

7/29/11

1 Department of Real Estate
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2 Los Angeles, California 90013

FILED

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SEP 09 2011

DEPARTMENT OF REAL ESTATE

BY: 

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * * *

11 To:)	No. H-37517 LA
)	
12 AMERITRUST FINANCIAL, LLC;)	
13 and TOM STEVE CHIOLES,)	
)	<u>ORDER TO DESIST</u>
)	<u>AND REFRAIN</u>
)	(B&P Code Section 10086)
)	
)	

17 The Commissioner ("Commissioner") of the California
18 Department of Real Estate ("Department") caused an investigation
19 to be made of the activities of AMERITRUST FINANCIAL, LLC
20 ("AMERITRUST") and TOM STEVE CHIOLES ("CHIOLES"). Based on that
21 investigation the Commissioner has determined that AMERITRUST has
22 acted in the capacity of, or is acting in the capacity of,
23 advertising or assuming to act as a real estate broker in the
24 State of California within the meaning of California Business and
25 Professions Code ("Code") Section 10131(d) (performing services
26 for borrowers in connection with loans secured by real property).
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1 That investigation has further determined that CHIOLES has
2 engaged in or is engaging in the business of claiming, demanding,
3 charging, receiving, collecting or contracting for the collection
4 of an advance fee in connection with employment undertaken to
5 promote the sale or lease of real property or to obtain a loan or
6 loans on real property, including the performance of loan
7 negotiation and loan modification services with respect to loans
8 which are secured by liens on real property, within the meaning
9 of Code Section 10131.2. In addition, the Commissioner has
10 determined that CHIOLES has engaged in or is engaging in
11 activities which constitute violations of the Code and Title 10,
12 California Code of Regulations ("Regulations"). Based on that
13 investigation, the Commissioner hereby issues the following
14 Findings of Fact, Conclusions of Law, and Desist and Refrain
15 Order under the authority of Section 10086 of the Code.

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17 FINDINGS OF FACT

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

21 2. At no time has AMERITRUST been licensed by the
22 Department.

23 3. At all times relevant herein, CHIOLES was the
24 chief executive officer of the unlicensed entity, AMERITRUST.
25 Whenever acts referred to below are attributed to CHIOLES, those
26 acts are alleged to have been done by CHIOLES, acting by
27 himself, or by and/or through one or more agents, associates,

1 affiliates, and/or co-conspirators, including but not limited to
2 AMERITRUST, and using the name AMERITRUST, or any fictitious
3 name unknown at this time.

4 4. CHIOLES engaged in the business of claiming,
5 demanding, charging, receiving, collecting or contracting for the
6 collection of an advance fee, as defined by Code Section 10026,
7 including but not limited to the activities described in
8 Paragraph 6, below.

9 5. CHIOLES failed to submit the advance fee
10 agreements referred to in Paragraph 6, below, to the
11 Commissioner ten days before using them.

12 6. At the times set forth below CHIOLES engaged in the
13 business of, acted in the capacity of, or advertised a real
14 estate loan service and advance fee brokerage offering to perform
15 solicitation, negotiation and modification of loans secured by
16 liens on real property for compensation or in expectation of
17 compensation and for fees collected in advance including, but not
18 limited to, the following:

19 a. On or about October 6, 2008, Rafael N. paid
20 CHIOLES, doing business as AMERITRUST, an advance fee of \$5,000.
21 The advance fee was collected pursuant to the provisions of an
22 agreement pertaining to loan solicitation, negotiation, and
23 modification services to be provided by CHIOLES, doing business
24 as AMERITRUST, with respect to a loan secured by real property
25 in San Leandro, California.
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1 b. On or about October 24, 2008, and November 24,
2 2008, Alberto B. paid CHIOLES, doing business as AMERITRUST, and
3 advance fees totaling \$13,500. The advance fee was collected
4 pursuant to the provisions of an agreement pertaining to loan
5 solicitation, negotiation, and modification services to be
6 provided by CHIOLES, doing business as AMERITRUST, with respect
7 to a loan secured by five separate real properties.

8 c. On or about December 9, 2008, Edith S. paid
9 CHIOLES, doing business as AMERITRUST, an advance fee of \$3,500.
10 The advance fee was collected pursuant to the provisions of an
11 agreement pertaining to loan solicitation, negotiation, and
12 modification services to be provided by CHIOLES, doing business
13 as AMERITRUST, with respect to a loan secured by real property
14 in Van Nuys, California.

