

Flag Facts

1 Julie L. To (SBN 219482)
2 Department of Real Estate
3 320 West 4th Street, Suite. 350
4 Los Angeles, California 90013-1105
5 Telephone: (213) 576-6916 (direct)
6 -or- (213) 576-6982 (office)

FILED
OCT 16 2010
DEPT. OF REAL ESTATE
Sigrid Daner

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of	}	No. H-41522 LA
12 LOIS LAUER INC and		ACCUSATION
13 DAVID G. COY, as designated officer of		
14 LOIS LAUER INC,		
15 Respondents.		

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18 The Complainant, Maria Suarez, a Supervising Special Investigator of the State of
19 California, for cause of Accusation against LOIS LAUER INC, alleges as follows:

20 1.

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

23 2.

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

1 DEPARTMENT OF REAL ESTATE LICENSE HISTORY

2 3.

3 LOIS LAUER INC

4 A. Respondent LOIS LAUER INC (“LLI”) 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 (corporation) (“REB”), California Department of Real Estate (“DRE” or “Department”) license
7 ID 00531231.

8 B. LLI was originally licensed by the DRE on December 6, 1976.

9 C. According to the DRE’s records, LLI’s main and mailing address of record are
10 the same: 1998 Orange Tree Ln, Redlands, CA 92374 (“Redlands address” or “Redlands office”)

11 D. According to the DRE’s records, LLI’s license includes two (2) current DBAs,
12 for (1) Century 21 Lois Lauer Realty, active as of March 8, 1999 and (2) Lois Lauer Escrow a
13 non independent broker escrow, active as of December 29, 2008.

14 E. According to the DRE’s records, LLI has one (1) branch office at: 33699
15 Yucaipa Blvd., Ste 1B, Yucaipa, CA 92399 (“Yucaipa address” or “Yucaipa office”), managed
16 by Branch/Division Manager REB Steven Wayne Newsom, DRE license ID 00545681.

17 F. According to the DRE’s records, the LLI has seventeen (17) broker associates
18 and 147 real estate salespersons (“RES”) licensed under its DRE license.

19 G. DAVID G. COY is the designated officer of LLI until his officer expiration
20 date of January 27, 2022.

21 H. Respondent LLI’s REB license will expire on January 27, 2022.

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1 4.

2 DAVID G. COY

3 A. Respondent DAVID G. COY ("COY") is presently licensed and/or has license
4 rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a REB, DRE license ID
5 00875385.

6 B. COY was originally licensed by the DRE as a REB on October 26, 2000. Prior
7 to his licensure as a REB, COY was licensed as a real estate salesperson ("RES") on October 26,
8 1984.

9 C. According to the DRE's records, COY's s main and mailing address of record
10 are the same as LLI's Redlands address.

11 D. According to the DRE's records, COY has one (1) branch office at the same
12 Yucaipa address as that of LLI.

13 E. COY is the designated officer of LLI until his officer expiration date of
14 January 27, 2022.

15 F. COY's REB license will expire on October 25, 2020.

16 APPLICABLE SECTIONS OF THE REAL ESTATE LAW

17 Trust Fund Handling –

18 Code Section 10145 and Regulations 2831, 2831.1, 2832, and 2832.1

19 5.

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

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

3 (2) Withdrawals may be made from a trust fund account of an individual broker
4 only upon the signature of that broker, or in the case of a corporate broker, only upon the
5 signature of an officer through whom the corporation is licensed pursuant to Section 10158 or
6 10211, or one, or more, of the following persons if specifically authorized in writing by the
7 individual broker or officer:

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

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

12 (C) An unlicensed employee of the individual broker, if the broker has
13 fidelity bond coverage equal to at least the maximum amount of the trust
14 funds to which the unlicensed employee has access at any time. For
15 purposes of this section, bonds providing coverage may be written with a
16 deductible of up to 5 percent of the coverage amount. For bonds with a
17 deductible, the employing broker shall have evidence of financial
18 responsibility that is sufficient to protect members of the public against a
19 loss subject to the deductible amount.

20 Evidence of financial responsibility shall include one or more of the
21 following:

22 (i) Separate fidelity bond coverage adequate to cover the amount
23 of the fidelity bond deductible.

