively and solely for the purpose of paying the fidelity bond  
14 deductible amount.

15 (iii) Any other evidence of financial responsibility approved by the  
16 commissioner.

17 (3) An arrangement under which a person enumerated in subparagraph (A),(B),  
18 or (C) of paragraph (2) is authorized to make withdrawals from a trust fund account of a broker  
19 shall not relieve an individual broker, nor the broker-officer of a corporate broker licensee, from  
20 responsibility or liability as provided by law in handling trust funds in the broker's custody.

21 ...

22 (4)(b) A real estate broker acting as a principal pursuant to Section 10131.1<sup>1</sup>  
23 shall place all funds received from others for the purchase of real property sales contracts or  
24

25 <sup>1</sup>Code Section 10131.1 states, "(a) A real state broker within the meaning of this part is also a person who engages as  
26 a principal in the business of making loans or buying from, selling to, or exchanging with the public, real property  
27 sales contracts or promissory notes secured directly or collaterally by liens on real property..."

1 promissory notes secured directly or collaterally by liens on real property in a neutral escrow  
2 depository unless delivery of the contract or notes is made simultaneously with the receipt of the  
3 purchase funds.

4 ...

5 (4)(g) The broker shall maintain a separate record of the receipt and disposition of  
6 all funds described in subdivisions (a) and (b), including any interest earned on the funds..."

7 5.

8 Pursuant to Regulation 2831 *Trust Fund Records To Be Maintained:*

9 "(a) Every broker shall keep a record of all trust funds received, including  
10 uncashed checks held pursuant to instructions of his or her principal. This record, including  
11 records maintained under an automated data processing system, shall set forth in chronological  
12 sequence the following information in columnar form:

13 (1) Date trust funds received.

14 (2) From whom trust funds received.

15 (3) Amount received.

16 (4) With respect to funds deposited in an account, date of said deposit.

17 (5) With respect to trust funds previously deposited to an account, check  
18 number and date of related disbursement.

19 (6) With respect to trust funds not deposited in an account, identity of other  
20 depository and date funds were forwarded.

21 (7) Daily balance of said account.

22 (b) For each bank account which contains trust funds, a record of all trust funds  
23 received and disbursed shall be maintained in accordance with subdivision (a) or (c).

24 (c) Maintenance of journals of account cash receipts and disbursements, or similar  
25 records, or automated data processing systems, including computer systems and electronic  
26

1 storage and manipulation of information and documents, in accordance with generally accepted  
2 accounting principles, shall constitute compliance with subdivision (a) provided that such  
3 journals, records, or systems contain the elements required by subdivision (a) and that such  
4 elements are maintained in a format that will readily enable tracing and reconciliation in  
5 accordance with Section 2831.2.

6 (d) Nothing in this section shall be construed to permit a violation of Section  
7 10145 of the Code.

8 (e) A broker is not required to keep records pursuant to this section of checks  
9 which are written by a principal, given to the broker and made payable to third parties for the  
10 provision of services, including but not limited to escrow, credit and appraisal services, when  
11 the total amount of such checks for any transaction from that principal does not exceed \$1,000.  
12 Upon request of the Department or the maker of such checks, a broker shall account for the  
13 receipt and distribution of such checks. A broker shall retain for three years copies of receipts  
14 issued or obtained in connection with the receipt and distribution of such checks.”

15 6.

16 Pursuant to Regulation 2831.1 *Separate Record for Each Beneficiary or*  
17 *Transaction:*

18 “(a) A broker shall keep a separate record for each beneficiary or transaction,  
19 accounting for all funds which have been deposited to the broker’s trust bank account and  
20 interest, if any, earned on the funds on deposit. The record shall include information sufficient to  
21 identify the transaction and the parties to the transaction. Each record shall set forth in  
22 chronological sequence the following information in columnar form:

- 23 (1) Date of deposit.  
24 (2) Amount of deposit.  
25 (3) Date of each related disbursement.  
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(4) Check number of each related disbursement.

