

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

4 (213) 576-6913

FILED
AUG 24 2009
DEPARTMENT OF REAL ESTATE



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7
8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 FIDELITY NATIONAL MORTGAGE)
14 CORPORATION,)
15 PETER MICHAEL DOWNING)
16 and JOHN B. SPEAR,)
17 individually, and as)
18 designated officers of)
19 the corporation,)
20 Respondents.)

No. H-35472 LA
L-2009 010 846

STIPULATION AND AGREEMENT

18 It is hereby stipulated by and between FIDELITY
19 NATIONAL MORTGAGE CORPORATION and PETER MICHAEL DOWNING
20 (sometimes referred to as Respondents), and their attorney,
21 Anthony F. Geraci, and the Complainant, acting by and through
22 James R. Peel, Counsel for the Department of Real Estate, as
23 follows for the purpose of settling and disposing of the
24 Accusation filed on November 19, 2008, in this matter.

25 1. All issues which were to be contested and all
26 evidence which was to be presented by Complainant and Respondents
27 at a formal hearing on the Accusation, which hearing was to be

1 held in accordance with the provisions of the Administrative
2 Procedure Act (APA), shall instead and in place thereof be
3 submitted solely on the basis of the provisions of this
4 Stipulation and Agreement.

5 2. Respondents have received, read and understand the
6 Statement to Respondent, the Discovery Provisions of the APA and
7 the Accusation filed by the Department of Real Estate in this
8 proceeding.

9 3. On December 22, 2008, Respondents filed a Notice
10 of Defense pursuant to Section 11506 of the Government Code for
11 the purpose of requesting a hearing on the allegations in the
12 Accusation. Respondents hereby freely and voluntarily withdraw
13 said Notice of Defense. Respondents acknowledge that they
14 understand that by withdrawing said Notice of Defense they will
15 thereby waive their right to require the Commissioner to prove
16 the allegations in the Accusation at a contested hearing held in
17 accordance with the provisions of the APA and that they will
18 waive other rights afforded to them in connection with the
19 hearing such as the right to present evidence in defense of the
20 allegations in the Accusation and the right to cross-examine
21 witnesses.

22 4. This Stipulation is based on the factual
23 allegations contained in the Accusation filed in this
24 proceeding. In the interest of expedience and economy,
25 Respondents choose not to contest these factual allegations, but
26 to remain silent and understand that, as a result thereof, these
27 factual statements, will serve as a prima facie basis for the

1 disciplinary action stipulated to herein. The Real Estate
2 Commissioner shall not be required to provide further evidence
3 to prove such allegations.

4 5. The Stipulation herein and Respondents decision
5 not to contest the Accusation, are made solely for the purpose
6 of reaching an agreed disposition of this proceeding and are
7 expressly limited to this proceeding and any other proceeding or
8 case in which the Department of Real Estate ("Department") or
9 another licensing agency of this state, another state or if the
10 federal government is involved, and otherwise shall not be
11 admissable in any other criminal or civil proceedings.

12 6. It is understood by the parties that the Real
13 Estate Commissioner may adopt the Stipulation and Agreement as
14 his Decision in this matter, thereby imposing the penalty and
15 sanctions on Respondents' real estate licenses and license
16 rights as set forth in the below "Order". In the event that the
17 Commissioner in his discretion does not adopt the Stipulation
18 and Agreement, it shall be void and of no effect, and
19 Respondents shall retain the right to a hearing and proceeding
20 on the Accusation under all the provisions of the APA and shall
21 not be bound by any stipulation or waiver made herein.

22 7. The Order or any subsequent Order of the Real
23 Estate Commissioner made pursuant to this Stipulation and
24 Agreement shall not constitute an estoppel, merger or bar to any
25 further administrative or civil proceedings by the Department of
26 Real Estate with respect to any matters which were not
27 specifically alleged to be causes for accusation in this

1 proceeding.

2 DETERMINATION OF ISSUES

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

7 The conduct of Respondents, FIDELITY NATIONAL MORTGAGE
8 CORPORATION and PETER MICHAEL DOWNING, as described in Paragraph
9 4, above, is grounds for the suspension or revocation of all of
10 the real estate licenses and license rights of Respondents under
11 the provisions of Section 10177(g) of the Business and
12 Professions Code ("Code").