24 (ii) A cash deposit held in a separate account, apart from other
25 funds of the broker, the broker's employees, or the broker's
26

1 principals, in a bank or recognized depository in this state adequate
2 to cover the amount of the fidelity bond deductible and held
3 exclusively and solely for the purpose of paying the fidelity bond
4 deductible amount.

5 (iii) Any other evidence of financial responsibility approved by the
6 commissioner.

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

12 ...

13 (4)(b) A real estate broker acting as a principal pursuant to Section 10131.1¹
14 shall place all funds received from others for the purchase of real property sales contracts or
15 promissory notes secured directly or collaterally by liens on real property in a neutral escrow
16 depository unless delivery of the contract or notes is made simultaneously with the receipt of the
17 purchase funds.

18 ...

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

21 6.

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

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24
25 ²Code Section 10131.1 states, "(a) A real state broker within the meaning of this part is also a person who engages
26 as 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 “(a) Every broker shall keep a record of all trust funds received, including
2 uncashed checks held pursuant to instructions of his or her principal. This record, including
3 records maintained under an automated data processing system, shall set forth in chronological
4 sequence the following information in columnar form:

5 (1) Date trust funds received.

6 (2) From whom trust funds received.

7 (3) Amount received.

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

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

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

13 (7) Daily balance of said account.

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

16 (c) Maintenance of journals of account cash receipts and disbursements, or
17 similar records, or automated data processing systems, including computer systems and
18 electronic storage and manipulation of information and documents, in accordance with
19 generally accepted accounting principles, shall constitute compliance with subdivision (a)
20 provided that such journals, records, or systems contain the elements required by subdivision
21 (a) and that such elements are maintained in a format that will readily enable tracing and
22 reconciliation in accordance with Section 2831.2.

23 (d) Nothing in this section shall be construed to permit a violation of Section
24 10145 of the Code.

1 (e) A broker is not required to keep records pursuant to this section of checks
2 which are written by a principal, given to the broker and made payable to third parties for the
3 provision of services, including but not limited to escrow, credit and appraisal services, when
4 the total amount of such checks for any transaction from that principal does not exceed
5 \$1,000. Upon request of the Department or the maker of such checks, a broker shall account
6 for the receipt and distribution of such checks. A broker shall retain for three years copies of
7 receipts issued or obtained in connection with the receipt and distribution of such checks.”

8 7.

9 Pursuant to Regulation 2831.1 *Separate Record for Each Beneficiary or*
10 *Transaction:*

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

16 (1) Date of deposit.

17 (2) Amount of deposit.

18 (3) Date of each related disbursement.

19 (4) Check number of each related disbursement.

20 (5) Amount of each related disbursement.

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

23 (7) Balance after posting transactions on any date.

24 (b) Maintenance of trust ledgers of separate beneficiaries or transactions, or
25 similar records, or automated data processing systems, including computer systems and
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1 electronic storage and manipulation of information and documents, in accordance with generally
2 accepted accounting principles will constitute compliance with subdivision (a), provided that
3 such ledgers, 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 8.

7 Pursuant to Regulation 2832 *Trust Fund Handling*:

8 “(a) Compliance with Section 10145 of the Code requires that the broker place
9 funds accepted on behalf of another into the hands of the owner of the funds, into a neutral
10 escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if
11 the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other
12 financial institution not later than three business days following receipt of the funds by the
13 broker or by the broker’s salesperson.

14 (b) Except as expressly provided by subdivision (d) of Section 10145 of the Code
15 or by a regulation in this article, the account into which the trust funds are deposited shall not be
16 an interest-bearing account for which prior written notice can by law or regulation be required
17 by the financial institution as a condition to the withdrawal of funds.

18 (c) A check received from the offeror may be held uncashed by the broker until
19 acceptance of the offer if

20 (1) the check by its terms is not negotiable by the broker or if the offeror
21 has given written instructions that the check shall not be deposited nor cashed until acceptance of
22 the offer and

23 (2) the offeree is informed that the check is being so held before or at the
24 time the offer is presented for acceptance.