15 d. On or about January 30, 2009, Manuel O. paid
16 CHIOLES, doing business as AMERITRUST, an advance fee of \$2,500.
17 The advance fee was collected pursuant to the provisions of an
18 agreement pertaining to loan solicitation, negotiation, and
19 modification services to be provided by CHIOLES, doing business
20 as AMERITRUST, with respect to a loan secured by real property
21 in Riverside, California.

22 e. On or about January 17, 2009, Fred P. paid CHIOLES,
23 doing business as AMERITRUST, an advance fee of \$3,000. The
24 advance fee was collected pursuant to the provisions of an
25 agreement pertaining to loan solicitation, negotiation, and
26 modification services to be provided by CHIOLES, doing business
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1 as AMERITRUST, with respect to a loan secured by real property
2 in Sun City, California.

3 f. On or about March 16, 2009, Jaime A. paid CHIOLES,
4 doing business as AMERITRUST, an advance fee of \$2,500. The
5 advance fee was collected pursuant to the provisions of an
6 agreement pertaining to loan solicitation, negotiation, and
7 modification services to be provided by CHIOLES, doing business
8 as AMERITRUST, with respect to a loan secured by real property
9 in Victorville, California.

10 CONCLUSIONS OF LAW

11 7. The activities described in Paragraph 6, above,
12 require a real estate license under Section 10131(d) and Section
13 10131.2 of the Code.

14 8. Based on the information contained in Paragraph
15 6, above, AMERITRUST performed and/or participated in loan
16 solicitation, negotiation and modification activities which
17 require a real estate broker license under the provisions of
18 Code Sections 10131(d) and 10131.2 during a period of time when
19 it was not licensed by the Department as a real estate broker
20 nor employed as a real estate salesperson by the broker on whose
21 behalf the activities were performed in violation of Section
22 10130 of the Code.

24 9. Based on the information contained in Paragraphs
25 4, 5, and 6, above, CHIOLES collected fees pursuant to an
26 agreement which constitutes an advance fee agreement within the
27 meaning of Code Section 10085.

1 10. Based on the information contained in Paragraphs
2 4, 5, and 6, above, the failure by CHIOLES to submit the advance
3 fee agreement advertising to the Commissioner ten days before
4 using it constitutes a violation of Code Section 10085 and
5 Section 2970 of the Regulations.

6 DESIST AND REFRAIN ORDER

7 Based on the Findings of Fact and Conclusions of Law
8 stated herein:

9 1. IT IS HEREBY ORDERED that TOM STEVE CHIOLES,
10 whether doing business under the name AMERITRUST, or any other
11 names, or any fictitious name:

12 (i) Immediately desist and refrain from charging,
13 demanding, claiming, collecting and/or receiving advance fees, as
14 that term is defined in Section 10026 of the Code, in any form,
15 and under any conditions, with respect to the performance of loan
16 modification or any other form of mortgage loan forbearance
17 services in connection with loans on residential property
18 containing four or fewer dwelling units (Code Section 10085.6).

19 2. IT IS HEREBY ORDERED that AMERITRUST FINANCIAL,
20 LLC immediately desist and refrain from performing any acts
21 within the State of California for which a real estate broker
22 license is required. In particular AMERITRUST FINANCIAL, LLC is
23 ORDERED TO DESIST AND REFRAIN from:
24

25 (i) charging, demanding, claiming, collecting and/or
26 receiving advance fees, as that term is defined in Section 10026
27 of the Code, in any form, and under any conditions, with respect

1 to the performance of loan modifications or any other form of
2 mortgage loan forbearance service in connection with loans on
3 residential property containing four or fewer dwelling units
4 (Code Section 10085.6); and

5 (ii) charging, demanding, claiming, collecting and/or
6 receiving advance fees, as that term is defined in Section 10026
7 of the Code, for any other real estate related services offered
8 by them to others.

9
10 DATED: 9/7, 2011.

11 BARBARA BIGBY
12 Acting Real Estate Commissioner

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15 **Notice:** Business and Professions Code Section 10139 provides
16 that "Any person acting as a real estate broker or real estate
17 salesperson without a license or who advertises using words
18 indicating that he or she is a real estate broker without being
19 so licensed shall be guilty of a public offense punishable by a
20 fine not exceeding twenty thousand dollars (\$20,000), or by
21 imprisonment in the county jail for a term not to exceed six
22 months, or by both fine and imprisonment; or if a corporation, be
23 punished by a fine not exceeding sixty thousand dollars
24 (\$60,000)."

21 cc: Tom Steve Chioles
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23 Tom Steve Chioles
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25 Newport Beach, California 92660

25 Ameritrust Financial, LLC
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