13 ORDER

14 All licenses and licensing rights of Respondents
15 FIDELITY NATIONAL MORTGAGE CORPORATION and PETER MICHAEL DOWNING
16 under the Real Estate Law are revoked, provided, however, a
17 restricted real estate broker license shall be issued to
18 Respondents pursuant to Section 10156.5 of the Business and
19 Professions Code A. if Respondents makes application therefor
20 and pays to the Department of Real Estate the appropriate fee
21 for the restricted license within 90 days from the effective
22 date of this Decision. B. Respondent PETER MICHAEL DOWNING
23 shall prior to and as a condition of the issuance of the
24 restricted license, submit proof satisfactory to the
25 Commissioner of having taken and successfully completed the
26 continuing education course on trust fund accounting and
27 handling specified in subdivision (a) of Section 10170.5 of the

1 Business and Professions Code. Proof of satisfaction of this
2 requirement includes evidence that Respondent has successfully
3 completed the trust fund account and handling continuing
4 education course within 120 days prior to the effective date of
5 the Decision in this matter. The restricted license issued to
6 Respondents shall be subject to all of the provisions of Section
7 10156.7 of the Business and Professions Code and to the
8 following limitations, conditions, and restrictions imposed
9 under authority of Section 10156.6 of that Code:

10 1. No restricted license shall be issued until
11 Respondent presents satisfactory evidence to the Department of
12 Real Estate that all trust account shortages have been cured.

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

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

24 4. Respondent shall not be eligible to apply for the
25 issuance of an unrestricted real estate license nor for the
26 removal of any of the conditions, limitations or restrictions of
27 a restricted license until two years have elapsed from the

effective date of this Decision.

1
2 5. Respondent PETER MICHAEL DOWNING shall, within
3 nine months from the effective date of this Decision, present
4 evidence satisfactory to the Real Estate Commissioner that
5 Respondent has, since the most recent issuance of an original or
6 renewal real estate license, taken and successfully completed
7 the continuing education requirements of Article 2.5 of Chapter
8 3 of the Real Estate Law for renewal of a real estate license.
9 If Respondent fails to satisfy this condition, the Commissioner
10 may order the suspension of the restricted license until the
11 Respondent presents such evidence. The Commissioner shall
12 afford Respondent the opportunity for a hearing pursuant to the
13 Administrative Procedure Act to present such evidence.

14 6. Pursuant to Section 10148 of the Business and
15 Professions Code, Respondents FIDELITY NATIONAL MORTGAGE
16 CORPORATION and PETER MICHAEL DOWNING shall pay the
17 Commissioner's reasonable cost for the (a) audit which led to
18 this disciplinary action and (b) shall pay the Commissioner's
19 reasonable cost for a subsequent audit to determine if
20 Respondent Fidelity National Mortgage Corporation has corrected
21 the violations found in the Determination of Issues. In
22 calculating the amount of the Commissioner's reasonable cost,
23 the Commissioner may use the estimated average hourly salary for
24 all persons performing audits of real estate brokers, and shall
25 include an allocation for travel costs, including mileage, time
26 to and from the auditor's place of work and per diem.
27 Respondent shall pay such cost within 45 days of receiving an

1 invoice from the Commissioner detailing the activities performed
2 during the audit and the amount of time spent performing those
3 activities. The Commissioner may suspend the restricted license
4 issued to Respondent pending a hearing held in accordance with
5 Section 11500, et seq., of the Government Code, if payment is
6 not timely made as provided for herein, or as provided for in a
7 subsequent agreement between the Respondent and the
8 Commissioner. The suspension shall remain in effect until
9 payment is made in full or until Respondent enters into an
10 agreement satisfactory to the Commissioner to provide for
11 payment, or until a decision providing otherwise is adopted
12 following a hearing held pursuant to this condition.

13
14 DATED: June 24, 2009

15
16
17 James R. Peel
18 JAMES R. PEEL
19 Counsel for Complainant

20 * * *

21 We have read the Stipulation and Agreement, have
22 discussed it with our attorney, and its terms are understood by
23 us and are agreeable and acceptable to us. We understand that
24 we are waiving rights given to us by the California
25 Administrative Procedure Act (including but not limited to
26 Sections 11506, 11508, 11509 and 11513 of the Government Code),
27 and we willingly, intelligently and voluntarily waive those

1 rights, including the right of requiring the Commissioner to
2 prove the allegations in the Accusation at a hearing at which we
3 would have the right to cross-examine witnesses against us and
4 to present evidence in defense and mitigation of the charges.

