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**FILED**  
APR 11 2006  
DEPARTMENT OF REAL ESTATE

*K. M. Schmidt*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	NO. H-28233 LA
	)	
CARL DOUGLAS BYERS,	)	
	)	
Respondent.	)	
	)	

ORDER GRANTING REINSTATEMENT OF LICENSE

On October 9, 2002, a Decision was rendered herein revoking Respondent's real estate broker license, but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on October 9, 2002, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On January 28, 2004, Respondent petitioned for reinstatement of his real estate broker license and the Attorney General of the State of California has been given notice of the filing of said petition.

///

1 I have considered the petition of Respondent and  
2 the evidence and arguments in support thereof. Respondent  
3 has demonstrated to my satisfaction that Respondent meets  
4 the requirements of law for the issuance to Respondent of  
5 an unrestricted real estate broker license and that it would  
6 not be against the public interest to issue said license to  
7 Respondent.

8 NOW, THEREFORE, IT IS ORDERED that Respondent's  
9 petition for reinstatement is granted and that a real estate  
10 broker license be issued to Respondent if Respondent satisfies  
11 the following conditions within nine (9) months from the date  
12 of this Order:

13 1. Submittal of a completed application and payment  
14 of the fee for a real estate broker license.

15 2. Submittal of evidence of having, since the most  
16 recent issuance of an original or renewal real estate license,  
17 taken and successfully completed the continuing education  
18 requirements of Article 2.5 of Chapter 3 of the Real Estate  
19 Law for renewal of a real estate license.

20 This Order shall become effective immediately.

21 DATED: 4-5-06

22 \_\_\_\_\_  
23 JEFF DAVI  
24 Real Estate Commissioner  
25 

26 cc: Carl D. Byers  
27 1708 Raintree Road  
Fullerton, CA 92835

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA  
DEPARTMENT OF REAL ESTATE

\* \* \*

By Jean Arnold

In the Matter of the Accusation of	)	DRE No. H-28233 LA
CARL DOUGLAS BYERS,	)	OAH No. L-1999090384
Respondent.	)	

ORDER MODIFYING DISCIPLINARY ACTION  
PURSUANT TO STIPULATED SETTLEMENT

On May 24, 2000, the Real Estate Commissioner issued a Decision After Rejection in this matter revoking Respondent Byer's real estate broker license. The revocation became effective on June 21, 2000. Thereafter, on August 8, 2000, following a hearing on a timely filed Petition for Writ of Mandate, the Superior Court for the County of Orange issued an order directing the Department to set aside and reconsider its action with respect to Respondent Byer's real estate broker license. In response thereto, on January 31, 2001, the Real Estate Commissioner issued a Decision After Remand ("Decision After Remand No.1") once again revoking respondent Byer's real estate broker license.

On March 15, 2001, respondent Byer's filed a second Petition for Writ of Mandate in the Orange County to appeal Decision After Remand No.1. On May 8, 2001, The Superior Court of Orange County declined to issue a stay of Decision After Remand No. 1. However, following a hearing, on June 28, 2001, the Orange County Superior Court issued a Peremptory Writ of Mandate ordering the Department to set Decision After Remand No. 1. In response, the Department set aside Decision After Remand No. 1 and gave Notice of said action to

1 the Court.

2 On August 31, 2001, the Department issued a second Decision  
3 After Remand (Decision After Remand No. 2) again revoking the real  
4 estate broker license and license rights of Respondent CARL DOUGLAS  
5 BYERS. The effective date of the Decision After Remand No. 2 was  
6 September 24, 2001.

7 On or about May 30, 2002, Respondent CARL DOUGLAS BYERS  
8 filed Notice of Motion and Motion for Sanctions Respondents  
9 Willful Refusal to Comply With Order Compelling Compliance With  
10 Peremptory Writ of Mandate and For Sanctions Pursuant to Civil  
11 Code of Procedure Sections 1097, 128 and 1028.5. Hearings were  
12 held on the Sanctions Motion on July 9, 2002 and August 6, 2002.  
13 The Court's Tentative Decision was to grant the motion and  
14 sanction the Department and Commissioner Reddish Zinnemann  
15 \$1,000.00. Ultimately the Court Ordered the Commissioner to  
16 continue her reconsideration of Decision After Remand No. 2 ab  
17 initio and continued the hearing until October 22, 2002.  
18 Subsequent thereto, Respondent Byers and the Department agreed to  
19 stipulate and resolve the pending Petition for Writ of Mandate and  
20 Motion for Sanctions by issuance of the Order set forth below  
21 herein.

22 In consideration for the dismissal with prejudice and in  
23 complete settlement of Respondent CARL DOUGLAS BYERS' Petition for  
24 Writ of Mandate and Motion for Sanctions, with each party to bear  
25 his or its own costs and attorneys fees, the following order is  
26 made:

27

28

1 ORDER

2  
3 All licenses and licensing rights of Respondent Carl  
4 Douglas Byers under the Real Estate Law are revoked; provided  
5 however, a restricted real estate broker license shall be issued to  
6 Respondent Byers pursuant to Section 10156.5 of the Business and  
7 Professions Code if Respondent makes application therefor and pays  
8 to the Department of Real State the appropriate fee for the  
9 restricted license within 90 days from the effective date of this  
10 Order. The restricted license issued to Respondent Byers shall be  
11 subject to all of the provisions of Section 10156.7 of the Business  
12 and Professions Code and to the following limitations, conditions  
13 and restrictions imposed under authority of Section 10156.6 of that  
14 Code.

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

20 2. The restricted license issued to Respondent may  
21 be suspended prior to hearing by Order of the Real Estate  
22 Commissioner on evidence satisfactory to the Commissioner that  
23 Respondent has violated provisions of the California Real Estate  
24 Law, the Subdivided Lands Law, Regulations of the Real Estate  
25 Commissioner or conditions attaching to the restricted license.

26 3. Respondent shall not be eligible to apply for the  
27 issuance of an unrestricted real estate license nor for the removal  
28 of any of the conditions, limitations or restrictions of a

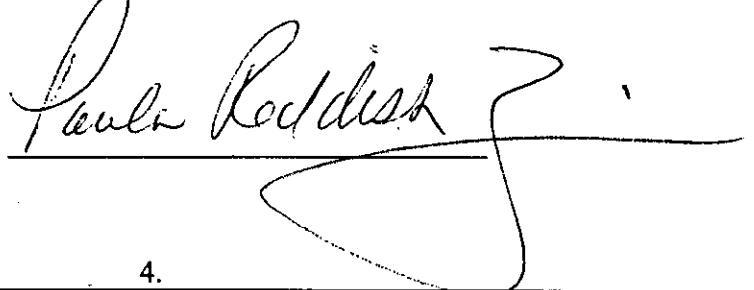
1 restricted license until one (1) year has elapsed from the  
2 effective date of this Decision.

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

15 5. Respondent shall within six (6) months from the  
16 effective date of the restricted license, take and pass the  
17 Professional Responsibility Examination administered by the  
18 Department including the payment of the appropriate examination  
19 fee. If Respondent fails to satisfy this condition, the  
20 Commissioner may order suspension of the restricted license until  
21 Respondent passes the examination.

22 DATED: October 9, 2002.

23  
24 PAULA REDDISH ZINNEMANN  
25 Real Estate Commissioner

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**FILED**  
SEP - 4 2001  
DEPARTMENT OF REAL ESTATE  
By *R. Mederholt*

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	DRE No. H-28233 LA
CARL DOUGLAS BYERS,	)	OAH No. L-1999090384
Respondent..	)	

DECISION AFTER REMAND

On or about January 31, 2001, a Decision After Remand in this matter revoked the real estate license of Respondent. The Decision was to be effective at 12 o'clock noon on March 8, 2001.

Respondent sought judicial review via a Petition for Writ of Administrative Mandamus filed in the Superior Court of the State of California, Orange County, Central District, in Case No. 01CC03604. After a June 26, 2001, hearing in Superior Court on said petition, on June 28, 2001; the Court issued a Peremptory Writ of Mandate directing the Real Estate Commissioner to set aside her Decision of January 31, 2001, and to reconsider the

1 Conclusions of Law and penalties imposed thereon in accordance  
2 with the following Findings of Fact and Law upon the court's  
3 independent judgment of the record that:

4 "1. There was an abuse of discretion by the  
5 commissioner in her Findings of Fact and Conclusions of Law in  
6 that the Commissioner failed to offer evidence and/or rationale  
7 in support of her rejection of the mitigating factors contained  
8 in the proposed Decision issued by the Administrative Law Judge,  
9 findings of fact 5(A), 5(D), and 7(A) through (E), to support the  
10 commissioner's conclusion that the suspension [sic] of  
11 petitioner's license was necessary to 'protect the public.'"  
12 [Peremptory Writ of Mandate, Case No. 01CC03604, pages 1-2].

13 On July 26, 2001, the Department issued a Notice of its  
14 Order Setting Aside Decision After Remand, effective June 28,  
15 2001.

