Department of Real Estate
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0789

FILED
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DEPARTMENT OF REAL ESTATE
By R. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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| To:<br><br>LEGACY HOME LOANS & REAL ESTATE and BRETT JOSEPH TOLIVER. | NO. H-5646 SAC<br><br>ORDER TO DESIST AND REFRAIN<br>(B&P Code Section 10086) |

The Commissioner ("the Commissioner") of the California Department of Real Estate ("the Department") caused an investigation to be made of the activities of LEGACY HOME LOANS & REAL ESTATE, ("LEGACY"), and BRETT JOSEPH TOLIVER, ("TOLIVER"), (collectively "Respondents"). Based on that investigation, the Commissioner has determined that Respondents have engaged in, are engaging in, or are attempting to engage in, acts or practices constituting violations of the California Business and Professions Code ("Code") and/or Title 10, Chapter 6, California Code of Regulations ("Regulations"), including acting in the capacity of, advertising or assuming to act as a real estate broker in the State of California within the meaning of Section 10131(d) (performing services for borrowers and/or lenders in connection with loans secured by real property), 10131.2 (collection of advance fees), 10085 (advance fee agreements and materials) and 10085.5 (collection of advance fee) and 10085.6 (collecting unauthorized advance fee prior to performance) of the Code.

Furthermore, based on the investigation, the Commissioner hereby issues the following Findings of Fact, Conclusions of Law, and Desist and Refrain Order under the authority of Section 10086 of the Code.

FINDINGS OF FACT

1. At all times relevant, LEGACY was and now is licensed by the State of California Department of Real Estate ("the Department") as a corporate real estate broker.

2. At all times relevant, TOLIVER was and now is licensed by the Department as a real estate broker, individually and as the designated officer/broker of LEGACY. As said designated officer/broker, TOLIVER was at all times relevant responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees, and employees of LEGACY for which a license is required.

3. During the period of time set out below, Respondents performed services for one or more borrowers and negotiated to do one or more of the following acts for another or others, for or in expectation of compensation: negotiate one or more loans for, or perform services for, borrowers and/or lenders with respect to the collection of advance fees and loan modification, loan refinance, principal reduction, foreclosure abatement or short sale services and/or those borrowers' lenders in connection with loans secured directly or collaterally by one or more liens on real property; and charged, demanded or collected an advance fee for any of the services offered.

4. In furtherance of their plan and scheme to solicit advance fees and provide loan modification services, on or about January 1 2010, LEGACY entered into a loan modification services agreement with Dora O. According to that agreement, LEGACY agreed to negotiate a loan modification on behalf of Dora O. for her real property located at 1509 Foley Avenue, San Jose, California, in exchange for an advance fee payment of $1,000. On that same date, Dora O. paid the advance fee of $1,000 to LEGACY. No loan modification was obtained by LEGACY for Dora O. and her money was not refunded by LEGACY.

5. In furtherance of their plan and scheme to solicit advance fees and provide loan modification services, on or about November 21, 2009, LEGACY entered into an agreement to provide loan modification services to Resham K. for his real property located at 10789 Winward Avenue, Stockton, California, in exchange for a payment of $2,500. On that same date, Resham K. paid $2,500 to LEGACY. No loan modification was obtained by LEGACY for Resham K. and his money was not refunded by LEGACY.

CONCLUSIONS OF LAW

6. Based on the Findings of Fact contained in Paragraphs 1 through 5, above, LEGACY HOME LOANS & REAL ESTATE and BRETT JOSEPH TOLIVER solicited borrowers and/or performed services for those borrowers with respect to the collection of advance fees and loan modification, loan refinance, principal reduction, foreclosure abatement or short sale services and/or those borrowers' lenders in connection with loans secured directly or collaterally by one or more liens on real property; and charged, demanded or collected advance fees for the services to be provided, which acts require a real estate broker license under Sections 10131(d) and 10131.2 of the Code.

7. LEGACY HOME LOANS & REAL ESTATE and BRETT JOSEPH TOLIVER used a form of advance fee agreement which had not been provided to the Department for its prior review and consideration, in violation of Sections 10085, 10085.5 (collection of advance fees) and 10085.6 (collection of advance fee prior to performance) of the Code, and Sections 2970 (submission of advance fee materials) and 2972 (content of verified accounting) of the Regulations.

DESIST AND REFRAIN ORDER

Based on the Findings of Fact and Conclusions of Law stated herein, LEGACY HOME LOANS & REAL ESTATE and BRETT JOSEPH TOLIVER whether doing business under your own names, or any other names or fictitious names, ARE HEREBY ORDERED to immediately desist and refrain from:

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1. Performing any acts that require a real estate license unless and until you are properly licensed by the Department;

2. Charging, demanding, claiming, collecting and/or receiving advance fees, as that term is defined in Section 10026 of the Code, for any of the services you offer to others, unless and until you demonstrate and provide evidence satisfactory to the Commissioner that LEGACY HOME LOANS & REAL ESTATE and BRETT JOSEPH TOLIVER:

(a) Have an advance fee agreement which has been submitted to the Department and which is in compliance with Sections 2970 and 2972 of the Regulations;

(b) Have placed all previously collected advance fees into a trust account for that purpose and are in compliance with Section 10146 (deposit of advance fees into trust account) of the Code; and

(c) Have provided an accounting to trust fund owner-beneficiaries pursuant to Section 2972 of the Regulations.

3. Demanding, claiming, collecting and/or receiving advance fees, as that term is defined in Section 10026 of the Code, in any form, and under any conditions, with respect to the performance of loan modification or any other form of mortgage loan forbearance services in connection with loans on residential property containing four or fewer dwelling units.

DATED: 8/1/11

BARBARA J. BIGBY
Acting Real Estate Commissioner

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

cc: Legacy Home Loans & Real Estate
Attn: Brett Joseph Toliver
1803 West March Lane, Suite M
Stockton, CA 95207

Legacy Home Loans & Real Estate
Attn: Maggie Salas-Agent For Service of Process
1803 West March Lane, Suite M
Stockton, CA 95207

Brett Joseph Toliver
1803 West March Lane, Suite M
Stockton, CA 95207

Brett Joseph Toliver
828 West Elm Street
Stockton, CA 95203

Michael F. Babitzke
Attorney at Law
Michael F. Babitzke, Inc.
6 South El Dorado Street, Suite 305
Stockton, CA 95202

ATTY JWB:km