(5) Amount of each related disbursement.

(6) If applicable, dates and amounts of interest earned and credited to the account.

(7) Balance after posting transactions on any date.

(b) Maintenance of trust ledgers of separate beneficiaries or transactions, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles will constitute compliance with subdivision (a), provided that such ledgers, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2.”

7.

Pursuant to Regulation 2831.2 *Trust Account Reconciliation:*

“The balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a month, except in those months when the bank account did not have any activities. A record of the reconciliation must be maintained, and it must identify the bank account name and number, the date of the reconciliation, the account number or name of the principals or beneficiaries or transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or transactions.”

8.

Pursuant to Regulation 2832.1 *Trust Fund Handling for Multiple Beneficiaries:*

“The written consent of every principal who is an owner of the funds in the account shall be obtained by a real estate broker prior to each disbursement if such a

1 disbursement will reduce the balance of funds in the account to an amount less than the existing  
2 aggregate trust fund liability of the broker to all owners of the funds.”

3 9.

4 Pursuant to Regulation 2950 *When Broker Handles Escrow*:

5 “The following acts in the handling of an escrow by a real estate broker  
6 exempted from the provisions of the Escrow Law (by Section 17006(a)(4) of the Financial  
7 Code) are prohibited and may be considered grounds for disciplinary action:

8 (a) Soliciting or accepting an escrow instruction (or amended or supplemental  
9 escrow instruction) containing any blank to be filled in after signing or initialing of such escrow  
10 instruction (or amended or supplemental escrow instruction).

11 (b) Permitting any person to make any addition to, deletion from, or alteration of  
12 an escrow instruction (or amended or supplemental escrow instruction) received by such  
13 licensee, unless such addition, deletion or alteration is signed or initialed by all persons who had  
14 signed or initialed such escrow instruction (or amended or supplemental escrow instruction)  
15 prior to such addition, deletion or alteration.

16 (c) Failing to deliver at the time of execution of any escrow instruction or  
17 amended or supplemental escrow instruction a copy thereof to all persons executing the same.

18 (d) Failing to maintain books, records and accounts in accordance with accepted  
19 principles of accounting and good business practice.

20 (e) Failing to maintain the office, place of books, records, accounts, safes, files,  
21 and papers relating to such escrows freely accessible and available for audit, inspection and  
22 examination by the commissioner.

23 (f) Failing to deposit all money received as an escrow agent and as part of an  
24 escrow transaction in a bank, trust account, or escrow account on or before the close of the next  
25 full working day after receipt thereof.



1 (g) Withdrawing or paying out any money deposited in such trustee account or  
2 escrow account without the written instruction of the party or parties paying the money into  
3 escrow.

4 (h) Failing to advise all parties in writing if he has knowledge that any licensee  
5 acting as such in the transaction has any interest as a stockholder, officer, partner or owner of  
6 the agency holding the escrow.

7 (i) Failing upon closing of an escrow transaction to render to each principal in the  
8 transaction a written statement of all receipts and disbursements together with the name of the  
9 person to whom any such disbursement is made.

10 (j) Delivering or recording any instrument which purportedly transfers a party's  
11 title or interest in or to real property without first obtaining the written consent of that party to  
12 the delivery or recording."

13 10.

14 Pursuant to Regulation 2951 *Record Keeping and Funds Handling*:

15 "The provisions of Sections 2831, 2831.1, 2831.2, 2832, 2832.1, 2834 and 2835  
16 of these regulations shall apply to the handling of funds and the keeping of records by a real  
17 estate broker who is not licensed under the Escrow Law (Section 17000, et seq., of the Financial  
18 Code) when acting in the capacity of an escrow holder in a real estate purchase and sale,  
19 exchange or loan transaction in which the broker is performing acts for which a real estate  
20 license is required."