16 I have given due consideration to the proceedings to  
17 date in DRE Case No. H-28233 LA, and to the appropriate penalty  
18 to be imposed in this matter. In that vein, I have re-reviewed  
19 the administrative record, including the transcript of the  
20 November 11, 1999, administrative hearing, the Proposed Decision,  
21 the Decision After Rejection, the Peremptory Writ of Mandate  
22 issued in Orange County Superior Court Case No. 00CC07187, the  
23 January 31, 2001, Decision After Remand, and the Peremptory Writ  
24 of Mandate issued in Orange County Superior Court Case No.  
25 01CC03604.

26 After further consideration of the matter, in light of  
27 the determination of the Superior Court in its Peremptory Writ of



1 Mandate in Case No. 01CC03604, the following shall constitute the  
2 Decision of the Real Estate Commissioner in the above-entitled  
3 matter:

4 FINDINGS OF FACT

5 1. Complainant Thomas McCrady filed the Accusation in  
6 the above-captioned proceeding while acting in his official  
7 capacity as a Deputy Real Estate Commissioner of the Department  
8 of Real Estate (the Department), State of California.

9 2. Pursuant to the Department's July 26, 2001 Notice  
10 of Order Setting Aside Decision After Remand, Respondent is  
11 currently licensed as a real estate broker by the Department.  
12 His license, number 00552256, is due to expire June 29, 2002.

13 3. On February 23, 1999, in the Superior Court of  
14 California, County of Orange, North Orange County Judicial  
15 District, in the case *People v. Carl Douglas Byers*, case no.  
16 FU989NM10871, Respondent was convicted of violating Penal Code  
17 section 602.5. That conviction followed his plea of nolo  
18 contendere, and by that plea, Respondent was convicted of  
19 unlawful entry of a non-commercial dwelling house, a misdemeanor.

20 4. The court suspended imposition of sentence, on the  
21 condition that Respondent be placed on informal (unsupervised)  
22 probation for a period of three years. Among the terms and  
23 conditions of that probation, Respondent was required to pay a  
24 \$200.00 fine, to pay \$500.00 to the restitution fund and to the  
25 victim witness emergency fund, to attend ten counseling sessions,  
26 and to perform 100 hours community service. Other terms and  
27 conditions, standard to probation grants, were imposed.

1           5. The facts and circumstances of Respondent's crime  
2 are as follows:

3           (A) On December 11, 1998, Respondent entered a  
4 home on Amerage Street in Fullerton, California. The home had  
5 been listed for sale. Respondent went there to walk through the  
6 house, as he and his wife needed to acquire a house for a tax-  
7 free exchange they then contemplated. To gain entry to the home,  
8 Respondent used the lockbox which had been placed on the door.  
9 According to Respondent's testimony, at the time he was sleep-  
10 deprived, having been unable to sleep for several days as a  
11 result of chronic migraine headaches. While inside the Amerage  
12 Street home, Respondent took two videotapes which tapes he  
13 describes as being pornographic. Respondent said he took the  
14 tapes because his headache pain was very bad, and he thought that  
15 he might be able to distract himself from his headache pain by  
16 watching them. He testified he intended to return the tapes  
17 after he had viewed them. He testified that he thought he could  
18 get away with watching the tapes at his own home, and before  
19 returning them. Respondent left the house on Amerage, and drove  
20 to his own home, several blocks away. Upon arrival, however, he  
21 noticed in his driveway a car belonging to one of his children.

22           (B) Respondent then went to another home, on  
23 Jacaranda Street in Fullerton, which was listed for sale. He  
24 also gained entry onto this house via the lockbox thereon. While  
25 inside the Jacaranda Street home, because he was "in the mood,"  
26 Respondent engaged in an act of self gratification, to wit,  
27 masturbated, using a napkin that he deposited in the bottom of a

1 garbage pail in the home. He then used a video tape player  
2 located in the home to play some portion of one of the  
3 videotapes. How much is unclear. Respondent testified that when  
4 he began to feel paranoid, he fled the house, leaving the  
5 videotape behind in the video machine.

6 (C) Respondent states he then drove around the  
7 area in some sort of a daze. He went to a local hardware store,  
8 where he lost his wallet after purchasing some items. He later  
9 went to his chiropractor's office. He states he was somewhat  
10 disoriented there, and still was suffering the effects of his  
11 migraine headache.

12 (D) Thereafter, in the evening of December 11,  
13 1998, Respondent returned to the Jacaranda Street home,  
14 remembering he left the videotape in the video machine. When he  
15 arrived, he found the owner of the home, a woman, and her real  
16 estate agent, with whom Respondent is acquainted. Outside the  
17 police were also present. Respondent promptly told the police of  
18 his actions. He was not arrested at that time. He then went to  
19 his home, and confessed the whole story to his wife.

20 (E) Respondent did not testify that the two  
21 videotapes were returned to their owner.

22 (F) Respondent's total conduct indicates he was  
23 aware of his actions and the reasons for his actions on  
24 December 11, 1998. For example, he realized that he couldn't  
25 watch the video at his home because of its content.

26 6. Under all of the circumstances, the aforementioned  
27 offense is a crime of moral turpitude, substantially related to

1 the duties, qualifications, and functions of a real estate  
2 licensee.

3 7. There are a number of other factors relating to  
4 mitigation of Respondent's conduct which must be considered in  
5 determining the appropriate degree of discipline in this matter.

6 (A) Respondent has been a licensee of the  
7 Department for over twenty years. He has never before been the  
8 subject of disciplinary action, and has no other convictions.  
9 According to his testimony, he has regularly been recognized by  
10 his peers as an outstanding real estate professional. Respondent  
11 has been married for over twenty years and supports five  
12 children.

13 (B) For a period of years prior to the incident in  
14 question, Respondent had suffered from chronic headaches, neck  
15 and shoulder pain. He regularly treated with a chiropractor, and  
16 according to Respondent, he was taking a medication prescribed by  
17 his doctor, plus over-the-counter medications at the time of his  
18 criminal conduct.

19 (C) Very soon after the criminal conduct,  
20 Respondent sought medical assistance. Since the criminal  
21 conduct, Respondent has been further evaluated and treated by  
22 doctors, who have changed his medication. He testified that he  
23 can now get regular sleep, which is apparently helping him deal  
24 with the numerous other stresses in his life. Respondent has not  
25 received any diagnosis that he is a sexual predator, or that he  
26 suffers some other sexually-tinged mental affliction, or some  
27 other mental affliction. Respondent, however, offered no

1 evidence that he has been evaluated for the same by a qualified  
2 professional specializing in the field of aberrant sexually-  
3 tinged behaviors. Respondent offered no evidence that he has  
4 undergone standard diagnostic psychological testing, or any  
5 results of such testing. Respondent did testify that he satisfied  
6 the criminal probation requirement of "10 counseling sessions  
7 with his private doctor," Martin Jensen, M.D., a self-described  
8 "brain chemistry correction" specialist. Respondent did not  
9 offer any evidence regarding the precise nature or duration of  
10 his evaluation by or treatment with Dr. Jensen. Respondent  
11 offered no evidence that he received any psychotherapy or that he  
12 worked in therapy on issues relevant to his acts on December 11,  
13 1998, or that he made any progress in addressing the causes of  
14 those acts. There was no testimony that Respondent's conduct  
15 while inside both the Amerage and Jacaranda Street homes on  
16 December 11, 1998 resulted from a fundamental breakdown of his  
17 ability to engage in rational thought or distinguish right from  
18 wrong as a result of his medical condition. In fact the facts in  
19 their entirety indicate that he knew what he was looking for and  
20 what he wanted to do after he found it.

21 (D) Respondent's employer, a large brokerage  
22 employing over fifty people, wants to retain his services. The  
23 morning after the incident in question, Respondent called one of  
24 the firm's owners, met with him, and told him the entire story.  
25 Mr. Linz attested at this hearing that if the Department saw fit  
26 to allow Respondent to continue as a licensee, Mr. Linz's firm  
27 would employ, and supervise him. Mr. Linz's firm adopted this

1 posture notwithstanding advice that for liability reasons, the  
2 firm should not continue to use Respondent's services.

3 (E) There is no evidence of any behavior like this  
4 in Respondent's forty-eight years. Per evidence offered by  
5 Respondent during this hearing, this was an aberrant act,  
6 unlikely to repeat itself. Such testimony I find somewhat self-  
7 serving and must be given little weight. For example, Respondent  
8 did not testify that he would not do such a thing again or offer  
9 any safeguards or protections against his repetition of such an  
10 action.

11 (F) Respondent testified that he was embarrassed  
12 by his actions on December 11, 1998, and immediately thereafter  
13 felt awkward and uncomfortable going out in public. Respondent  
14 did not testify that he was remorseful for his actions on  
15 December 11, 1998. Respondent did not expressly discuss any  
16 awareness of the wrongfulness of his actions, or the impact of  
17 his actions upon the victims of his crime, the real estate  
18 profession, or the public perception of the real estate  
19 profession. Respondent did testify that, in his opinion, no one  
20 would have known about his acts if he had not admitted them.  
21 This is an indication of his awareness of all the facts  
22 surrounding his conduct.

