

1 GRETCHEN BUSTERUD  
Acting Regional Counsel  
2  
3 EDGAR P. CORAL  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
4 Region IX  
75 Hawthorne Street  
5 San Francisco, CA 94105  
(415) 972-3898  
6 Coral.Edgar@EPA.Gov



7  
8 UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
9 REGION IX

10 In the matter of: ) Docket No. TSCA-09-2022-0077  
11 )  
12 NRT West, Inc., ) CONSENT AGREEMENT  
AND FINAL ORDER  
13 Respondent. ) pursuant to 40 C.F.R. §§ 22.13(b),  
22.18(b)(2), and 22.18(b)(3)  
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15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency, Region IX (“EPA”), and NRT  
17 West, Inc. (the “Respondent”) agree to settle this matter and consent to the entry of this Consent  
18 Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and concludes this  
19 proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).  
20

21 A. AUTHORITY AND PARTIES

22 1. This is a civil administrative penalty action instituted against Respondent pursuant to  
23 Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), for violation  
24 of Section 1018 of Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992  
25 (“Section 1018”), 42 U.S.C. § 4852d, and federal regulations promulgated to implement Section  
26 1018 at 40 C.F.R. Part 745, Subpart F. Violation of Section 1018 through its implementing  
27 regulations at 40 C.F.R. Part 745, Subpart F constitutes violation of Section 409 of TSCA, 15  
28 U.S.C. § 2689.

1           2. Complainant is the Manager of the Toxics Section in the Enforcement and  
2 Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to  
3 bring this action and to sign a consent agreement settling this action.

4           3. Respondent, a California real estate brokerage corporation headquartered in Concord,  
5 California, sells residential properties located in the State of California.

6                                   B. STATUTORY AND REGULATORY BASIS

7           4. 40 C.F.R. Part 745, Subpart F implements the provisions of Section 1018 that impose  
8 certain disclosure requirements concerning lead-based paint and/or lead-based paint hazards  
9 upon the sale or lease of target housing.

10           5. “Target housing” means any housing constructed prior to 1978, except housing for the  
11 elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is  
12 expected to reside in such housing) or any 0-bedroom dwelling. 40 C.F.R. § 745.103.

13           6. “Seller” means any entity that transfers legal title to target housing, in whole or in part,  
14 in return for consideration, including but not limited to individuals, partnerships, corporations,  
15 trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. 40  
16 C.F.R. § 745.103.

17           7. “Purchaser” means any entity that enters into an agreement to purchase an interest in  
18 target housing, including but not limited to individuals, partnerships, corporations, trusts,  
19 government agencies, housing agencies, Indian tribes, and nonprofit organizations. 40 C.F.R. §  
20 745.103.

21           8. “Agent” means any party who enters into a contract with a seller or lessor, including  
22 any party who enters into a contract with a representative of the seller or lessor, for the purpose  
23 of selling or leasing target housing. 40 C.F.R. § 745.103.

24           9. Before a purchaser is obligated under any contract to purchase target housing, the  
25 seller shall provide the purchaser with an EPA-approved lead hazard information pamphlet. 40  
26 C.F.R. § 745.107(a)(1).

1           10. Each contract to sell target housing shall include, as an attachment, a Lead Warning  
2 Statement containing language provided in 40 C.F.R. § 745.113(a)(1). 40 C.F.R. §  
3 745.113(a)(1).

4           11. Each contract to sell target housing shall include, as an attachment, a statement by the  
5 seller disclosing the presence of known lead-based paint and/or lead-based paint hazards in the  
6 target housing being sold or indicating no knowledge of the presence of lead-based paint and/or  
7 lead-based paint hazards. 40 C.F.R. § 745.113(a)(2).

8           12. When one or more agents are involved in the transaction to sell target housing on  
9 behalf of the seller, each contract to sell target housing shall include, as an attachment, a  
10 statement that the agent has informed the seller of the seller’s obligations under Section 1018 and  
11 the agent is aware of his/her duties to ensure compliance with the requirements of 40 C.F.R. Part  
12 745, Subpart F. 40 C.F.R. § 745.113(a)(6).

13           13. Each contract to sell target housing shall include, as an attachment, the signatures of  
14 the sellers, agents, and purchasers certifying to the accuracy of their statements to the best of their  
15 knowledge, along with the dates of signature. 40 C.F.R. § 745.113(a)(7).