1 (d) In these circumstances if the offeror's check was held by the broker in
2 accordance with subdivision (c) until acceptance of the offer, the check shall be placed into a
3 neutral escrow depository or the trust fund account, or into the hands of the offeree if offeror and
4 offeree expressly so provide in writing, not later than three business days following acceptance
5 of the offer unless the broker receives written authorization from the offerree to continue to hold
6 the check.

7 (e) Notwithstanding the provisions of subdivisions (a) and (d), a real estate broker
8 who is not licensed under the Escrow Law (Section 17000, et seq., of the Financial Code) when
9 acting in the capacity of an escrow holder in a real estate purchase and sale, exchange or loan
10 transaction in which the broker is performing acts for which a real estate license is required shall
11 place all funds accepted on behalf of another into the hands of the owner of the funds, into a
12 neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious
13 name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or
14 other financial institution not later than the next business day following receipt of the funds by
15 the broker or by the broker's salesperson."

16 9.

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

18 "The written consent of every principal who is an owner of the funds in the
19 account shall be obtained by a real estate broker prior to each disbursement if such a
20 disbursement will reduce the balance of funds in the account to an amount less than the existing
21 aggregate trust fund liability of the broker to all owners of the funds."

22 10.

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

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

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

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

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

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

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

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

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

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

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

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

10 11.

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

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

18 12.

19 **Escrow Law - Financial Code Section 17006**

20 Pursuant to Financial Code Section 17006:

21 "(a) This division does not apply to:

22 (1) Any person doing business under any law of this state or the United States
23 relating to banks, trust companies, building and loan or savings and loan associations, credit
24 unions, or insurance companies.
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1 (2) Any person licensed to practice law in California who has a bona fide client
2 relationship with a principal in a real estate or personal property transaction and who is not
3 actively engaged in the business of an escrow agent.

4 (3) Any person whose principal business is that of preparing abstracts or
5 making searches of title that are used as a basis for the issuance of a policy of title insurance by
6 a company doing business under any law of this state relating to insurance companies.

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

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

17
18 13.

19 **Notification of Escrow Activities – Code Section 10141.6**

20 Pursuant to Code Section 10141.6 *Notification of Escrow Activities*:

21 “(a) A real estate broker who engages in escrow activities for five or more
22 transactions in a calendar year pursuant to the exemption from the Escrow Law contained in
23 Section 17006 of the Financial Code, or whose escrow activities pursuant to that exemption
24 equal or exceed one million dollars (\$1,000,000) in a calendar year, shall file with the
25 department a report, within 60 days following the completion of the calendar year, documenting
26

1 the number of escrows conducted and the dollar volume escrowed during the calendar year in
2 which the threshold was met. This report shall be made on a form acceptable to the
3 commissioner.

4 (b) A real estate broker subject to this section and Section 10232.2 may file
5 consolidated reports that include all of the information required under this section and Section
6 10232.2. Those consolidated reports shall clearly indicate that they are intended to satisfy the
7 requirements of both sections.

8 (c) A real estate broker who fails to submit the report required pursuant to
9 subdivision (a) shall be assessed a penalty of fifty dollars (\$50) per day for each day the report
10 has not been received by the department, up to and including the 30th day after the first day of
11 the assessment penalty. On and after the 31st day, the penalty shall be one hundred dollars
12 (\$100) per day, not to exceed a total penalty of ten thousand dollars (\$10,000), regardless of the
13 number of days, until the department receives the report.

14 (d) The commissioner may suspend or revoke the license of a real estate broker
15 who fails to pay a penalty imposed pursuant to this section. In addition, the commissioner may
16 bring an action in an appropriate court of this state to collect payment of that penalty.

17 (e) All penalties paid or collected under this section shall be deposited into the
18 Recovery Account of the Real Estate Fund and shall, upon appropriation by the Legislature, be
19 available for expenditure for the purposes specified in Chapter 6.5 (commencing with Section
20 10470).

21 (f) The reports described in this section are exempted from any requirement of
22 public disclosure by paragraph (2) of subdivision (d) of Section 6254 of the Government Code.”

23 14.