23 8. Since his conviction, Respondent has completed all  
24 of the terms and conditions of his probation, although the term  
25 of the probation has not expired. He remains, as he was before  
26 the incident, active in his church and his community. There have  
27 been no known further incidents. Despite the stresses of these

1 events, Respondent is still married and supporting his family.

2 CONCLUSIONS OF LAW

3 1. Cause exists to revoke or suspend the real estate  
4 broker's license issued to Respondent Carl Byers pursuant to  
5 Business and Professions Code sections 490 and 10177(b), for his  
6 conviction of a crime of moral turpitude, substantially related  
7 to the duties, qualifications, and functions of a real estate  
8 professional. This conclusion is based on Findings of Fact 3  
9 through 6.

10 2. There are some mitigating facts to consider when  
11 determining what discipline to impose, based on information set  
12 out in Findings of Fact 5(A), 5(D), 7(A) through 7(E), and 8.  
13 Specifically, these mitigating facts are as follows.

14 (A) Respondent testified that he was sleep-deprived and  
15 suffering from unremitting migraine headache pain on December 11,  
16 1998. Respondent did not intend permanently to deprive the owner  
17 of his videotapes; Respondent intended only to borrow them, watch  
18 them, and return them.

19 (B) Respondent admitted his acts to the police and to  
20 his wife.

21 (C) Respondent has suffered no prior convictions or  
22 license discipline. Respondent has received a number of awards  
23 for his outstanding performance as a real estate professional.  
24 Respondent has been married for over 20 years, and supports his  
25 five children.

26 (D) For a period of years prior to the incident in  
27 question, Respondent had suffered from chronic headaches, neck

1 and shoulder pain, and was undergoing somewhat ineffectual  
2 treatment for same.

3 (E) Soon after the events on December 11, 1998,  
4 Respondent sought assistance from different medical personnel.  
5 He has received improved treatments that have been effective in  
6 controlling his headache pain. Respondent testified that he now  
7 can get regular sleep. Respondent has not been diagnosed by any  
8 of these practitioners as having any condition involving sexual  
9 compulsion or a sexually-tinged disorder or other mental  
10 disorder. Respondent has undergone at least ten counseling  
11 sessions with Martin Jensen, M.D., a "brain chemistry correction"  
12 expert.

13 (F) Respondent immediately admitted his actions to his  
14 supervisor. Respondent's supervisor wishes to continue to employ  
15 Respondent, notwithstanding advice that Respondent's continued  
16 employment presents liability issues.

17 (G) There is no evidence of any behavior like this in  
18 Respondent's forty-eight years. Per evidence offered by  
19 Respondent during this hearing, this was an aberrant act,  
20 unlikely to repeat itself. However, conduct such as what  
21 occurred can be hidden and kept from others.

22 Since his conviction, Respondent has completed all of  
23 the terms and conditions of his probation, although the term of  
24 the probation has not expired. He remains, as he was before the  
25 incident, active in his church and his community. There have  
26 been no known further incidents. Despite the stresses  
27 of these events, Respondent is still married and supporting his



1 family.

2           3. Respondent has taken steps toward rehabilitation,  
3 but has not established his complete rehabilitation at this time,  
4 based on Findings of Fact 5, 7, and 8. The criteria for  
5 evaluating rehabilitation are set out in the California Code of  
6 Regulations, Title 10, section 2912. With respect to these  
7 criteria, I make the following findings.

8           2912(a): The hearing in this matter occurred less than  
9 two years from the date of the conviction. The evidence before  
10 me was presented about 8 ½ months after Respondent's conviction.  
11 Hence, the evidence upon which this decision is based was  
12 obtained less than two years from the date of the conviction.

13           2912(b): I have before me no evidence that restitution  
14 has been made to the victims in this case. I have no evidence  
15 that the videotapes were returned to the tenant at the Amerage  
16 property, or that Respondent otherwise made amends to this  
17 individual. I have no evidence of amends being made to the  
18 homeowner at the Jacaranda property for the unconsented use, or  
19 misuse, of her property.

20           2912(c): Respondent's conviction has not been  
21 expunged.

22           2912(d): Respondent remains on and has not been  
23 granted an early discharge from probation.

24           2912(e): Substance abuse is an issue not applicable,  
25 per the evidence in this record.

26           2912(f): The hearing record indicates that respondent  
27 has paid all fines imposed upon him by the court.

1           2912(g): His "business practices," per se, are not  
2 applicable to this case. Respondent, however, did not discuss  
3 the wrongfulness of taking or even borrowing property that does  
4 not belong to him. Respondent did not discuss the special  
5 fiduciary duty imposed upon real estate brokers, who are  
6 entrusted with access to listed homes. Respondent did not  
7 discuss the impact of the abuse of such access upon the  
8 homeowners, upon the profession, upon the public confidence in  
9 the profession. Nor did he discuss his abuse of his privilege to  
10 use a lockbox to enter homes for sale for private gain, rather  
11 than making such an entry on behalf of a principal or client.

12           2912(h): There is no evidence in the record to suggest  
13 that Respondent's social or business relationships played any  
14 direct role in his conviction. At the same time, Respondent  
15 appears to surround himself with individuals who have excused or  
16 rationalized his actions, and have expressed no deep concern  
17 about Respondent's judgment. Respondent did not offer any  
18 evidence as to new or different social or business relationships  
19 with individuals who would tend to view Respondent's actions more  
20 objectively.

21           2912(i): The record suggests that Respondent had and  
22 continues to have a stable family life. This record suggests  
23 that Respondent previously fulfilled and still fulfills his  
24 familial and parental responsibilities.

25           2912(j): There is no evidence suggesting that  
26 Respondent is involved in formal educational efforts.

27           2912(k): The evidence suggests that Respondent has

1 been and continues to be active in his church.

2           2912(1): The criterion, involving changes of attitude  
3 from those existing at the time of the commission of the criminal  
4 acts, may be one of the most significant in connection with this  
5 case.

6           Respondent's testimony reflects only a minor change of  
7 attitude. After his acts on December 11, 1998, Respondent did  
8 recognize a need to seek assistance from medical professionals  
9 other than the ones he previously was seeing. While Respondent  
10 said he was embarrassed by his acts on December 11, 1998,  
11 Respondent has not discussed or offered any insights into the  
12 wrongfulness of his acts, or any awareness of the impact of those  
13 actions on others: the victims of his crime, the real estate  
14 profession, the public perception and confidence in the real  
15 estate profession. Respondent has not expressed any remorse for  
16 his actions on December 11, 1998. Respondent has not made  
17 efforts at amends to the victims of his crime.

18           Respondent candidly admitted his acts on December 11,  
19 1998, but he did not seem to recognize that his pain and lack of  
20 sleep was not and is not an excuse or justification for his  
21 actions. Respondent has commented that no one would have known  
22 about his acts if he had not admitted them.

23           Respondent did not testify that he would never engage  
24 in such actions again. Respondent did not offer safeguards or  
25 protections against his repetition of actions like those on  
26 December 11, 1998.

27           Respondent did express embarrassment by his actions,

1 but embarrassment involves a self-oriented focus, i.e., how  
2 others perceive him. He is not yet thinking about or discussing  
3 how others are feeling and how others have been harmed.  
4 Respondent is not even expressing any curiosity why he made the  
5 decisions he made on December 11, 1998. To date, Respondent is  
6 content to have his headache pain resolved and sees no apparent  
7 reason to explore his conduct and choices any further. This is  
8 particularly troubling, given the impact that his actions have  
9 had on his career and on those close to him, not to mention the  
10 impact on the profession and the public.

11           Respondent's wife testified that Respondent sleeps  
12 better since he began taking the new medication. Respondent's  
13 wife, minister, and supervisor all testified that Respondent has  
14 and continues to have good morals. None was particularly  
15 troubled by Respondent's actions on December 11, 1998, except to  
16 the extent that it resulted in professional or legal difficulties  
17 to Respondent or to the extent that it reflected a medical  
18 problem. All seem to excuse and/or dismiss Respondent's actions  
19 because he was in pain.

20           2912(1)(3): No probation personnel or law enforcement  
21 officials testified.

22           2912(1)(4): Respondent presented testimony from a  
23 "brain chemistry correction" specialist who opined that  
24 Respondent's actions resulted from his pain, his medications, and  
25 his medical condition. This testimony, however, was irrelevant  
26 to and inconsistent with Respondent's clear awareness and  
27 recollection of his actions, his motivations, and his choices on

1 December 11, 1998. The ability of Respondent to recognize and  
2 remember that but for his own admission no one would have known  
3 about his conduct is evidence of the clearness of thought and  
4 what took place.