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DRE Accusation – LINH DUC PHAM

**Retention of Records – Chargeable Audits – Cost Recovery – Penalties for Unlawful  
Destruction of Records –  
Code Section 10148**

Pursuant to Code Section 10148 *Retention of Records – Chargeable Audits – Cost  
Recovery – Penalties for Unlawful Destruction of Records:*

“(a) A licensed real estate broker shall retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. The retention period shall run from the date of the closing of the transaction or from the date of the listing if the transaction is not consummated. After notice, the books, accounts, and records shall be made available for examination, inspection, and copying by the commissioner or his or her designated representative during regular business hours; and shall, upon the appearance of sufficient cause, be subject to audit without further notice, except that the audit shall not be harassing in nature. This subdivision shall not be construed to require a licensed real estate broker to retain electronic messages of an ephemeral nature, as described in subdivision (d) of Section 1624 of the Civil Code.

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

(c) If a broker fails to pay for the cost of an audit as described in subdivision (b) within 60 days of mailing a notice of billing, the commissioner may suspend or revoke the

1 broker's license or deny renewal of the broker's license. The suspension or denial shall remain  
2 in effect until the cost is paid or until the broker's right to renew a license has expired.

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

7 (e) The bureau may suspend or revoke the license of any real estate broker, real  
8 estate salesperson, or corporation licensed as a real estate broker, if the real estate broker, real  
9 estate salesperson, or any director, officer, employee, or agent of the corporation licensed as a  
10 real estate broker knowingly destroys, alters, conceals, mutilates, or falsifies any of the books,  
11 papers, writings, documents, or tangible objects that are required to be maintained by this  
12 section or that have been sought in connection with an investigation, audit, or examination of a  
13 real estate licensee by the commissioner.”  
14

15 12.

16 **Financial Code Section 17006**

17 Pursuant to Financial Code Section 17006:

18 “(a) This division does not apply to:

19 (1) Any person doing business under any law of this state or the United States  
20 relating to banks, trust companies, building and loan or savings and loan associations, credit  
21 unions, or insurance companies.

22 (2) Any person licensed to practice law in California who has a bona fide client  
23 relationship with a principal in a real estate or personal property transaction and who is not  
24 actively engaged in the business of an escrow agent.  
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(3) Any person whose principal business is that of preparing abstracts or making searches of title that are used as a basis for the issuance of a policy of title insurance by a company doing business under any law of this state relating to insurance companies.

(4) Any broker licensed by the Real Estate Commissioner while performing acts in the course of or incidental to a real estate transaction in which the broker is an agent or a party to the transaction and in which the broker is performing an act for which a real estate license is required.

(b) The exemptions provided for in paragraphs (2) and (4) of subdivision (a) are personal to the persons listed, and those persons shall not delegate any duties other than duties performed under the direct supervision of those persons. Notwithstanding the provisions of this subdivision, the exemptions provided for in paragraphs (2) and (4) of subdivision (a) are not available for any arrangement entered into for the purpose of performing escrows for more than one business.”

13.

**Grounds for Revocation or Suspension – Code Section 10176**

Pursuant to Code Section 10176 *Grounds for Revocation or Suspension:*

“The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

...

1 (i) Any other conduct, whether of the same or a different character than  
2 specified in this section, which constitutes fraud or dishonest dealing...”

3 14.

4 **Further Grounds for Disciplinary Action – Code Section 10177**

5 Pursuant to Code Section 10177 *Further Grounds for Disciplinary Action:*

6 “The commissioner may suspend or revoke the license of a real estate licensee,  
7 delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an  
8 applicant, who has done any of the following:

9 ...

10 (d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing  
11 with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and  
12 regulations of the commissioner for the administration and enforcement of the Real Estate Law  
13 and Chapter 1 (commencing with Section 11000) of Part 2.”

14 ...

15 (g) Demonstrated negligence or incompetence in performing an act for which he  
16 or she is required to hold a license...”

17 **DRE AUDIT LA170221: LINH DUC PHAM**

18 **(BROKER ESCROW ACTIVITY)**

19 15.