16           14. Pursuant to 40 C.F.R. § 745.115, each agent shall ensure compliance with all  
17 requirements of 40 C.F.R. Subpart F, including ensuring that the seller has performed all  
18 activities required under 40 C.F.R. §§ 745.107, 745.110, and 745.113.

19           15. As provided at 40 C.F.R. § 745.118(e), failure to comply with 40 C.F.R. §§ 745.107  
20 or 745.113 is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, and the penalty for each  
21 such violation shall not be more than \$19,507 for violations occurring after November 2, 2015  
22 where penalties are assessed on or after January 12, 2022 pursuant to the Civil Monetary Penalty  
23 Inflation Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties  
24 Inflation Adjustment Act Improvement Act of 2015, 28 U.S.C. § 2461.

### 25   C. ALLEGED VIOLATIONS

26           16. EPA has jurisdiction over this matter pursuant to Section 1018.

27           17. At all times relevant to this matter, Respondent, by and through its sales associates,  
28 was an “agent” representing the sellers of the seven residential properties located at 330 Serrano

1 Avenue in San Jose, California (the “Serrano Property”), 4 Canyon Road in Felton, California  
2 (the “Canyon Property”), 1502 Blackhawk Drive in Sunnyvale, California (the “Blackhawk  
3 Property”), 1101 Columbine Avenue in Sunnyvale, California (the “Columbine Property”), 2948  
4 Garden Avenue in San Jose, California (the “Garden Property”), 227 Viewmont Avenue in  
5 Vallejo, California (the “Viewmont Property”), and 1150 South 11<sup>th</sup> Street in San Jose,  
6 California (the “11<sup>th</sup> Street Property”), as those terms are defined at 40 C.F.R. § 745.103.

7 18. At all times relevant to this matter, the seven residential properties referenced in  
8 Paragraph 16 were “target housing,” as that term is defined at 40 C.F.R. § 745.103.

9 19. On or around August 31, 2017, November 9, 2017, August 3, 2018, February 19,  
10 2019, September 6, 2017, September 12, 2018, and October 11, 2018, Respondent’s clients (the  
11 sellers of these seven residential properties) entered into sales contracts for the Serrano Property,  
12 the Canyon Property, the Blackhawk Property, the Columbine Property, the Garden Property, the  
13 Viewmont Property, and the 11<sup>th</sup> Street Property, respectively.

14 20. At the time that the seller entered into the sales contract for the Canyon Property,  
15 Respondent as seller’s agent failed to ensure that its client provided the purchaser with an EPA-  
16 approved lead hazard information pamphlet, as required by 40 C.F.R. § 745.107(a)(1).

17 21. At the time that the respective sellers entered into the sales contracts for the  
18 Blackhawk Property and the Garden Property, Respondent as sellers’ agent failed to ensure that  
19 its clients included in the contracts, as an attachment, a Lead Warning Statement containing  
20 language provided in 40 C.F.R. § 745.113(a)(1), as required by 40 C.F.R. § 745.113(a)(1).

21 22. At the time that the seller entered into the sales contract for the Blackhawk Property,  
22 Respondent as seller’s agent failed to ensure that its client included in the contract, as an  
23 attachment, a statement by the seller disclosing the presence of known lead-based paint and/or  
24 lead-based paint hazards in the property being sold or indicating no knowledge of the presence of  
25 lead-based paint and/or lead-based paint hazards, as required by 40 C.F.R. § 745.113(a)(2).

26 23. At the time that the seller entered into the sales contract for the Garden Property,  
27 Respondent as seller’s agent failed to ensure that its client included in the contract, as an  
28 attachment, a statement that the agent has informed the seller of the seller’s obligations under

1 Section 1018 and the agent is aware of his/her duties to ensure compliance with the requirements  
2 of 40 C.F.R. Part 745, Subpart F, as required by 40 C.F.R. § 745.113(a)(6).

3 24. At the time that the respective sellers entered into the sales contracts for the Serrano  
4 Property, the Blackhawk Property, the Columbine Property, the Viewmont Property, and the 11<sup>th</sup>  
5 Street Property, Respondent as sellers' agent failed to ensure that its clients included in the  
6 contracts, as an attachment, the signatures of the sellers, agents, and purchasers certifying to the  
7 accuracy of their statements to the best of their knowledge, along with the dates of signature, as  
8 required by 40 C.F.R. § 745.113(a)(7).