5 4. There are some aggravating facts to consider when  
6 determining what discipline to impose, based on information set  
7 out in Findings of Fact 5(A), 5(B), 5(E), 5(F), 7(C), 7(E), 7(F).  
8 Specifically, these aggravating facts are as follows.

9 In 5(A): Respondent's visit to the Amperage property  
10 was motivated by a desire to achieve a personal financial  
11 benefit. To view properties on one's own behalf, real estate  
12 licensure is not required. A license is required only when  
13 acting for another or others. Respondent exploited his licensure  
14 by not only gaining access to this property by a lockbox (which  
15 access a layperson would not have) for his own personal  
16 interests, but by removing from the home videotapes that did not  
17 belong to him. His motives in taking the videotapes were self-  
18 serving: to distract himself from his headache pain.

19 In 5(B): Respondent went to the Jacaranda property for  
20 the sole purpose of viewing the videotapes, since he was unable  
21 to view them at his own home. Respondent gained entry to the  
22 home via the lockbox thereon. He thereby again exploited his  
23 status as a real estate licensee. A layperson would not have  
24 been able to take advantage of the Jacaranda property in this  
25 manner. Respondent also engaged in the self-gratifying act of  
26 masturbation while at the Jacaranda property and disposed of the  
27 "evidence" in the garbage pail in that home. The hiding of this

1 item at the bottom of the garbage pail indicates he was aware of  
2 the nature of his conduct. He also left the pornographic  
3 videotape in the video machine. It could have been offensive  
4 and/or harmful to anyone subsequently subjected to it.

5 In 5(E): Respondent apparently never returned the  
6 videotapes to their owner.

7 In 5(F): Notwithstanding his pain and medication,  
8 Respondent had full awareness of his actions and motivations  
9 therefor.

10 In 7(C): Respondent has not sought assistance from a  
11 professional who specializes in the field of aberrant sexual  
12 behaviors, or in an effort to see if he may be suffering from any  
13 psychological diagnosis that needs attention and treatment.  
14 Respondent has not sought assistance from a professional who  
15 provides psychological evaluation and assessment. Respondent  
16 apparently has not engaged in psychotherapy and has made no  
17 effort to obtain insight into his choice of actions on December  
18 11, 1998.

19 In 7(E): As noted above, Respondent did not testify  
20 that he would never engage in such actions again. He did not  
21 offer safeguards or protections against his repetition of actions  
22 like those on December 11, 1998.

23 In 7(F): Respondent did not testify that he was  
24 remorseful for his actions on December 11, 1998. Respondent did  
25 not express any awareness or concern regarding the impact of his  
26 actions on the victims of his crime, on the real estate  
27 profession, or on the public confidence in the real estate

1 profession. Respondent did express embarrassment by his actions,  
2 but embarrassment involves a self-oriented focus, i.e., how  
3 others perceive him. He is not yet thinking about or discussing  
4 how others are feeling and how others have been harmed.  
5 Respondent is not even expressing any curiosity why he made the  
6 decisions he made on December 11, 1998. To date, Respondent is  
7 content to have his headache pain resolved and sees no apparent  
8 reason to explore his conduct and choices any further.

9 In 8: Respondent is scheduled to remain on probation  
10 until February 23, 2002.

11 5. Findings of Fact 5, 6, and 7, based on Respondent's  
12 conviction for trespass, with the underlying act of theft and the  
13 abuse of access to the amenities of a listed home, involved  
14 dishonesty, untrustworthiness and moral turpitude. Honesty and  
15 trustworthiness are qualities of utmost importance in a real  
16 estate licensee, who must frequently act in a fiduciary capacity.  
17 "Honesty and truthfulness are two qualities deemed by the  
18 Legislature to bear on one's fitness and qualification to be a  
19 real estate licensee." Harrington v. Department of Real Estate  
20 (1989) 214 C.A.3d 394, 402. "If appellant's offenses reflect  
21 unfavorable on his honesty, it may be said he lacks the necessary  
22 qualifications to become a real estate salesperson." Harrington,  
23 supra, 214 C.A.3d at 402; Golde v. Fox, (1979) 98 Cal. App. 3d  
24 167, 176. "The Legislature intended to insure that real estate  
25 brokers and salespersons will be honest, truthful and worthy of  
26 the fiduciary responsibilities which they will bear."  
27 Harrington, supra, 214 C.A. 3d at 402; Ring v. Smith (1970) 5

1 C.A. d 197, 205.

2           The act of illegally entering any real property and  
3 taking personal property of the owner, or engaging in an act of  
4 self gratification is conduct involving moral turpitude of the  
5 highest magnitude. As mentioned above, licensees have access to  
6 homes of clients and non-clients, and it is essential that their  
7 conduct when entering these homes is above reproach. As such,  
8 Respondent's conduct and acts underlying his conviction are  
9 substantially related to the qualifications, functions, and  
10 duties of a real estate licensee pursuant to Section 2910(a)(1)  
11 of Chapter 6, of Title 10, of the California Code of Regulations  
12 (Regulations), and are a basis to revoke his real estate license,  
13 in conjunction with Business and Professions Code Sections 490  
14 and 10177(b).

15           6. In determining the level and form of license  
16 discipline necessary to protect the public from future similar  
17 conduct, there are several factors that I have considered.

18           (A) Respondent's conduct was a serious breach of public  
19 trust. Real estate licensees frequently have unfettered access  
20 to homes on which there are lock boxes. The public has the right  
21 to expect that its trust and confidence placed in licensees is  
22 never breached in the slightest manner or way. Any breach, no  
23 matter how slight, must be considered very serious, for it causes  
24 a loss of such trust and confidence. The public relies on the  
25 Department of Real Estate to issue licenses to  
26 those who are honest and trustworthy. Continued licensure of  
27 Respondent will have a negative impact on the public and the



1 profession, who will be advised, in effect, that the Department  
2 of Real Estate will allow persons who breach the public trust to  
3 continue to have access to their homes.

4 (B) Continued licensure of Respondent would require  
5 measures that could safeguard the public. As a practical matter,  
6 however, there is no effective way for Respondent's broker,  
7 Mr. Linz, to supervise Respondent when he is "in the field."  
8 Mr. Linz theoretically could arrange for Respondent to be  
9 accompanied by another real estate licensee on each and every  
10 home preview, open house, and walk-through he conducts. Such a  
11 requirement, however, would be impractical, cost-prohibitive, and  
12 impossible for the Department of Real Estate to enforce.

13 Most reasonable members of the public would find that  
14 the use of their home by a licensee in a manner like that of  
15 Respondent on December 11, 1998, to be repugnant and highly  
16 objectionable. It is reasonable to assume that the public would  
17 want foreknowledge of Respondent's prior conduct in order to  
18 decide whether or not to allow him to enter their homes or have  
19 access to their possessions or have contact with their families.  
20 There is no practical way to warn the public of Respondent's  
21 offense so that they can give informed consent before they decide  
22 whether or not to allow him access to their homes. Such a  
23 requirement would not be enforceable.

24 Similarly, the Department cannot effectively monitor  
25 whether or not Respondent has his stress and pain levels under  
26 control.

27 (C) The Department could require Respondent to undergo

1 psychological testing and insight-oriented psychotherapy, but  
2 these measures would be more meaningful and effective if they  
3 resulted from Respondent's own choices when he is ready to face  
4 these issues, and were not measures that resulted from an order  
5 by this Department.

6 (D) The disciplinary procedures provided for in the  
7 Real Estate Law are intended to protect the public when they deal  
8 with real estate licensees. (Business and Professions Code  
9 Section 10050 and Handeland v. DRE (1975) 58 Cal. App. 513.)  
10 Only time will tell whether Respondent is rehabilitated from the  
11 conduct that gave rise to these proceedings.

12 At this time, and in the context of this case, the risk  
13 presented by the Respondent's continued practice under his real  
14 estate license is an unfair one to place on the people of the  
15 State of California.

16 After Respondent has spent a period of time without the  
17 supervision of the criminal justice system, his actions can be  
18 again evaluated and his level of rehabilitation can be more  
19 accurately determined. California courts have held that little  
20 weight is placed on the fact that a license applicant did not  
21 commit additional crimes while in prison, or while on parole or  
22 probation. (See In re Menna (1995) 11 Cal. 4<sup>th</sup> 975; Seide v.  
23 Committee of Bar Examiners (1989) 49 Cal. 3d 933). For example,  
24 in the recent case In re Gossage (200) 23 Cal. 4<sup>th</sup> 1080, the  
25 court noted that persons under the direct supervision of  
26 correctional authorities are required to behave in an exemplary  
27 fashion and gave little weight to the fact that an applicant did

1 not commit additional crimes during the period of supervision or  
2 while engaged in the license application process. Respondent  
3 remains on probation until February 2002.