20 On October 31, 2018, the DRE completed its audit examinations of the books and  
21 records of Respondent PHAM pertaining to his broker escrow activities. The audit examination  
22 covered a period of time beginning on August 1, 2015 and ending on June 30, 2018 (“audit  
23 examination period” or “audit period”), and was performed between July 10, 2018 and October  
24 2, 2018. The final report of October 31, 2018 revealed violations of the Code and the  
25 Regulations as set forth in the following paragraphs, and more fully discussed in the Audit  
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27 DRE Accusation – LINH DUC PHAM

1 Report for SD 170221.

2 16.

3 Document Collection for Audit Examination

4 Audit Appointment Letter

5 On July 2, 2018, the DRE Auditor contacted PHAM telephonically and sent an  
6 audit appointment letter to PHAM via fax and via regular and certified mail to his Westminster  
7 address of record on file with the DRE, advising of an audit scheduled for July 10, 2018 at 9:00  
8 A.M. The audit appointment letter also requested PHAM to produce his books and records for  
9 the audit examination, pursuant to Code Section 10148. On July 5, 2018, PHAM telephoned the  
10 DRE Auditor and asked what records must be provided for the audit; the DRE Auditor informed  
11 PHAM that the audit appointment letter contains all of the information regarding the requested  
12 records.

13 17.

14 Audit Examination

15 On July 10, 2018, the DRE Auditor met with PHAM at PHAM's Westminster  
16 address of record. PHAM indicated that his computer contained his books, records and  
17 transaction files, and that his computer had crashed. The DRE Auditor obtained some of the  
18 requested records. On July 16, 2018, the DRE Auditor called PHAM regarding a date when he  
19 could collect additional records for the audit examination; PHAM responded that he did not  
20 know when the bank would send the records.

21 18.

22 Subpoena Duces Tecum – East West Bank

23 A subpoena duces tecum dated July 12, 2019 was served on East West Bank on  
24 the same date to produce records for the audit examination of PHAM's broker escrow activity on  
25 August 23, 2018 at the DRE's Los Angeles District Office.

26  
27 DRE Accusation – LINH DUC PHAM



19.

Subpoena Duces Tecum - PHAM

A subpoena duces tecum dated July 25, 2019 was served on PHAM on the same date to produce records for the audit examination of PHAM’s broker escrow activity on August 9, 2018 at the DRE’s Los Angeles District Office.

20.

Incomplete Records for Audit Examination

The audit examination was limited to the verification of the Department’s licensing records, limited records provided for the audit examination, documents submitted to the Department, and subpoenaed records obtained from East West Bank. The DRE’s Auditor was unable to obtain all necessary information for the audit.

21.

PHAM’s Business Activities

Based on the DRE Auditor’s discussions with PHAM on July 10, 2018 and the documents examined, PHAM performed real estate activities representing buyers and sellers, and he also provided escrow services to his clients. According to PHAM, he closed three (3) escrows per month. Based on an examination of the limited records provided for the audit, PHAM closed approximately thirty-nine (39) broker escrow transactions and handled approximately \$7,203,092.15 for the twelve (12) months prior to the audit examination.

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1 22.

2 Trust Accounts

3 During the audit period, OHAM maintained two (2) trust accounts at East West  
4 Bank (903 Bolsa Ave., Westminster, CA 92683) related to his broker escrow activity:

5 Trust Account 1 - #####7177 ("TA 1")

6 \* Bank: East West Bank (Westminster, CA)

7 \* Account Name: LINH DUC PHAM DBA First Services Escrow Client Trust  
8 Account

9 \* Signatories: PHAM

10 \* Number of Signatures Required: One (1)

11 TA 1 was maintained for handling the receipts and disbursements for trust funds  
12 received in connection with PHAM's broker escrow activity. The account name was based on  
13 TA 1's bank signature card dated June 17, 2017, obtained from East West Bank. Per the bank  
14 signature card, TA 1 was opened on June 17, 2017. (PHAM did not make TA 1's bank signature  
15 card or copies of cancelled checks available for the audit examination.)