5 Respondents can signify acceptance and approval of
6 the terms and conditions of this Stipulation and Agreement by
7 faxing a copy of the signature page, as actually signed by
8 Respondents, to the Department at the following telephone/fax
9 number: (213) 576-6917. Respondents agree, acknowledge and
10 understand that by electronically sending to the Department a
11 fax copy of their actual signature as it appears on the
12 Stipulation and Agreement that receipt of the faxed copy by the
13 Department shall be as binding on Respondents as if the
14 Department had received the original signed Stipulation and
15 Agreement.

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(Page 10 of 10)

From:

06/17/2009 11:14 #001 P.010/010

JUN-17-09 WED 08:22 AM

FAX NO.

P: 09/18

1 Further, if the Respondents are represented in these
2 proceedings, the Respondents' attorney can signify his agreement
3 to the terms and conditions of the Stipulation and Agreement by
4 submitting that signature via fax.

5
6 DATED:

6-17-09

Peter Michael Downing
FIDELITY NATIONAL MORTGAGE
CORPORATION
Respondent

7
8
9
10 DATED:

6-17-09

Peter Michael Downing
PETER MICHAEL DOWNING
Respondent

11
12
13 DATED:

6-17-09

Anthony F. Geracy
ANTHONY F. GERACY
Respondents' Attorney

14
15 * * *

16 The foregoing Stipulation and Agreement is hereby
17 adopted as my Decision in this matter and shall become effective
18 at 12 o'clock noon on _____

19 IT IS SO ORDERED _____

20
21 JEFF DAVI
Real Estate Commissioner
22
23
24
25
26
27

1 Further, if the Respondents are represented in these
2 proceedings, the Respondents' attorney can signify his agreement
3 to the terms and conditions of the Stipulation and Agreement by
4 submitting that signature via fax.

5
6
7 DATED: _____

_____ FIDELITY NATIONAL MORTGAGE
CORPORATION
Respondent

8
9
10 DATED: _____

_____ PETER MICHAEL DOWNING
Respondent

11
12
13 DATED: _____

_____ ANTHONY F. GERACI
Respondents' Attorney

14
15 * * *

16
17 The foregoing Stipulation and Agreement is hereby
18 adopted as my Decision in this matter and shall become effective
19 at 12 o'clock noon on September 14, 2009.

20 IT IS SO ORDERED 4-9-09

21 JEFF DAVI
Real Estate Commissioner

22
23 
24 BY: Barbara J. Bigby
Chief Deputy Commissioner

1 Department of Real Estate
2 320 W. 4th St., Room 350
3 Los Angeles, California 90013
4 Telephone: (213) 576-6982

FILED
AUG 24 2009
DEPARTMENT OF REAL ESTATE

By 

6
7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-35472 LA
12) L-2009 010 846
13 FIDELITY NATIONAL MORTGAGE)
14 CORPORATION,)
15 PETER MICHAEL DOWNING)
16 and JOHN B. SPEAR,) STIPULATION AND AGREEMENT
17 individually, and as)
18 designated officers of)
19 the corporation,)
20 Respondents.)

21 It is hereby stipulated by and between JOHN B. SPEAR
22 (sometimes referred to as Respondent) and his attorney, Anthony
23 F. Geraci, and the Complainant, acting by and through James R.
24 Peel, Counsel for the Department of Real Estate, as follows for
25 the purpose of settling and disposing of the Accusation filed on
26 November 19, 2008, in this matter.

27 1. All issues which were to be contested and all
evidence which was to be presented by Complainant and Respondent

1 at a formal hearing on the Accusation, which hearing
2 was to be held in accordance with the provisions of the
3 Administrative Procedure Act ("APA"), shall instead and in place
4 thereof be submitted solely on the basis of the provisions of
5 this Stipulation and Agreement ("Stipulation").

6 2. Respondent has received, read and understands the
7 Statement to Respondent, the Discovery Provisions of the
8 Administrative Procedure Act ("APA") and the Accusation filed by
9 the Department of Real Estate in this proceeding.