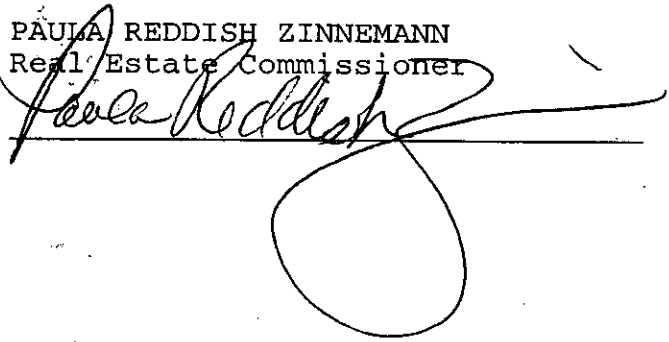
4 The below Order has taken into consideration the  
5 evidence in mitigation offered by Respondent and the evidence of  
6 rehabilitation, and reflects my assessment of the level of public  
7 protection required due to Respondent's conduct which involved an  
8 unlawful taking of personal property and moral turpitude.

9  
10 ORDER

11 The real estate broker license and license rights of  
12 Respondent CARL DOUGLAS BYERS under the Real Estate Law (Part 1  
13 of Division 4 of the Business and Professions Code) are hereby  
14 revoked.

15 This Decision shall become effective at 12 o'clock  
16 noon on September 24, 2001.

17 IT IS SO ORDERED August 31, 2001.  
18

19 PAULA REDDISH ZINNEMANN  
20 Real Estate Commissioner  
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**FILED**  
JUL 26 2001  
DEPARTMENT OF REAL ESTATE

By *K. Neuberger*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )	
CARL DOUGLAS BYERS, )	DRE NO. H-28233 LA
Respondent )	OAH NO. L-1999090384
_____ )	

NOTICE OF ORDER SETTING ASIDE  
DECISION AFTER REJECTION AFTER REMAND

TO: CARL DOUGLAS BYERS, Respondent/and to the Attorney of Record:

On or about May 24, 2000, in a Decision After Rejection effective June 21, 2000, the license of respondent was revoked.

Pursuant to respondent's petition for the issuance of a Writ of Mandate filed in the Superior Court of the State of California, Orange County, Central Judicial District, on June 15, 2000, in Case No. OCCC07187, a hearing was held in Department 30 of said Superior Court on August 8, 2000.

After hearing the arguments of counsel and considering the administrative record, a Peremptory Writ of Mandate was filed August 24, 2000, that directed the Department of Real Estate to set aside its order of May 24, 2000, revoking

1 the license of respondent. In addition, the matter was remanded  
2 to the Department to reconsider the actions of the Department  
3 regarding the Conclusions of Law and penalties imposed thereon  
4 with respect to the real estate broker license of respondent,  
5 Carl Douglas Byers.

6 On October 27, 2000, an Amended Notice of Order  
7 Setting Aside Decision After Rejection After Remand was filed.

8 Thereafter, on January 31, 2001, in a Decision After  
9 Remand, effective March 8, 2001, Respondent's license was again  
10 revoked.

11 Respondent petitioned for the issuance of a second  
12 Writ of Mandate filed in the Superior Court of the State of  
13 California, Orange County, Central Judicial District, on or about  
14 March 13, 2001, in Case No. 01CCO3604, a hearing was held in  
15 Department C16 of said Superior Court on June 26, 2001.

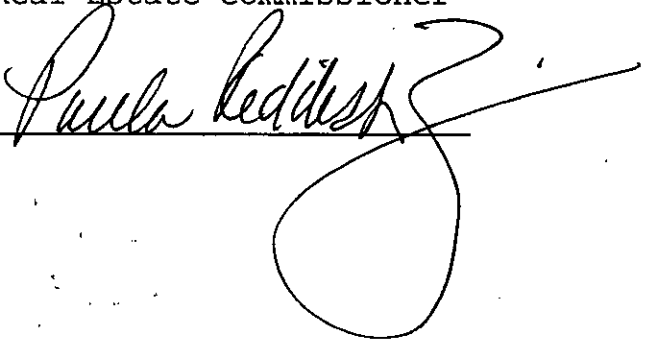
16 After hearing the arguments of counsel and  
17 considering the administrative record, a Peremptory Writ of  
18 Mandate was filed June 28, 2001, that directed the Department of  
19 Real Estate to set aside its order of January 31, 2001, revoking  
20 the license of respondent. In addition, the matter was remanded  
21 to the Department to reconsider the actions of the Department  
22 regarding the Conclusions of Law and penalties imposed thereon  
23 with respect to the real estate broker license of respondent,  
24 Carl Douglas Byers.

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1                    NOW, THEREFORE, IT IS HEREBY ORDERED, that the  
2                    Decision of January 31, 2001, revoking the real estate broker of  
3                    respondent is set aside effective June 28, 2001, and that the  
4                    actions of the Department of Real Estate as set forth in said  
5                    Decision be reconsidered.

6                    DATED: July 23, 2001.  
7

8                    PAULA REDDISH ZINNEBANN  
9                    Real Estate Commissioner

10                    Paula Reddish  
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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	No. H-28233 LA
	)	
CARL DOUGLAS BYERS,	)	OAH No. L-1999090384
	)	
	)	
Respondent.	)	

DECISION AFTER REMAND

On or about May 24, 2000, a Decision After Rejection revoked the real estate license of respondent. The Decision was to become effective at 12 o'clock noon on June 21, 2000.

Respondent sought relief by Writ of Mandate filed in the Superior Court of the State of California, Orange County, Central District, on June 15, 2000, in Case No. 00CC 07187.

After a hearing in Superior Court considering the administrative record and arguments of counsel, a Peremptory Writ of Mandate was filed August 24, 2000, directing the Department of Real Estate (Department) to set aside its Decision of May 24, 2000, and to consider the Conclusions of Law and penalties imposed thereon.

1                    On October 27, 2000, the Department issued an Amended  
2 Notice of Order Setting Aside Decision After Rejection After  
3 Remand.

4                    I have given due consideration to the actions of the  
5 Department of Real Estate with respect to the revocation of  
6 respondent's license and have re-reviewed the administrative  
7 record, the Proposed Decision, the Decision After Rejection and  
8 the Peremptory Writ of Mandate from the Superior Court.

9                    After further consideration of the matter, in light of  
10 the determination of the Superior Court as set forth in its  
11 Peremptory Writ of Mandate, the following shall constitute the  
12 Decision of the Real Estate Commissioner in the above-entitled  
13 matter:

14    FINDINGS OF FACT

15                    All Findings of Fact as set forth in the Proposed  
16 Decision are adopted as the Findings of Fact of the Real Estate  
17 Commissioner in this proceeding.

18    CONCLUSIONS OF LAW

19                    Conclusions of Law 1 and 3 of the Proposed Decision are  
20 adopted as the Conclusions of Law of the Real Estate Commissioner  
21 herein.

22                    Conclusions of Law 2 and 4 of the Proposed Decision are  
23 not adopted. With respect to Conclusion No. 2, it is my  
24 determination that Findings of Fact 5(A), 5(D), and 7(A) through  
25 (E) are not sufficient mitigating factors, in light of the facts  
26 surrounding respondent's conviction, to change or alter the  
27 penalty imposed in the Decision After Rejection, to revoke



1 respondent's real estate license. In their place I have reached  
2 the following conclusions:

3           2. Respondent's use of a lock-box key to enter the  
4 home of a citizen for private purposes not related to an act for  
5 which a real estate license was required and while therein to  
6 steal a video tape was a serious breach of the public trust and  
7 confidence required of real estate licensees. Real estate  
8 licensees frequently have unfettered access to homes on which  
9 there are "lock-boxes." The public has the right to expect that  
10 its trust and confidence placed in licensees is never breached in  
11 the slightest manner or way. Any breach, no matter how slight,  
12 must be considered very serious, for it causes a loss of such  
13 trust and confidence.

14           Respondent's conduct was further aggravated when he  
15 again used a lock-box key to enter another home for private  
16 purposes not related to an act for which a real estate license is  
17 required, and while therein to use the personal property of the  
18 owner of that home to view a pornographic video and engage in an  
19 act of self gratification. Most reasonable members of the public  
20 would find that the use of their home by a licensee in this  
21 manner to be repugnant and highly objectionable.

22           Respondent's conduct was further aggravated by the fact  
23 that the video contained pornographic material which he left in  
24 the video tape player where it could have easily been viewed by  
25 children or adults who believe the conduct portrayed in the video  
26 offensive and repugnant.

27 ///

1.           Additionally, while there was testimony at the hearing  
2 about the reasons for respondent's conduct, that testimony was  
3 not directed and did not address whether or not respondent would  
4 again in the future use a lock-box key to enter a private home  
5 for purposes not related to the functions and duties of a  
6 licensee.