24 **Broker Supervision – Code Section 10159.2 and Regulation 2725**

25 Pursuant to Code Section 10159.2 *Responsibility of Corporate Officer in Charge:*

1 (g) Regular and consistent reports of licensed activities of salespersons.

2 The form and extent of such policies, rules, procedures and systems shall take
3 into consideration the number of salespersons employed and the number and location of branch
4 offices.

5 A broker shall establish a system for monitoring compliance with such policies,
6 rules, procedures and systems. A broker may use the services of brokers and salespersons to
7 assist in administering the provisions of this section so long as the broker does not relinquish
8 overall responsibility for supervision of the acts of salespersons licensed to the broker.”

9 16.

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

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

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

18 ...

19
20 (i) Any other conduct, whether of the same or a different character than
21 specified in this section, which constitutes fraud or dishonest dealing...”

22 17.

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

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

19.

LLI's Business Activities

According to COY, LLI performs residential sales activity and represents buyers and/or sellers. COY is the President, designated officer of record, and 1.5% owner of LLI. Also according to COY, LLI also performed broker escrow services for its own clients. LLI closed approximately 1,294 escrows with a total receipt of \$387,263,000 during the audit period.

20.

Bank Accounts

During the audit period, LLI maintained two (2) bank accounts at Community Bank (200 E. Citrus Ave., Redlands, CA 92373) for the handling of trust fund receipts and disbursements related to its broker escrow activity:

Bank Account 1 - #####1352 ("B/A 1")

- * Bank: Community Bank (Redlands, CA)
- * Account Name: LOIS LAUER INC
- * Signatories: 4, including COY
- * Number of Signatures Required: One (1)

B/A 1 was opened on November 10, 2010 and was maintained for handling the trust fund receipts and disbursements related to LLI's broker escrow activities for the Redlands office. Based on the bank signature card dated November 10, 2010 that was provided for the audit examination, B/A 1 was not designated a trust account or in the name of LLI or its licensed fictitious names as trustee.

Bank Account 2 - #####1360 ("B/A 2")

- * Bank: Community Bank (Redlands, CA)
- * Account Name: LOIS LAUER INC
- * Signatories: 7, including COY

1 * Number of Signatures Required: One (1)

2 B/A 2 was opened on November 10, 2010 and was maintained for handling the
3 trust fund receipts and disbursements related to LLI's broker escrow activities for the Yucaipa
4 office. Based on the bank signature card dated November 10, 2010 that was provided for the
5 audit examination, B/A 2 was not designated a trust account or in the name of LLI or its licensed
6 fictitious names as trustee.

7 21.

8 Bank Reconciliations

9 Bank reconciliations were prepared for B/A 1 and B/A 2 as of audit cutoff dates
10 of February 28, 2018 and January 29, 2016. The adjusted bank balances were compared to the
11 total balance of separate records named "Ledger" (accountability). LLI's separate records
12 "Ledger" were incomplete and inaccurate and did not reflect an accurate running daily balance.
13 The DRE Auditor reconstructed the trust fund records based on records provided for the audit
14 and are presented in the Audit Report for LA170161.

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

16 22.

17 In the course of broker escrow activities described above in Paragraph 19 and
18 during the audit examination period described in Paragraph 18, Respondents LLI and/or COY
19 violated the Code and the Regulations, as described below:

20 23.

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

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

23 A. As of February 28, 2018, B/A 1 had a minimum shortage of <\$36,604.52>.

24 This minimum shortage was caused by:

- 25 (1) minimum negative escrow balances <\$ 18,811.90>
26 (2) minimum unauthorized disbursements <\$ 17,792.62>

<\$ 36,604.52>

The minimum shortage of <\$14,422.75> was carried forward from the audit cutoff of January 29, 2016.

B. As of January 29, 2016, B/A 1 had a minimum shortage of <\$42,952.54>.

This minimum shortage was caused by minimum negative escrow balances in the amount of <\$ 42,952.54>

There were minimum unidentified/unaccounted for funds of \$3,797.44 in B/A 1 as of January 29, 2016.