10 3. On December 22, 2008, Respondent filed a Notice of
11 Defense pursuant to Section 11506 of the Government Code for the
12 purpose of requesting a hearing on the allegations in the
13 Accusation. Respondent hereby freely and voluntarily withdraws
14 said Notice of Defense. Respondent acknowledges that he
15 understands that by withdrawing said Notices of Defense he will
16 thereby waive his right to require the Commissioner to prove the
17 allegations in the Accusation at a contested hearing held in
18 accordance with the provisions of the APA and that he will waive
19 other rights afforded to him in connection with the hearing,
20 such as the right to present evidence in defense of the
21 allegations in the Accusation and the right to cross-examine
22 witnesses.

23 4. This Stipulation is based on the factual
24 allegations contained in the Accusation filed in this
25 proceeding. In the interest of expedience and economy,
26 Respondent chooses not to contest these factual allegations, but
27

1 to remain silent and understands that, as a result thereof,
2 these factual statements, will serve as a prima facie basis for
3 the disciplinary action stipulated to herein. The Real Estate
4 Commissioner shall not be required to provide further evidence
5 to prove such allegations.

6 5. This Stipulation and Respondent's decision not to
7 contest the Accusation is made for the purpose of reaching an
8 agreed disposition of this proceeding and is expressly limited
9 to this proceeding and any other proceeding or case in which the
10 Department of Real Estate ("Department"), the state or federal
11 government, or an agency of this state, another state or the
12 federal government is involved.

13 6. It is understood by the parties that the Real
14 Estate Commissioner may adopt the Stipulation as his decision
15 in this matter thereby imposing the penalty and sanctions on
16 Respondent's real estate licenses and license rights as set
17 forth in the below "Order". In the event that the Commissioner
18 in his discretion does not adopt the Stipulation, the
19 Stipulation shall be void and of no effect, and Respondent shall
20 retain the right to a hearing on the Accusation under all the
21 provisions of the APA and shall not be bound by any stipulation
22 or waiver made herein.

24 7. The Order or any subsequent Order of the Real
25 Estate Commissioner made pursuant to this Stipulation shall not
26 constitute an estoppel, merger or bar to any further
27 administrative or civil proceedings by the Department of Real

1 Estate with respect to any conduct which was not specifically
2 alleged to be causes for accusation in this proceeding.

3 DETERMINATION OF ISSUES

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

8 The conduct, acts and/or omissions of Respondent
9 JOHN B. SPEAR, as set forth in the Accusation, constitute cause
10 for the suspension or revocation of all of the real estate
11 licenses and license rights of Respondent under the provisions
12 of Section 10177(g) of the Business and Professions Code
13 ("Code").

14 ORDER

15 All licenses and licensing rights of Respondent JOHN
16 B. SPEAR under the Real Estate Law are suspended for a period of
17 sixty (60) days from the effective date of this Decision;
18 provided, however, that thirty days (30) days of said suspension
19 shall be stayed for two (2) years upon the following terms and
20 conditions:

21 1. Respondent shall obey all laws, rules and
22 regulations governing the rights, duties and responsibilities of
23 a real estate licensee in the State of California; and

24 2. That no final subsequent determination be made,
25 after hearing or upon stipulation that cause for disciplinary
26 action occurred within two (2) years of the effective date of
27

1 this Decision. Should such a determination be made, the
2 Commissioner may, in his discretion, vacate and set aside the
3 stay order and reimpose all or a portion of the stayed
4 suspension. Should no such determination be made, the stay
5 imposed herein shall become permanent.

6 3. Provided, however, that if Respondent petitions,
7 the remaining thirty (30) days of said sixty (60) day suspension
8 shall be stayed upon condition that:

9 a. Respondent pays a monetary penalty pursuant to
10 Section 10175.2 of the Business and Professions Code at the rate
11 of \$50 for each day of the suspension for a total monetary
12 penalty of \$1,500.

13 b. Said payment shall be in the form of a
14 cashier's check or certified check made payable to the Recovery
15 Account of the Real Estate Fund. Said check must be received by
16 the Department prior to the effective date of the Decision in
17 this matter.