7           Based on the facts, the Respondent's conviction  
8 involved dishonesty and untrustworthiness. Honesty and  
9 trustworthiness are qualities of utmost importance in a real  
10 estate licensee, who must frequently act in a fiduciary capacity.  
11 "Honesty and truthfulness are two qualities deemed by the  
12 Legislature to bear on one's fitness and qualification to be a  
13 real estate licensee." Harrington v. Department of Real Estate  
14 (1989) 214 C.A.3d 394, 402. "If appellant's offenses reflect  
15 unfavorable on his honesty, it may be said he lacks the necessary  
16 qualifications to become a real estate salesperson." Harrington,  
17 supra, 214 C.A.3d at 402; Golde v. Fox, (1979) 98 Cal.App.3d 167,  
18 176. "The Legislature intended to insure that real estate  
19 brokers and salespersons will be honest, truthful and worthy of  
20 the fiduciary responsibilities which they will bear."  
21 Harrington, supra, 214 C.A.3d at 402; Ring v. Smith (1970) 5  
22 C.A.3d 197, 205.

23           The act of illegally entering any real property and  
24 taking personal property of the owner, or engaging in an act of  
25 self gratification is conduct involving moral turpitude of the  
26 highest magnitude. As mentioned above, licensees have access  
27 into homes of clients and non-clients and it is important that

1 their conduct when entering these homes is above reproach. As  
2 such, Respondent's conduct and acts are substantially related to  
3 the qualifications, functions and duties of a real estate  
4 licensee pursuant to Section 2910(a)(1) of Chapter 6, Title 10 of  
5 the California Code of Regulations ("Regulations") and are a  
6 basis to revoke his real estate license.

7 Based on the conclusions herein, it has not been shown  
8 that the public interest would be adequately protected at this  
9 time by allowing respondent to retain his real estate license.

10 The following Legal Conclusions are also added to the  
11 Decision After Rejection as part of my decision herein:

12 4. Respondent has not yet expunged the conviction  
13 found herein (Section 2912(c) of the Regulations).

14 5. Respondent has not yet completed probation for the  
15 conviction found herein (Section 2912(d) of the Regulations).

16 6. Because of the serious nature of the criminal  
17 conduct engaged in herein by respondent, including the misuse of  
18 his license to breach the public's trust in licensees, sufficient  
19 time has not yet passed to fully measure his rehabilitation  
20 (Section 2912(a) of the Regulations).

21 7. Based on all of the conclusions respondent has not  
22 demonstrated complete rehabilitation.

23 8. Consistent with the instructions from the Superior  
24 Court, the second sentence in the second paragraph under  
25 "Discussion and Rationale" in the Proposed Decision is not  
26 adopted. This sentence begins, "However, concern remains that  
27 psychological problems ..."

1 9. The third paragraph under "Discussion and  
2 Rationale" is also not adopted in reaching a decision on the  
3 penalty imposed herein. Rather reliance is placed on the  
4 discussion and rationale set forth in these Conclusions of Law.

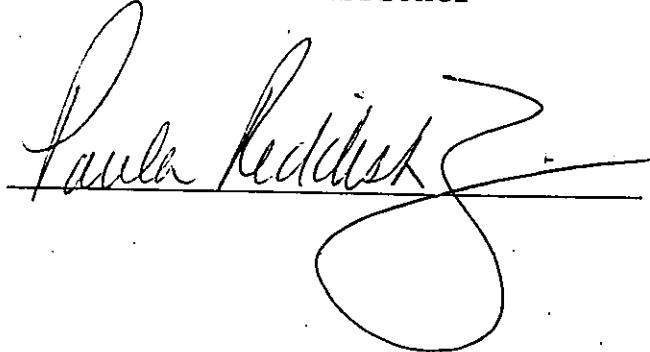
5 ORDER

6 All license and license rights of Respondent CARL  
7 DOUGLAS BYERS under the Real Estate Law (Part 1 of Division 4 of  
8 the Business and Professions Code) are revoked.

9 This Decision shall become effective at 12 o'clock noon  
10 on March 8, 2001.

11 IT IS SO ORDERED January 31, 2001.

12  
13 PAULA REDDISH ZINNEMANN  
14 Real Estate Commissioner

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**FILED**  
OCT 27 2000  
DEPARTMENT OF REAL ESTATE

By *Laura B. Stone*

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )	
CARL DOUGLAS BYERS, )	DRE NO. H-28233 LA
Respondent )	OAH NO. L-1999090384
_____ )	

AMENDED NOTICE OF ORDER SETTING ASIDE  
DECISION AFTER REJECTION AFTER REMAND

TO: CARL DOUGLAS BYERS, Respondent/and to the Attorney of Record:

On or about May 24, 2000, in a Decision After Rejection effective June 21, 2000, the license of respondent was revoked.

Pursuant to respondent's petition for the issuance of a Writ of Mandate filed in the Superior Court of the State of California, Orange County, Central Judicial District, on June 15, 2000, in Case No. OCCC07187, a hearing was held in Department 30 of said Superior Court on August 8, 2000.

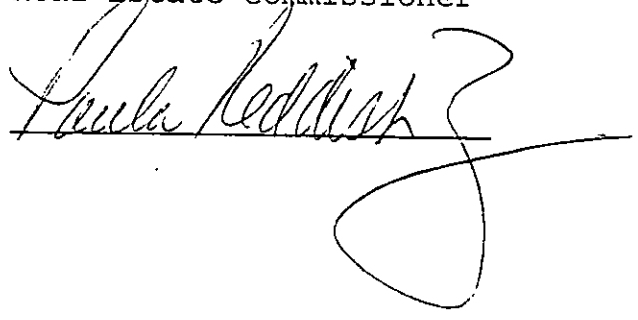
After hearing the arguments of counsel and considering the administrative record, a Peremptory Writ of Mandate was filed August 24, 2000, that directed the Department of Real Estate to set aside its order of May 24, 2000, revoking

1 the license of respondent. In addition, the matter was remanded  
2 to the Department to reconsider the actions of the Department re  
3 the Conclusions of Law and penalties imposed thereon with respect  
4 to the real estate broker license of respondent, Carl Douglas  
5 Byers.

6 NOW, THEREFORE, IT IS HEREBY ORDERED, that the  
7 Decision of May 24, 2000, revoking the real estate broker of  
8 respondent is set aside effective August 24, 2000, and that the  
9 actions of the Department of Real Estate as set forth in said  
10 decision be reconsidered.

11 DATED: October 27, 2000,

13 PAULA REDDISH ZINNEMANN  
14 Real Estate Commissioner

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**FILED**  
OCT 19 2000  
DEPARTMENT OF REAL ESTATE

By *Laura B. Stone*

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )	
CARL DOUGLAS BYERS, )	DRE NO. H-28233 LA
Respondent )	OAH NO. L-1999090384

NOTICE OF ORDER SETTING ASIDE  
DECISION AFTER REJECTION AFTER REMAND

TO: CARL DOUGLAS BYERS, Respondent/and to the Attorney of Record:

On or about May 24, 2000, in a Decision After Rejection effective June 21, 2000, the license of respondent was revoked.

Pursuant to respondent's petition for the issuance of a Writ of Mandate filed in the Superior Court of the State of California, Orange County, Central Judicial District, on June 15, 2000, in Case No. OCCC07187, a hearing was held in Department 30 of said Superior Court on August 8, 2000.

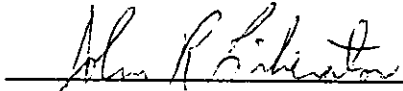
After hearing the arguments of counsel and considering the administrative record, a Peremptory Writ of Mandate was filed August 24, 2000, that directed the Department of Real Estate to set aside its order of May 24, 2000, revoking

1 the license of respondent. In addition, the matter was remanded  
2 to the Department to reconsider the actions of the Department re  
3 the Conclusions of Law and penalties imposed thereon with respect  
4 to the real estate broker license of respondent, Carl Douglas  
5 Byers.

6 NOW, THEREFORE, IT IS HEREBY ORDERED, that the  
7 Decision of May 24, 2000, revoking the restricted real estate  
8 salesperson license of respondent is set aside effective  
9 August 24, 2000, and that the actions of the Department of Real  
10 Estate as set forth in said decision be reconsidered.

11 DATED: October 17, 2000.

12  
13 PAULA REDDISH ZINNEMANN  
14 Real Estate Commissioner

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17 **BY: John R. Liberator**  
18 **Chief Deputy Commissioner**

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By Jana B. Orma

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DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \* \* \*

In the Matter of the Accusation of )	DRE No. H-28233 LA
CARL DOUGLAS BYERS, )	OAH No. L-199090384
Respondent. )	

DECISION AFTER REJECTION

The matter came on for hearing before Joseph D. Montoya, Administrative Law Judge, of the Office of Administrative Hearings, in Los Angeles, California, on November 12, 1999.

Elliott Mac Lennan, Counsel, represented the Complainant. Respondent was present represented by J. Scott Souders, Esq.

Evidence was received, the hearing was closed, and the matter was submitted.

On December 13, 1999, the Administrative Law Judge submitted a Proposed Decision which I declined to adopt as my Decision herein. Pursuant to Section 11517(c) of the Government Code of the State of California. Respondent was served with notice

1 of my determination not to adopt the Proposed Decision of the  
2 Administrative Law Judge along with a copy of said Proposed  
3 Decision. On January 21, 2000, Respondent was notified that the  
4 case would be decided by me upon the record, the transcript of  
5 proceedings held on November 12, 1999, and upon written argument  
6 offered by Respondent.