9 25. Each of Respondent's ten failures to ensure its clients' compliance with 40 C.F.R. §§  
10 745.107 and 745.113, as set forth in Paragraphs 20 through 24, constitutes a separate violation of  
11 Section 409 of TSCA, 15 U.S.C. § 2689, which can be assessed a penalty of up to \$19,507 per  
12 violation occurring after November 2, 2015 where penalties are assessed on or after January 12,  
13 2022.

#### 14 D. RESPONDENT'S ADMISSIONS

15 26. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,  
16 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over  
17 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section  
18 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the  
19 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any  
20 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the  
21 proposed Final Order contained in this CAFO.

#### 22 E. CIVIL ADMINISTRATIVE PENALTY

23 27. In full and final settlement of the violations specifically alleged in Section I.C of this  
24 CAFO, Respondent shall pay a civil administrative penalty of THIRTY-FIVE THOUSAND,  
25 FOUR HUNDRED, AND THIRTY-THREE DOLLARS (\$35,433). Respondent shall pay this  
26 civil penalty within thirty (30) days of the effective date of this CAFO. The civil penalty shall be  
27 paid by remitting a certified or cashier's check, including the name and docket number of this  
28 case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the

1 other methods listed below) and sent as follows:

2 Regular Mail:

3 U.S. Environmental Protection Agency  
4 Fines and Penalties  
5 Cincinnati Finance Center  
6 PO Box 979077  
7 St. Louis, MO 63197-9000

8 Wire Transfers:

9 Wire transfers must be sent directly to the Federal Reserve Bank in New  
10 York City with the following information:  
11 Federal Reserve Bank of New York  
12 ABA = 021030004  
13 Account = 68010727  
14 SWIFT address = FRNYUS33  
15 33 Liberty Street  
16 New York, NY 10045  
17 Beneficiary = U.S. Environmental Protection Agency

18 Certified or Overnight Mail:

19 U.S. Bank  
20 1005 Convention Plaza  
21 Mail Station SL-MO-C2GL  
22 ATTN Box 979077  
23 St. Louis, MO 63101

24 ACH (also known as Remittance Express or REX):

25 Automated Clearinghouse (ACH) payments to EPA can be made through  
26 the U.S. Treasury using the following information:

27 U.S. Treasury REX/Cashlink ACH Receiver  
28 ABA = 051036706  
Account = 31006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking

Physical location of U.S. Treasury facility:

5700 Rivertech Court  
Riverdale, MD 20737

Remittance Express (REX) = (866) 234-5681

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov  
Enter "SFO 1.1" in the search field  
Open form and complete required fields

1 If clarification regarding a particular method of payment remittance is  
2 needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.

3 A copy of each check, or notification that the payment has been made by one of the other  
4 methods listed above, including proof of the date payment was made, shall be sent with a  
5 transmittal letter, indicating Respondent's name, the case title, and docket number, to the  
6 following regular mail or email addresses:

7  
8 Regional Hearing Clerk  
9 Office of Regional Counsel (ORC-1)  
10 U.S. Environmental Protection Agency, Region IX  
11 75 Hawthorne Street  
12 San Francisco, CA 94105

13  
14 Brandon Boatman  
15 Toxics Section  
16 Enforcement Division (ENF-2-3)  
17 U.S. Environmental Protection Agency, Region IX  
18 75 Hawthorne Street  
19 San Francisco, CA 94105

20  
21 28. Respondent shall not use payment of any penalty under this CAFO as a tax deduction  
22 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to  
23 use such payment as a tax deduction.

24  
25 29. If Respondent fails to pay the assessed civil administrative penalty of THIRTY-FIVE  
26 THOUSAND, FOUR HUNDRED, AND THIRTY-THREE DOLLARS (\$35,433), as identified  
27 in Paragraph 27, by the deadline specified in that Paragraph, then Respondent shall pay a  
28 stipulated penalty to EPA of FIVE HUNDRED DOLLARS (\$500) per day in addition to the  
assessed penalty. Stipulated penalties shall accrue until such time as the assessed penalty and all  
accrued stipulated penalties are paid and shall become due and payable upon EPA's written  
request. Failure to pay the civil administrative penalty specified in Paragraph 27 by the deadline  
specified in that Paragraph may also lead to any or all of the following actions:

(1) EPA may refer the debt to a credit reporting agency, a collection  
agency, or to the Department of Justice for filing of a collection action in the appropriate United  
States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and  
appropriateness of the assessed penalty or of this CAFO is not subject to review in any such

1 collection proceeding.