C. As of February 28, 2018, B/A 2 had a minimum shortage of <\$5,726.01>.

This minimum shortage was caused by:

(1) minimum negative escrow balances	<\$ 45.00>
(2) minimum unidentified cause(s)	<\$ 5,681.01>
	<\$ 5,726.01>

D. As of January 29, 2018, B/A 2 had a minimum shortage of <\$19,959.61>.

This minimum shortage was caused by:

(1) minimum negative escrow balances	<\$ 16,297.05>
(2) minimum unidentified cause(s)	<\$ 3,662.56>
	<\$ 19,959.61>

LLI provided no evidence that the owners of the trust funds had given their written consent to allow LLI to reduce the balance of the funds in bank accounts B/A 1 and B/A 2 to an amount less than the existing aggregate trust fund liabilities, in violation of **Code Section 10145(a) and Regulations 2832.1, 2950(g), and 2951.**

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24.

Trust Fund Records To Be Maintained/When Broker Handles Escrow

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

Based on an examination of the records of all trust funds received and disbursed General Ledger (control records) maintained for B/A 1 and B/A 2 for LLI's broker escrow activity, LLI failed to maintain accurate and complete records. Some of the trust funds date of deposit, amounts of deposit and disbursements were inaccurately recorded. LLI'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.

25.

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

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

A. During the audit period, LLI did not maintain complete and accurate separate records (Ledger) for each escrow transaction for B/A 1 and B/A 2. Based on an examination of B/A 1 and B/A 2's separate records, some of the trust funds date, amounts of deposits and disbursements were inaccurately recorded or not recorded at all. In addition, said records did not reflect an accurate balance after the transactions posted.

B. During the audit period and in connection with the collection and disbursement of said trust funds, LLI did not maintain a separate record of the receipt and disposition of all trust funds deposited into B/A. B/A 1 contained unidentified and/or unaccounted for funds of at least \$3,797.44 as of January 29, 2018.

C. The separate records maintained for B/A 1 and B/A 2 were incomplete and inaccurate, in violation of Code Section 10145 and Regulations 2831.1, 2950(d) and 2951.

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1 26.

2 **Trust Account Designation & Trust Fund Handling/When Broker Handles Escrow**

3 **(Code Section 10145 and Regulations 2832/ 2951)**

4 A. Based on an examination of the signature cards for B/A 1 and B/A 2, both
5 dated November 10, 2010, both B/A 1 and B/A 2 bank accounts that handle broker escrow trust
6 funds were not designated as trust accounts in the name of LLI or its DBAs as trustee, in
7 violation of **Code Section 10145 and Regulations 2832, and 2951.**

8 B. On June 22, 2018, LLI provided updated signature cards for B/A 1 (dated
9 March 29, 2018) and B/A 2 (dated June 14, 2017). IT was specified that B/A 1 was designated
10 as a trust account as of March 29, 2018 and that B/A 2 was designated as a trust account as of
11 June 14, 2017.

12 27.

13 **Use of False or Fictitious Name**

14 **(Code Section 10159.5 and Regulation 2731)**

15 Based on an examination of records, LLI used the unlicensed fictitious business
16 name ("FBN") Lois Lauer Realty Escrow Division to perform real estate broker escrow
17 activities. Per the DRE licensing records dated June 13, 2018, Lois Lauer Realty Escrow
18 Division is not a DBA of LLI. Said DBA was used on escrow instructions, closing statements
19 and checks. LLI's use of unlicensed Lois Lauer Realty Escrow Division in its real estate broker
20 activities is in violation of **Code Section 10159.5 and Regulation 2731.**

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Unauthorized Disbursement/When Broker Handles Escrow

(Code Sections 10145, 10176(i), and 10177(j) and Regulation 2950(g))

A. Based on an examination of records and a reconstruction of LLI's Escrow Funds separate record, LLI disbursed \$10,923.02 with Check #35748 on October 2, 2017 from B/A 1 without written instructions of the party or parties paying money into escrow.

B. An examination of the separate record named "Escrow X" Ledger showed several entries that indicated "Escheat to the State of California, Unclaim" totaling \$20,208.15 from May 27, 2011 to May 31, 2011. LLI issued check number 24071 from B/A 1 to the California State Controller in the amount of \$11,171.65 on June 12, 2015. LLI transferred the remaining balance of \$15,985.19 from the separate record named "Escrow X" Ledger to the separate record named "Escrow X-Fund" Ledger on July 13, 2016, of which \$9,036.50 was posted as "escheat to the State of California, Unclaim."