16 Trust Account 2 - #####8552 ("TA 2")

17 \* Bank: East West Bank (Westminster, CA)

18 \* Account Name: LINH DUC PHAM DBA First Services Escrow Client Trust  
19 Account

20 \* Signatories: PHAM

21 \* Number of Signatures Required: One (1)

22 TA 2 was maintained for handling the receipts and disbursements for trust funds  
23 received in connection with PHAM's broker escrow activity. The account name was based on  
24 TA 1's bank signature card dated November 5, 2009, obtained from East West Bank. Per the  
25 bank signature card, TA 2 was opened on November 5, 2009 and closed on June 19, 2017.  
26

1 (PHAM did not make TA 2's bank signature card or copies of cancelled checks available for the  
2 audit examination.)

3 23.

4 Bank Reconciliations

5 Bank reconciliations were prepared as of audit cutoff date June 30, 2018 for TA 1  
6 and June 19, 2017 for TA 2. As PHAM provided limited records for the DRE's audit, the DRE  
7 Auditor had to reconstruct the records based on three (3) months of accountability. The adjusted  
8 minimum bank balance was compared to the total balances of the reconstructed minimum  
9 separate beneficiary records (accountability).

10 **AUDIT FINDINGS: VIOLATIONS OF THE REAL ESTATE LAW BY PHAM**

11 24.

12 In the course of broker escrow activities described above in Paragraph 21 and  
13 during the audit examination period described in Paragraph 15, Respondent PHAM violated the  
14 Code and the Regulations, as described below:

15 25.

16 **Trust Fund Handling for Multiple Beneficiaries/When Broker Handles Escrow**

17 **(Code Section 10145(a) and Regulations 2832.1/2950(g)/2951)**

18 A. As of June 30, 2018, TA 1 had a minimum shortage of <\$822,392.20>. This  
19 minimum shortage was caused by:

(1) minimum negative escrow balances	<\$283,602.78>
(2) minimum bank charges	<\$ 2,537.20>
(3) minimum unauthorized disbursements	<\$317,035.01>
(4) minimum unidentified disbursements <sup>2</sup>	<\$135,277.74>
(5) minimum unidentified cause(s)	<\$ 83,939.47>
	<\$822,392.20>

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<sup>2</sup> These disbursement bore no related escrow numbers.

1 The minimum shortage of <\$410,531.50> was carried forward from TA 2's audit cutoff of June  
2 19, 2017.

3 B. As of June 19, 2017, TA 2 had a minimum shortage of <\$410,531.50>. This  
4 minimum shortage was caused by:

5	(1) minimum negative escrow balances	<\$215,373.02>
6	(2) minimum bank charges	<\$ 932.00>
7	(3) minimum unauthorized disbursements	<\$ 10,417.56>
8	(4) minimum unidentified disbursements <sup>3</sup>	<\$ 72,009.82>
9	(5) minimum unidentified cause(s)	<\$ 111,799.10>
		<\$ 410,531.50>

10 C. PHAM provided no evidence that the owners of the trust funds had given their  
11 written consent to allow PHAM to reduce the balance of the funds in trust accounts TA 1 and TA  
12 2 to an amount less than the existing aggregate trust fund liabilities, in violation of Code Section  
13 10145(a) and Regulations 2832.1, 2950(g), and 2951.

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26 <sup>3</sup> These disbursement bore no related escrow numbers.