2 (2) The U.S. Government may collect the debt by administrative offset  
3 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a  
4 person to satisfy the debt the person owes the U.S. Government), which includes, but is not  
5 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40  
6 C.F.R. §§ 13(C) and 13(H).

7 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke  
8 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing  
9 business with EPA or engaging in programs EPA sponsors or funds.

10 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.  
11 Government may assess interest, administrative handling charges, and nonpayment penalties  
12 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the  
13 civil administrative penalty specified in Paragraph 27 by the deadline specified in that Paragraph.

14 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.  
15 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established  
16 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,  
17 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty  
18 (30) days of the effective date of this CAFO.

19 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.  
20 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,  
21 based on either actual or average cost incurred (including both direct and indirect costs), for  
22 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

23 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)  
24 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,  
25 may be assessed on all debts more than ninety (90) days delinquent.  
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27  
28



1 F. CERTIFICATION OF COMPLIANCE

2 30. In executing this CAFO, Respondent certifies that, to the best of its current  
3 knowledge, it is now fully in compliance with Section 1018 and federal regulations promulgated  
4 to implement Section 1018 at 40 C.F.R. Part 745, Subpart F.

5 G. RETENTION OF RIGHTS

6 31. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's  
7 liabilities for federal civil penalties for the violation and facts specifically alleged in Section I.C  
8 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil  
9 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,  
10 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal  
11 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it  
12 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address  
13 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

14 32. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's  
15 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,  
16 and permits.

17 H. ATTORNEYS' FEES AND COSTS

18 33. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in  
19 this proceeding.

20 I. EFFECTIVE DATE

21 34. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be  
22 effective on the date that the Final Order contained in this CAFO, having been approved and  
23 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

24 J. BINDING EFFECT


25 35. The undersigned representative of Complainant and the undersigned representative of  
26 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions  
27 of this CAFO and to bind the party he or she represents to this CAFO.

28 36. The provisions of this CAFO shall apply to and be binding upon Respondent and its

1 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,  
2 and assigns.

3  
4  
5 FOR RESPONDENT NRT WEST, INC.:

6  
7 8/5/2022  
8 DATE

9  
10   
11 WILLIAM S. FISKE  
12 Brokerage and Litigation Counsel  
13 NRT West, Inc.

14  
15 FOR COMPLAINANT EPA:

16  
17 8/25/2022  
18 DATE

19  
20 MATTHEW SALAZAR Digitally signed by MATTHEW SALAZAR  
Date: 2022.08.25 07:17:20 -0700  
21 MATT SALAZAR, P.E.  
22 Manager, Toxics Section  
23 Enforcement and Compliance Assurance Division  
24 U.S. Environmental Protection Agency, Region IX  
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1 II. FINAL ORDER

2 EPA and NRT West, Inc. having entered into the foregoing Consent Agreement,  
3 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2022-0077) be  
4 entered, and Respondent shall pay a civil administrative penalty in the amount of THIRTY-FIVE  
5 THOUSAND, FOUR HUNDRED, AND THIRTY-THREE DOLLARS (\$35,433), and comply  
6 with the terms and conditions set forth in the Consent Agreement.  
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10 \_\_\_\_\_  
11 STEVEN JAWGIEL Date  
12 Regional Judicial Officer  
13 U.S. Environmental Protection Agency, Region IX  
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1 **CERTIFICATE OF SERVICE**

2 I certify that the original of the fully executed Consent Agreement and Final Order in the matter  
3 of NRT West, Inc., Docket No. TSCA-09-2022-0077 was filed with the Regional Hearing Clerk,  
4 U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and  
5 correct copy of the same was sent to the following parties:

6 A copy was mailed via CERTIFIED MAIL and ELECTRONIC MAIL to:

7 RESPONDENT: William S. Fiske  
8 Brokerage and Litigation Counsel  
9 NRT West, Inc.  
10 855 Gateway Blvd., Ste. 750  
11 Concord, California 94520  
12 [Will.Fiske@westrsc.com](mailto:Will.Fiske@westrsc.com)

13 A copy was mailed via ELECTRONIC MAIL to:

14 COMPLAINANT: Edgar Coral  
15 Assistant Regional Counsel (ORC-2-2)  
16 U.S. EPA, Region IX  
17 75 Hawthorne Street  
18 San Francisco, CA 94105  
19 Coral.Edgar@EPA.Gov

20 \_\_\_\_\_  
21 Ponly J. Tu Date  
22 Regional Hearing Clerk  
23 U.S. EPA, Region IX  
24  
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