18 c. No further cause for disciplinary action
19 against the real estate licenses of Respondent occurs within two
20 (2) years from the effective date of the Decision in this
21 matter.

22 d. If Respondent fails to pay the monetary
23 penalty in accordance with the terms and conditions of the
24 Decision, the Commissioner may, without a hearing, order the
25 immediate execution of all or any part of the stayed suspension
26 in which event the Respondent shall not be entitled to any
27

1 repayment nor credit, prorated or otherwise, for money paid to
2 the Department under the terms of this Decision.

3 e. If Respondent pays the monetary penalty and if
4 no further cause for disciplinary action against the real estate
5 license of Respondent occurs within two (2) years from the
6 effective date of the Decision, the stay hereby granted shall
7 become permanent.

8
9
10 DATED: JUNE 24, 2009

James R. Peel
11 JAMES R. PEEL, Counsel for the
12 Department of Real Estate

13 * * *

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

25 Respondent can signify acceptance and approval of the
26 terms and conditions of this Stipulation and Agreement by faxing
27 a copy of the signature page, as actually signed by Respondent,
to the Department at the following telephone/fax number:

From:

JUN-17-09 WED 08:23 AM

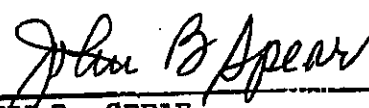
FAX NO.

P. 18/18

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

7 Further, if the Respondent is represented, the
 8 Respondent's representative can signify his or her agreement to
 9 the terms and conditions of the Stipulation and Agreement by
 10 submitting that signature via fax.

11 DATED: 6/17/09


 12 _____
 13 JOHN B. SPEAR
 Respondent

14 DATED: 6/17/09


 15 _____
 16 ANTHONY F. GERACY
 Counsel for Respondent

18 * * *

17 The foregoing Stipulation and Agreement is hereby
 18 adopted as my Decision and Order in this matter, and shall
 19 become effective at 12 o'clock noon on _____.

20 IT IS SO ORDERED _____.

21
 22 JEFF DAVI
 Real Estate Commissioner

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

7 Further, if the Respondent is represented, the
8 Respondent's representative can signify his or her agreement to
9 the terms and conditions of the Stipulation and Agreement by
10 submitting that signature via fax.

11
12 DATED: _____
13 JOHN B. SPEAR
Respondent


14 DATED: _____
15 ANTHONY F. GERACI
Counsel for Respondent

16 * * *

17 The foregoing Stipulation and Agreement is hereby
18 adopted as my Decision and Order in this matter, and shall
19 become effective at 12 o'clock noon on September 14, 2009.

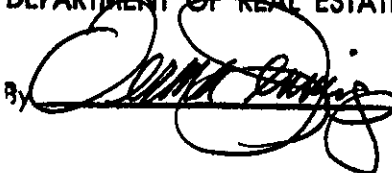
20 IT IS SO ORDERED 7-9-09.

21
22 JEFF DAVI
Real Estate Commissioner

23
24 
25 BY: Barbara J. Bigby
26 Chief Deputy Commissioner
27

SACTO
Flag

1 JAMES R. PEEL, Counsel (SBN 47055)
2 Department of Real Estate
3 320 West Fourth Street, Suite 350
4 Los Angeles, CA 90013-1105
5 Telephone: (213) 576-6982
6 -or- (213) 576-6913 (Direct)

FILED
NOV 19 2008
DEPARTMENT OF REAL ESTATE
By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-35472 LA
12)
13 FIDELITY NATIONAL MORTGAGE)
14 CORPORATION,)
15 PETER MICHAEL DOWNING)
16 and JOHN B. SPEAR,)
17 individually, and as)
18 designated officers of)
19 the corporation,)
20 Respondents.)

21 The Complainant, Robin L. Trujillo, a Deputy Real
22 Estate Commissioner of the State of California, for cause of
23 accusation against FIDELITY NATIONAL MORTGAGE CORPORATION, PETER
24 MICHAEL DOWNING, and JOHN B. SPEAR, individually, and as
25 designated officers of the corporation, alleges as follows:

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I

The Complainant, Robin L. Trujillo, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against FIDELITY NATIONAL MORTGAGE CORPORATION, PETER MICHAEL DOWNING, and JOHN B. SPEAR.