27 \_\_\_\_\_

**Trust Fund Records To Be Maintained/When Broker Handles Escrow**

**(Code Section 10145 and Regulations 2831/2950(d)/2951)**

PHAM failed to maintain the records of all trust fund receipts and disbursements (control record) for TA 1 and TA 2. The DRE Auditor reconstructed the control records for TA 1 (April 2018 to June 2018) and for TA 2 (March 2017 to June 2017) based on bank statements, cancelled checks, deposit receipts and wire details for TA 1 and TA 2 obtained from East West Bank and on five (5) escrow files provided by PHAM. Examples of trust funds date of deposit records that were not maintained are as follows:

<u>Escrow No.</u>	<u>Amount</u>	<u>Date Recorded</u>	<u>Date of Deposit</u>	<u>Bank Date</u>
####004-LP	\$ 48,851.47	Not Recorded	Not Recorded	4/13/18
####005-LP	\$ 25.00	Not Recorded	Not Recorded	6/8/18
####005-LP	\$ 36,811.98	Not Recorded	Not Recorded	6/8/18
####007-LP	\$ 34,360.01	Not Recorded	Not Recorded	5/16/18
####013-LP	\$359,639.76	Not Recorded	Not Recorded	6/8/18
####014-LP	\$ 10,000.00	Not Recorded	Not Recorded	5/23/18
Total	\$487,688.22			

PHAM's failure to maintain the records of all trust fund receipts and disbursements (control record) for TA 1 and TA2 is in violation of Code Section 10145 and Regulations 2831, 2950(d) and 2951.

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1 27.

2 **Separate Record for Each Beneficiary or Transaction/When Broker Handles Escrow**

3 **(Code Section 10145 and Regulations 2831.1/2950(d)/2951)**

4 A. PHAM provided limited separate records for the audit examination; said  
5 records lacked a running daily balance. PHAM did not provide all separate records for the audit  
6 examination for TA 1 and TA 2. The DRE Auditor had to reconstruct the records from April  
7 2018 to June 2018 for TA 1 and from March 2017 to June 2017 for TA 2 to determine the  
8 minimum accountability.

9 B. The minimum accountability was based on limited information on TA 1 and  
10 TA 2's bank statements, cancelled checks, deposit receipts, wire details obtained from  
11 subpoenaed records from East West Bank, and limited separate records for each beneficiary of  
12 client's funds placed in trust fund accounts (TA 1 and TA 2) provided for the audit examination.  
13 The bank statements did not contain sufficient information for transaction identification.

14 C. Not all of the separate records for TA 1 and TA 2 related to PHAM's escrow  
15 transactions were made available for the audit examination.

16 D. The separate records maintained for TA 1 and TA 2 were incomplete, in  
17 violation of **Code Section 10145 and Regulations 2831.1, 2950(d) and 2951.**

18 28.

19 **Trust Account Reconciliation/When Broker Handles Escrow**

20 **(Code Section 10145 and Regulations 2831.2/2950(d)/2951)**

21 A. During the audit period, PHAM failed to perform and maintain a monthly  
22 reconciliation comparing the balance of all separate beneficiary or transaction records (separate  
23 records) to the balance of the record of all trust funds received and disbursed (control record) for  
24 TA 1 and TA 2, in violation of **Code Section 10145 and Regulations 2831.2, 2950(d) and**  
25 **2951.**



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29.

**When Broker Handles Escrow**

**(Regulation 2950(c))**

During the audit period, based on an examination of the loan/escrow instructions provided, said records did not contain the buyers/borrowers and/or sellers' signatures or initials in five (5) escrow files: Escrow Nos. #####004-LP (3/26/18); #####005-LP (6/1/18); #####007-LP (4/25/18); #####013-LP (5/14/18); and #####014-LP (5/21/18). No evidence was provided to show that said records were delivered to the buyers and sellers. At the time of execution, PHAM failed to deliver to buyers/borrowers and sellers any of the loan/sale escrow instructions or the amended or supplemental escrow instructions, in violation of Regulation 2950(c).

30.

**When Broker Handles Escrow**

**(Regulation 2950(h))**

During the audit period, based on an examination of the loan/escrow instructions provided, PHAM failed to advise all parties in writing that PHAM has any interest as owner of the agency holding the escrow and doing business as First Services, in violation of Regulation 2950(h).

31.