7 I have given careful consideration to the record in this  
8 case, including the transcript of proceedings of November 12,  
9 1999, complainant's argument and Respondent's written argument  
10 received April 4, 2000.

11 After further consideration of the matter, the following  
12 shall constitute the Decision of the Real Estate Commissioner in  
13 the above-entitled matter:

14 FINDINGS OF FACT

15 The Findings Of Fact set forth in the Proposed Decision  
16 dated December 13, 1999, of the Administrative Law Judge are  
17 hereby adopted as the Findings of Fact of the Real Estate  
18 Commissioner except for Finding of Fact 7(E). I have determined  
19 that Finding of Fact 7(E) of the Proposed Decision is not  
20 appropriate and said finding is not adopted.

21 DETERMINATION OF ISSUES

22 Conclusions of Law numbered 1 and 3 are hereby adopted  
23 as the Determinations of Issues of the Real Estate Commissioner.

24 Contrary to the Conclusions of Law of the Administrative  
25 Law Judge 2 and 4, I do not feel that the public interest would be  
26 adequately served or protected if Respondent were allowed to keep  
27 his present broker license, as it is clear from the evidence



1 presented that the psychological problems which led to the  
2 conviction set forth in finding 3 have not been completely dealt  
3 with. As the Administrative Law Judge states in his "Discussion  
4 and Rationale:" "...the Department must be concerned that they  
5 [the problems] might again drive Respondent to another untoward  
6 act."

7 ORDER

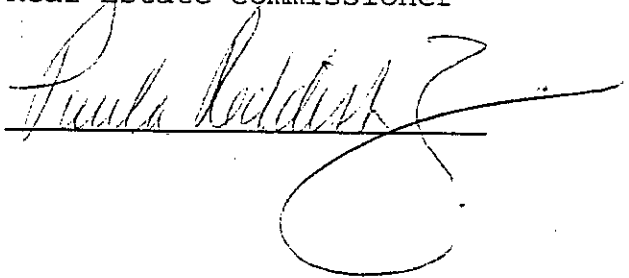
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9 The real estate broker license and license rights of  
10 Respondent CARL DOUGLAS BYERS under the Real Estate Law (Part 1 of  
11 Division 4 of the Business and Professions Code) are hereby  
12 revoked.

13  
14 This Decision shall become effective at 12 o'clock  
15 noon on June 21, 2000

16 IT IS SO ORDERED May 24, 2000.

17 PAULA REDDISH ZINEMANN.  
18 Real Estate Commissioner

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*Justo*

By *Sandra B. Stone*

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	No. H-28233 LA
	)	
CARL DOUGLAS BYERS,	)	L-1999090384
	)	
Respondent.	)	

NOTICE

TO: Respondent CARL DOUGLAS BYERS and J. SCOTT SOUDERS, his  
counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision  
herein dated December 13, 1999, of the Administrative Law Judge  
is not adopted as the Decision of the Real Estate Commissioner.  
A copy of the Proposed Decision dated December 13, 1999, is  
attached for your information.

In accordance with Section 11517(c) of the Government  
Code of the State of California, the disposition of this case  
will be determined by me after consideration of the record herein

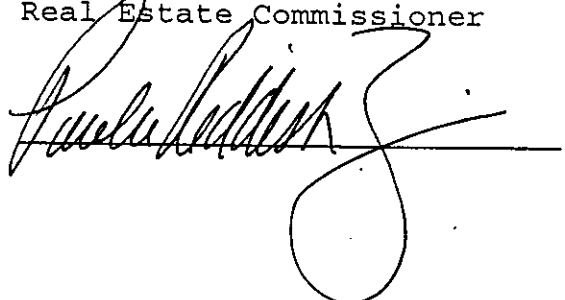
1 including the transcript of the proceedings held on November 12,  
2 1999, and any written argument hereafter submitted on behalf of  
3 Respondent and Complainant.

4           Written argument of Respondent to be considered by me  
5 must be submitted within 15 days after receipt of the transcript  
6 of the proceedings of November 12, 1999, at the Los Angeles  
7 office of the Department of Real Estate unless an extension of  
8 the time is granted for good cause shown.

9           Written argument of Complainant to be considered by me  
10 must be submitted within 15 days after receipt of the argument of  
11 Respondent at the Los Angeles office of the Department of Real  
12 Estate unless an extension of the time is granted for good cause  
13 shown.

14           DATED: 1/6/00

16           PAULA REDDISH ZINNEMANN  
17           Real Estate Commissioner

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DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation Against: ) Case No. H-28233 LA  
 )  
CARL DOUGLAS BYERS, ) OAH No. L-1999090384  
 )  
 )  
Respondent. )  
\_\_\_\_\_)

**PROPOSED DECISION**

Joseph D. Montoya, Administrative Law Judge, Office of Administrative Hearings, heard this matter at Los Angeles, California on November 12, 1999. Complainant was represented by Mr. Elliott Mac Lennan, Staff Counsel, Department of Real Estate. Respondent appeared with his attorney, Mr. J. Scott Souders.

Evidence was received, the case argued, and the matter submitted for decision on the hearing date. The Administrative Law Judge hereby makes his findings of fact, conclusions of law, and orders, as follows:

**FINDINGS OF FACT**

1. Complainant Thomas McCrady filed the Accusation in the above-captioned proceeding while acting in his capacity as a Deputy Real Estate Commissioner of the Department of Real Estate ("the Department"), State of California.
2. Respondent is currently licensed as a real estate broker by the Department. His license, number 00552256, is due to expire June 29, 2002.
3. On February 23, 1999, in the Superior Court of California, County of Orange, North Orange County Judicial District, in the case *People v. Carl Douglas Byers*, case no. FU98NM10871, Respondent was convicted of violating Penal Code section 602.5. That conviction followed his plea of nolo contendere, and by that plea Respondent was convicted of unlawful entry of a non-commercial dwelling house, a misdemeanor.
4. The court suspended imposition of sentence, on the condition that Respondent be placed on informal (unsupervised) probation for a period of three years. As terms and conditions of that probation, Respondent was required to pay a \$200.00 fine, to

pay \$500.00 to the restitution fund and to the victim witness emergency fund, to attend ten counseling sessions, and to perform 100 hours community service. Other terms and conditions, standard to probation grants, were imposed.

5. The facts and circumstances of the crime are as follows:

(A) On December 11, 1998, Respondent went to a home in the area of Fullerton, California which had been listed for sale. He went there to walk through the house as he and his wife needed to acquire a house for a tax-free exchange they then contemplated. He used the lockbox which had been placed on the door to obtain access. Respondent was at that time sleep-deprived, having been unable to sleep for several days as a result of chronic migraine headaches. Respondent took a video tape away from that house which tape he describes as being pornographic.

(B) Respondent then went to another house which was listed for sale. There he played some portion of the videotape, though how much is unclear. And, Respondent masturbated there. He then left that house, leaving the videotape behind in the video machine.

(C) Respondent then drove around the area in some sort of a daze. He first went to a local hardware store, where he lost his wallet after purchasing something. He next went to his chiropractor's office. He was somewhat disoriented there, and still suffering the effects of his migraine headache.

(D) Thereafter, in the evening of December 11, 1998, Respondent returned to the second home, thinking he should obtain the videotape. When he arrived he found the owner of the home, a woman, and her real estate agent, with whom Respondent is acquainted. The police were also present. Respondent promptly told the police of his actions. He was not arrested at that time. He then went to his home, and confessed the whole story to his wife.

6. Under all of the circumstances, the aforementioned offense is a crime of moral turpitude, substantially related to the duties, qualifications, and functions of a real estate licensee.

7. There are a number of other circumstances, many of which are mitigating, which must be considered in determining the outcome of this matter.

(A) Respondent has been a licensee of the Department for over twenty years. He has never before been the subject of disciplinary action, and has no other convictions. To the contrary, he has regularly been recognized by his peers as an outstanding real estate professional. Respondent has been married for well over twenty years, and supports five children.

(B) For a period of years prior to the incident in question, Respondent had suffered from chronic headaches, neck and shoulder pain. He regularly treated with a chiropractor, and was taking a medication prescribed by his doctor.

(C) Since the criminal act, Respondent has been further treated by doctors, who have changed his medication to an anti-convulsion type, along with an anti-depressant. Respondent has responded well to this treatment. He can now get regular sleep, which is apparently helping him deal with the other stresses in his life. At the same time, despite the nature of his acts, he has not received any diagnosis that he is a sexual predator, or suffers some other sexually-tinged mental affliction.

(D) Respondent's employer, a large brokerage employing over fifty people, wants to retain his services. The morning after the incident in question, Respondent called one of the firm's owners, met with him, and told him the entire story. Mr. Lins attested at this hearing that if the Department saw fit to allow Mr. Byers to continue as a licensee, Mr. Lins' firm would employ him, and supervise him.