C. Based on an examination of the separate record named "Escrow X-Fund" and a reconstruction of LLI's "Escrow X-Funds" separate record, LLI disbursed <\$17,792.62> to LLI without identifiable escrow numbers related to escrow transactions and without written authorization/instructions of the party or parties paying money into escrow.

D. The Auditor reconstructed LLI's separate record related to LLI's fees/funds left in B/A 1. AS of February 28, 2018, LLI disbursed funds/unearned fees of <\$17,792.62> which was more than the amount of fees earned that LLI was entitled to disburse.

E. LLI's disbursements described above were made without written instructions or authorization from the party or parties paying money into escrow, in violation of **Code Sections 10145, 10176(i), and 10177(j) and Regulation 2950(g)**.

///

1 29.

2 **When Broker Handles Escrow**

3 **(Regulation 2950(h))**

4 A. Based on an examination of LLI's escrow transaction files, LLI did not advise
5 all parties in writing that COY has any interest as an officer, owner and stockholder of LLI
6 holding the escrow , in violation of **Regulation 2950(h)**.

7 B. On June 22, 2018, LLI provided copies of its updated escrow instructions that
8 showed COY has interest as an officer, owner and stockholder of LLI holding the escrow.

9 30.

10 **Notification of Escrow Activities**

11 **(Code Section 10141.6)**

12 Between January 1, 2016 and December 31, 2016, LLI closed approximately 690
13 escrows with an aggregate total of \$125,673,341.29. LLI met the escrow threshold² and was
14 required to submit an Escrow Activity Report (DRE Form RE 890) within sixty (60) days after
15 the end of the calendar year. LLI did not submit said Escrow Activity Report within sixty (60)
16 days of the end of the calendar year (March 1, 2017), in violation of **Code Section 10141.6**.

17 31.

18 **Responsibility of Corporate Officer in Charge/Broker Supervision**

19 **(Code Sections 10159.2 and 10177(h) and Regulation 2725)**

20 Based on the findings, as described in Paragraphs 23 through 30, D.O. COY did
21 not adequately supervise and control the real estate activities of LLI's employees and RES.
22 COY failed to establish policies, rules, procedures, and systems to review, oversee, inspect and
23

24 _____
25 ² Brokers who are example from the Escrow Law (California Financial Code Section 17006) and engaged in
26 broker-controlled escrow activities amounting to five or more transactions in one calendar year or whose escrow
activities equal or exceed \$1,000,000 in one calendar year will meet the escrow threshold and must submit and
Escrow Activity Report (RE 890).

1 manage transactions requiring a real estate license and the handling of trust funds, in violation of
2 **Code Sections 10159.2 and 10177(h) and Regulation 2725.**

3 32.

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

5 **(Code Section 10177)**

6 The overall conduct of Respondents LLI and COY is violative of the Real Estate
7 Law and constitutes cause for the suspension or revocation of their real estate licenses and
8 license rights under the provisions of **Code Section 10177(g)** for negligence and **Code Section**
9 **10177(d)** for willful disregard of the Real Estate Law.

10 **COSTS**

11 **Investigation and Enforcement Costs**

12 **(Code Section 10106)**

13 33.

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.

19 **Audit Costs**

20 **(Code Section 10148)**


21 34.

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

1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against the license and license rights of Respondents LOIS LAUER INC and DAVID G.
4 COY under the Real Estate Law (Part 1 of vision 4 of the Business and Professions Code), for
5 the cost of investigation and enforcement as permitted by law, and for such other and further
6 relief as may be proper under other provisions of law, and for costs of audit.

7 Dated at Los Angeles, California

8 this 15th day of October, 2019.

9 
10 _____
11 Maria Suarez
12 Supervising Special Investigator

13
14 cc: LOIS LAUER INC
15 Enforcement – M. Suarez
16 Audits – D. Quek, J. Lin
17 Sacto.