**Engaged in Prohibited Activity/Exemptions From Escrow Law/Third Party Escrow**

**(Financial Code Section 17006(a)(4))**

Based on an examination of records provided for the audit, PHAM performed broker escrow services when PHAM was not an agent or party to the transactions in escrow files #####004-LP (closed 4/13/18); #####005-LP (closed 6/7/18); #####007-LP (closed 5/15/18); and #####013-LP (closed 6/7/18). PHAM's performance of broker escrow services in these

1 transactions when he was not an agent or party to the respective transactions is in violation of  
2 **Financial Code Section 17006(a)(4).**

3 32.

4 **Unauthorized Disbursement/Conversion of Funds/When Broker Handles Escrow**  
5 **(Code Sections 10145 and 10176(i) and Regulation 2950(g))**

6 A. PHAM provided limited records for examination and was not available during  
7 the audit to respond to the DRE Auditor's inquiries. Given limited records, the DRE Auditor had  
8 to reconstruct the minimum accountability for TA 1 and TA 2. Based on an examination of TA 1  
9 bank statements, wire details, deposit receipts and cancelled checks obtained from East West  
10 Bank, it was revealed that PHAM disbursed funds totaling <\$317,035.01>, of which  
11 <\$306,617.45> was disbursed as follows:

Payee	Total Amount
First Services Escrow	<\$258,600.00>
CASH	<\$ 31,080.00>
Personal	<\$ 6,287.45>
Hung P.	<\$ 6,550.00>
Dung C. P.	<\$ 4,100.00>
Total:	<\$306,617.45>

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20 The <\$10,417.56> was carried forward from TA 2's audit cutoff date as of June 19, 2017; the  
21 <\$10,417.56> disbursements from TA 2 were disbursed to Farmers N W Life Insurance  
22 Premium, VZ Wireless, and Neiman Marcus for payments. Said disbursements did not identify  
23 the escrow numbers related to the escrow transaction files and records provided. Based on an  
24 examination of TA 1 and TA 2's bank statements obtained from subpoenaed bank records from  
25 East West Bank, the minimum unauthorized disbursements of <\$317,035.01> were disbursed  
26

1 without written instructions from the party or parties paying money into the escrow, in violation  
2 of Code Sections 10145 and 10176(i) and Regulation 2950(g).

3 B. Based on an examination of TA 1 bank statements, PHAM disbursed/issued  
4 checks without sufficient funds, therefore checks issued had insufficient funds and several  
5 insufficient funds fees were charged to PHAM's TA 1 account. At least \$256.00 of insufficient  
6 funds fees were charged on TA 1 for the period May 22, 2018 to June 1, 2018. The balances in  
7 TA 1 were reduced to an amount less than the amount of trust funds deposited, in violation of  
8 Code Sections 10145 and 10176(i) and Regulation 2950(g).

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**When Broker Handles Escrow/Withdrawing Funds****(Code Section 10145 and Regulation 2950(g))**

Based on an examination of escrow documents and Final Statement/Closing Statements provided for the audit examination, it was revealed that PHAM disbursed trust funds deposited into TA 1 different from amounts that appeared on final/closing statements. There was no evidence or written statements/instructions from the buyers/sellers regarding the changes to the amounts disbursed that were made available for the audit examination. Examples of such differing amounts include:

<u>Escrow No.</u>	<u>Amount Paid/Disbursed</u>	<u>Amount on Closing Statement</u>	<u>Difference</u>	<u>Check No.</u>
#####004-LP	\$ 3,911.34	\$ 3,949.00	<\$37.66>	1247
#####004-LP	\$ 1,938.70	\$ 1,954.00	<\$15.30>	1252
#####004-LP	\$ 4,041.33	\$ 4,119.00	<\$77.67>	1246
#####004-LP	\$ 7,843.49	\$ 4,058.00	\$3,785.49	1249
#####004-LP	\$ 2,092.93	\$ 2,133.00	<\$40.07>	1251
#####004-LP	\$ 5,842.03	\$ 5,910.00	<\$67.97>	1256
#####004-LP	\$ 3,169.96	\$ 3,186.00	<\$16.04>	1248
#####004-LP	\$ 2,482.24	\$ 2,508.00	<25.76>	1250
#####004-LP	\$ 11,063.83	\$ 11,641.00	<\$577.17>	1255
#####005-LP	\$ 20,472.85	\$ 20,749.00	<\$276.15>	1283
#####007-LP	\$ 661.00			1269
#####007-LP	\$ 3,647.91	\$ 3,118.01	<\$1,190.90>	1291
Total	\$ 67,167.61	\$ 59,267.01		

1 PHAM failed to render to each principal in the transactions a written statement of all receipts and  
2 disbursements together with the name of the person to whom any such disbursements were made,  
3 in violation of **Code Section 10145 and Regulation 2950(g)**.

4 34.

5 **Retention of Records/When Broker Handles Escrow**

6 **(Code Section 10148 and Regulation 2950(e))**

7 A. On July 2, 2018, PHAM was contacted via telephone by the DRE Auditor and  
8 an audit appointment was scheduled for July 10, 2018 in Westminster at 9:00AM. An audit  
9 confirmation letter was mailed and faxed to PHAM on the same date that included a list of items  
10 to be made available for the audit examination. PHAM provided some of the requested records  
11 on July 10, 2018.

12 B. A *subpoena duces tecum* dated July 12, 2019 was served on East West Bank  
13 on the same date to produce records for the audit examination of PHAM's broker escrow activity  
14 on August 23, 2018 at the DRE's Los Angeles District Office. The requested bank records for  
15 TA 1 and TA 2 were received by the DRE Auditor on August 24, 2018.

16 C. A *subpoena duces tecum* dated July 25, 2019 was served on PHAM on the  
17 same date to produce records for the audit examination of PHAM's broker escrow activity on  
18 August 9, 2018 at the DRE's Los Angeles District Office. On August 9, 2018, PHAM did not  
19 appear at the DRE's Los Angeles District Office; nor were any records produced to the DRE for  
20 the audit examination.

21 D. The resulting audit examination was limited to the verification of the DRE's  
22 licensing records, limited records produced for the audit, documents submitted to the DRE, and  
23 subpoenaed records and documents obtained from East West Bank.

24 E. As of the audit report date, the DRE Auditor did not receive the requested  
25 records from PHAM, in violation of **Code Section 10148**.

1 35.

2 **Additional Violations of the Real Estate Law**

3 The overall conduct of Respondent PHAM is violative of the Real Estate Law and  
4 constitutes cause for the suspension or revocation of his real estate license and license rights  
5 under the provisions of Code Section 10177(g) for negligence and Code Section 10177(d) for  
6 willful disregard of the Real Estate Law.

7 **COSTS**

8 **Investigation and Enforcement Costs**

9 36.

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

15 **Audit Costs**

16 37.

17 Code Section 10148(b) provides, in pertinent part, the Commissioner shall charge  
18 a real estate broker for the cost of any audit, if the Commissioner has found in a final decision  
19 following a disciplinary hearing that the broker has violated Code section 10145 or a regulation  
20 or rule of the Commissioner interpreting said section.

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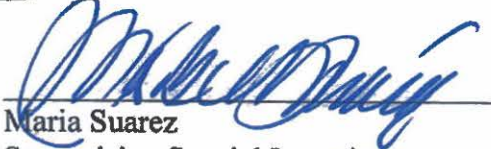


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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against the license and license rights of Respondent LINH DUC PHAM under 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, and for costs of audit.

Dated at Los Angeles, California

this 17th day of October, 2019.

  
\_\_\_\_\_  
Maria Suarez  
Supervising Special Investigator

cc: LINH DUC PHAM  
Enforcement – T. Nguyen, M. Suarez  
Audits – C. Tse, J. Lin  
Sacto.