II

FIDELITY NATIONAL MORTGAGE CORPORATION, PETER MICHAEL DOWNING, and JOHN B. SPEAR (hereinafter referred to as "Respondents") are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code, hereinafter Code).

III

At all times herein mentioned, Respondent FIDELITY NATIONAL MORTGAGE CORPORATION was licensed as a real estate broker with Respondent PETER MICHAEL DOWNING as its designated officer from December 24, 2001 through June 13, 2007, and JOHN B. SPEAR as its designated officer from June 14, 2007 through December 18, 2007.

IV

Respondents FIDELITY NATIONAL MORTGAGE CORPORATION and PETER MICHAEL DOWNING previously had their real estate licenses disciplined as a result of the decision in case No. H-31751 LA. Respondent PETER MICHAEL DOWNING previously had his real estate licenses disciplined as a result of the decisions in case Nos. H-29760 LA and H-33667 LA.

1 V

2 At all times material herein, Respondents engaged in
3 the business of, acted in the capacity of, advertised or assumed
4 to act as a real estate broker in the State of California within
5 the meaning of Section 10131(d) of the Code, and broker escrow
6 activity under the exception set forth in Financial Code Section
7 17004(a)(4).

8 VI

9 On or about September 30, 2008, the Department
10 completed an examination of Respondent FIDELITY NATIONAL MORTGAGE
11 CORPORATION's books and records, pertaining to the activities
12 described in Paragraph IV above, covering a period from July 3,
13 2006, through April 30, 2008, which examination revealed
14 violations of the Code and of Title 10, Chapter 6, California
15 Code of Regulations (hereinafter Regulations) as set forth below.

16 VII

17 The examination described in Paragraph VI, above,
18 determined that, in connection with the activities described in
19 Paragraph V above, Respondent FIDELITY NATIONAL MORTGAGE
20 CORPORATION accepted or received funds, including funds in trust
21 (hereinafter "trust funds") from or on behalf of principals, and
22 thereafter made deposit or disbursement of such funds.

23 VIII

24 In the course of activities described in Paragraphs V
25 through VII and during the examination period described in
26 Paragraph VI, Respondents FIDELITY NATIONAL MORTGAGE CORPORATION,
27 PETER MICHAEL DOWNING, and JOHN B. SPEAR acted in violation of

1 the Code and the Regulations as follows, and as more specifically
2 set forth in Audit Report Nos. LA 070350 and LA 070105 and
3 related exhibits:

4 1. Violated Section 10145(a) of the Code and
5 Regulation 2832.1 in that as of June 12, 2007, trust account No.
6 0097001580 contained a shortage of \$123,621.75. As of December
7 17, 2007, the trust account contained a shortage of \$138,896.25.

8 2. Violated Regulation 2831 in that the control record
9 for the trust account was inaccurate and incomplete. The record
10 did not reflect every disbursement and deposit for the trust
11 account.

12 3. Violated Regulation 2831.1 in that the separate
13 records maintained of all receipts and disbursements for escrow
14 activity did not reflect every receipt and disbursement.

15 4. Violated Regulation 2831.2 by not performing a
16 monthly reconciliation of the trust fund records.

17 5. Violated Regulation 2834 by permitting unlicensed
18 trust account signatories. There was no fidelity bond coverage.

19 6. Violated Regulation 2950(g) and (h) by disbursing
20 escrow funds without obtaining written instructions from the
21 party or parties paying the funds into escrow. The broker failed
22 to disclose to all parties in writing that it had an interest in
23 the escrow operation.

24 7. Violated Code Section 10130 by continuing to
25 perform activities requiring a real estate broker license from
26 December 18, 2007 through April 30, 2008 when the broker did not
27 have a designated broker officer.

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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 all licenses and license rights of Respondents FIDELITY NATIONAL MORTGAGE CORPORATION, PETER MICHAEL DOWNING, and JOHN B. SPEAR, individually, and as designated officers of Fidelity National Mortgage Corporation, 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 12 day of November, 2008.


ROBIN L. TRUJILLO
Deputy Real Estate Commissioner

cc: Fidelity National Mortgage Corporation
Peter Michael Downing
John B. Spear
Robin L. Trujillo
Audit Section
Phil Ihde
Sacto.