(E) There is no evidence of any behavior like this in Respondent's forty-eight years. This was an aberrant act, unlikely to repeat itself.

8. Since his conviction, Respondent as completed all of the terms and conditions of his probation, although the term of the probation has not expired. He remains, as he was before the incident, active in his church and his community. There have been no further incidents. Despite the stresses of these events, Respondent is still married, and supporting his family.

### CONCLUSIONS OF LAW

1. Cause exists to revoke or suspend the real estate broker's license issued to Respondent Carl Byers pursuant to Business and Professions Code sections 490 and 10177(b), for his conviction of a crime of moral turpitude, substantially related to the duties, qualifications, and functions of a real estate professional. This conclusion is based on Findings of Fact 3 through 6.

2. There are some mitigating facts to consider when determining what discipline to impose, based on Findings of Fact 5(A), 5(D), 7(A) through 7(E).

3. Respondent has taken steps toward rehabilitation, but has not established his complete rehabilitation at this time, based on Finding of Fact 8.

4. In all the facts and circumstances, the public interest can be protected by discipline less than the outright revocation of Respondent's license, and by the imposition of



probationary terms and conditions. This Conclusion is based on Conclusions 1 through 3, the factual findings supporting those conclusions, and the discussion below.

Discussion and Rationale:<sup>1</sup>

Certainly, this is an unusual case in most every respect. A highly regarded, seasoned broker was convicted of an act of trespass, whereby he misused the access to a home which his licensed status afforded him. While the peculiar circumstances of the crime do not clearly fall into the confines of Title 10, California Code of Regulations ("CCR"), section 2910(a)(5), it must be deemed substantially related when the power of access to private property has been so abused. This also takes into account the fact Respondent's took the video tape, for what ever purpose, and even if only temporarily.

Respondent offered a medically based explanation for his misbehavior, and medical evidence that his physical symptoms have been alleviated. To the extent that sleep deprivation and physical stress may wear down anyone's impulse control, some credibility attaches to that explanation. However, concern remains that psychological problems at the root of Respondent's act, sexually compulsive in nature, have not been completely dealt with. Whether familial, marital, or other personal issues fueled the event, the Department must be concerned that they might again drive Respondent to another untoward act.

It is well-settled that the purpose of this proceeding is to protect the public, and not to punish the Respondent. (*E.g., Camacho v. Youde* (1979) 95 Cal. App. 3<sup>rd</sup> 161, 164.) Given Respondent's otherwise outstanding record, the aberrant nature of the act, and the faith placed in him by his employers<sup>2</sup> and spouse, an order placing Respondent in a probationary status is appropriate. But, that order must be tailored to assure that Respondent receives some counseling or therapy to assist in Mr. Byers' rehabilitation. Further, an actual suspension should issue, in order to bring home the seriousness of this matter to Respondent, and to deter other licensees from misconduct.

ORDER

All licenses and licensing rights of Respondent Carl Douglas Byers under the Real Estate Law are revoked; provided, however, that a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays the Department of Real Estate the appropriate fee for a restricted license within ninety (90) days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provision

<sup>1</sup> The discussion which follows is meant to provide a rationale for the findings, conclusions and orders, and is within the ambit of Government Code section 11425.50(d).

<sup>2</sup> At the hearing Mr. Lins testified that his firm's lawyer had advised the owners to terminate Mr. Byers, in order to protect the brokerage from any liability. They have declined that advice and seek the Department's leniency in this matter.

NOT REOPENED

of Section 1015.6 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. Respondent's restricted license shall be actually suspended for a period of sixty (60) days from the date of its issuance.

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

3. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulation of the Real Estate Commissioner or conditions attaching to the restricted license.

4. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three (3) years have elapsed from the effective date of this Decision.

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

6. During the time that Respondent holds a restricted license he shall seek and obtain at least three hours of counseling per month. Such counseling shall be with a psychiatrist, psychologist, or marriage and family counselor licensed by the State of California. The communications made by and to Respondent in the course of such counseling and therapy shall remain confidential. However, Respondent shall be required, upon request from the Commissioner, to provide proof which is satisfactory to the Commissioner of attendance and participation in this mandated counseling.

7. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his decision herein or by separate written orders issued while the restricted license is in effect, such information concerning Respondent's activities for which a real estate license is required, as the Commissioner shall deem to be appropriate to protect the public interest.

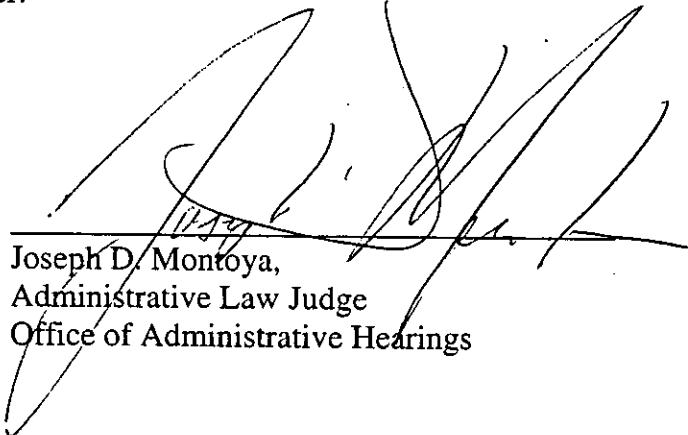
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Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of Respondent and periodic summaries of salient information concerning each real estate transaction in which Respondent has engaged during the period covered by the report. These reports may include the verification of counseling referred to in part 6, above.

8. During the period that the restricted license is in effect Respondent shall obey all laws, rules, and regulations governing the rights, duties, and responsibilities of a real estate licensee in the State of California, and shall remain in compliance with the terms and conditions of his criminal probation.

9. Respondent shall not change his place of employment or address of record without written notice to the Commissioner. Should Respondent seek to enter the employ of any other licensee, or to enter into any partnership with any other licensee, or become the officer of any corporate real estate licensee, he shall provide such person or persons a copy of this Decision. Such persons shall, within ten days of such employment, provide to the Commissioner a written statement which certifies that such employer, partner, or corporation has read this Decision of the Commissioner.

December 13, 1999

  
Joseph D. Montoya,  
Administrative Law Judge  
Office of Administrative Hearings

NOT ADOPTED

*Handwritten signature/initials*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

**FILED**  
OCT 19 1999  
DEPARTMENT OF REAL ESTATE

\* \* \* \* \*

In the Matter of the Accusation of )  
 )  
CARL DOUGLAS BYERS, )  
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Respondent. )

Case No. H-28233 LA  
OAH No. L-1999090384

By *Janice B. Cove*

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 320 West Fourth Street, 6th Floor, Suite 630, Los Angeles, California, on NOVEMBER 12, 1999, at the hour of 1:30 p.m., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served upon you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: OCT 19 1999

DEPARTMENT OF REAL ESTATE

By: *Elliott MacLennan*  
ELLIOTT MAC LENNAN, Counsel

cc: Carl Douglas Byers  
J. Scott Sounders, Esq.  
Sacto.  
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*Sachs*

**FILED**  
SEP 13 1999  
DEPARTMENT OF REAL ESTATE  
By *Laura B. Stone*

ELLIOTT MAC LENNAN, Counsel  
State Bar No. 66674  
Department of Real Estate  
320 W. 4th Street, Ste. 350  
Los Angeles, California 90013-1105  
  
(213) 576-6911

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DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of )	No. H-28233 LA
CARL DOUGLAS BYERS, )	<u>A C C U S A T I O N</u>
)	
)	
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Respondent. )	

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against CARL DOUGLAS BYERS is informed and alleges in his official capacity as follows:

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Respondent is presently licensed and/or has license rights as a real estate broker under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) (Code).

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Respondent was originally licensed by the Department of Real Estate of the State of California as a real estate broker on June 30, 1978.

On February 23, 1999, in the Superior Court of California, Orange County, North Orange County Judicial District, State of California, respondent was convicted upon a plea of nolo contendere to one count of violating Section 602.5 of the California Penal Code (unlawful entry of non-commercial dwelling house), a misdemeanor crime that occurred on December 11, 1998, which by its facts and circumstances involves moral turpitude and is substantially related under Section 2910, Title 10, Chapter 6, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

The facts as alleged constitute cause under Sections 490 and 10177(b) of the Code for the suspension or revocation of all licenses and license rights of respondent under the Real Estate Law.

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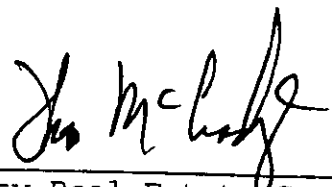
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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against the licenses and license rights of respondent CARL DOUGLAS BYERS under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California  
this SEP 13 1999

  
\_\_\_\_\_  
Deputy Real Estate Commissioner

cc: Carl Douglas Byers  
Sacto.  
Century 21 discovery  
SR