

FILED

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BUREAU OF REAL ESTATE

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BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

11	In the Matter of the Accusation of)	
12	LEGACY REAL ESTATE & ASSOCIATES,)	No. H-11825 SF
13	INC., CHIT RK PRASHAR, and THOMAS)	<u>ACCUSATION</u>
14	RICHARD SUMMERS,)	
15	Respondents.)	

16 The Complainant, HEATHER NISHIMURA, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation against LEGACY REAL
18 ESTATE & ASSOCIATES INC., CHIT RK PRASHAR, and THOMAS RICHARD SUMMERS
19 (Respondents), is informed and alleges as follows:

PRELIMINARY ALLEGATIONS

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22 The Complainant, HEATHER NISHIMURA, a Deputy Real Estate
23 Commissioner of the State of California, makes this Accusation in her official capacity.

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25 Respondents are presently licensed and/or have license rights under the Real
26 Estate Law, Part 1 of Division 4 of the Business and Professions Code (Code).

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2 At all times mentioned, Respondent LEGACY REAL ESTATE & ASSOCIATES
3 INC. (LEGACY) was and is licensed by the State of California Bureau of Real Estate (Bureau)
4 as a real estate broker corporation. At no time did LEGACY have a mortgage loan originator
5 license endorsement issued by the Bureau authorizing LEGACY to act as a mortgage loan
6 originator.

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8 At all times mentioned, Respondent CHIT RK PRASHAR (PRASHAR) was and
9 is licensed by the Bureau individually as a real estate broker, and as the designated broker-officer
10 of LEGACY. As said designated broker-officer, PRASHAR was responsible pursuant to Section
11 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate
12 licensees and employees of LEGACY for which a license is required. At no time did PRASHAR
13 have a mortgage loan originator license endorsement issued by the Bureau authorizing him to act
14 as a mortgage loan originator.

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16 At all times mentioned, Respondent THOMAS RICHARD SUMMERS
17 (SUMMERS) was and is licensed by the Bureau as a real estate salesperson. At all times after
18 November 9, 2010, SUMMERS worked under the employ of real estate broker corporation
19 LEGACY. At no time did SUMMERS have a mortgage loan originator license endorsement
20 issued by the Bureau authorizing him to act as a mortgage loan originator.

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22 Whenever reference is made in an allegation in this Accusation to an act or
23 omission of LEGACY, such allegation shall be deemed to mean that the officers, directors,
24 employees, agents and real estate licensees employed by or associated with LEGACY committed
25 such acts or omissions while engaged in furtherance of the business or operation of LEGACY
26 and while acting within the course and scope of their corporate authority and employment.

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At all times mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate licensee, in the State of California, within the meaning of:

a) Section 10131(b) of the Code in the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondents leased or rented and offered to lease or rent, and placed for rent, and solicited listings of places for rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon;

b) Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage business with the public wherein Respondents solicited lenders and borrowers for loans secured directly or collaterally by liens on real property or a business opportunity, and wherein such loans were arranged, negotiated, processed, and consummated by Respondents on behalf of others for compensation or in expectation of a compensation; and

c) Section 10131.2 of the Code, including the claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee in connection with any employment undertaken to promote the sale or lease of real property or of a business opportunity by advance fee listing, advertisement or other offering to sell, lease, exchange or rent property or a business opportunity, or to obtain a loan or loans thereon.

On or about April 24, 2014, and continuing intermittently through June 17, 2014, the Bureau conducted an audit of the records of LEGACY. The auditor examined the records for the period of July 1, 2011, through May 31, 2014.

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1 FIRST CAUSE OF ACTION

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3 Each and every allegation in Paragraphs 1 through 8, inclusive, above are
4 incorporated by this reference as if fully set forth herein.

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6 While acting in the course and scope of a real estate licensee as described in
7 Paragraph 7(b) and (c), and within three years prior to the filing of this Accusation, Respondents
8 accepted or received funds in trust (trust funds), within the meaning of Sections 10145 and
9 10146 of the Code, from or on behalf of borrowers, lenders, and/or others in connection with
10 loans secured directly or collaterally by liens on real property or on a business opportunity, for or
11 in expectation of compensation, as alleged herein, and thereafter from time-to-time made
12 disbursements of said trust funds, and engaged in the business of claiming, demanding, charging,
13 receiving, collecting or contracting for the collection of advance fees, which constitute trust
14 funds, within the meaning of Sections 10026, 10131.2, and 10146 of the Code.

15 11

16 While acting in the course and scope of a real estate licensee as described in
17 Paragraph 7(b) and (c), and within three years prior to the filing of this Accusation, Respondents
18 claimed, demanded, charged, collected, and/or received advance fees in connection with loan
19 modification services after October 10, 2009, in violation of Section 10085.6 (unlawful
20 collection of advance fees related to loan modifications) of the Code and Section 2945.4
21 (unlawful collection of advance fees related to loan modifications) of the California Civil Code
22 (Civil Code), for transactions, including but not limited to the following:

23

Borrower	Property	Advance Fee	Date Received
Tiffany N.	824 Sonoma Street, Richmond, CA	\$1,750	3/22/12
Dale L.	602 Summertree Drive, Livermore, CA	\$1,750	7/5/12
Donald R.	15189 Andover Street, San Leandro, CA	\$1,500	4/23/12
Lupe V.	4743 Dogwood Avenue, Fremont, CA	\$1,750	11/13/12

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2 In connection with the operation and conduct of the activities and transactions
3 described in Paragraph 10, and within three years prior to the filing of this Accusation,

4 Respondents:

5 (a) claimed, demanded, charged, received, collected, and/or contracted for
6 advance fees in connection with real estate services and failed to submit the advance fee
7 agreements and all materials used in obtaining the advance fee agreements to the Bureau prior to
8 use, without first obtaining a "No Objection Letter" as required by Section 10085 (failure to
9 submit materials used in collection of advance fees to Bureau) of the Code, and Section 2970
10 (materials used in collection of advance fees must be approved by Bureau prior to use) of Title
11 10 of the California Code of Regulations (Regulations);

12 (b) collected advance fees, trust funds, from principals for real estate services,
13 and deposited those funds into Respondents' general business bank account instead of
14 immediately depositing said funds into a designated trust account or neutral escrow depository,
15 in violation of Sections 10145 (trust fund handling) and 10146 (handling of advance fees as trust
16 funds) of the Code, and Section 2832 (trust account designation) of the Regulations;

17 (c) collected advance fees from principals for providing real estate services,
18 and did not maintain and provide an accounting to those principals showing the services
19 rendered, identification of the trust account into which the funds were deposited and details of
20 how those funds were disbursed, in violation of Section 10146 (handling of advance fees as
21 trust funds) of the Code and 2972 (verified accounting of advance fee handling to principals) of
22 the Regulations;

23 (d) failed to maintain separate beneficiary or transaction records containing
24 all information required by Section 2831.1 (separate beneficiary records) of the Regulations;

25 (e) failed to reconcile the balance of separate beneficiary or transaction
26 records with the control record of trust funds received and disbursed at least once a month,

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1 and/or failed to maintain a record of such reconciliations for each account as required by
2 Section 2831.2 (trust account reconciliation) of the Regulations;

3 (f) failed to notify the Bureau of Respondents' loan arranging activities for
4 properties containing one to four residential units, in violation of Section 10166.02(a) (failure to
5 notify Bureau of loan activity) of the Code; and,

6 (g) engaged in business as a mortgage loan originator as that term is defined
7 by Section 10166.01(b)(1) (activities related to loan modifications) of the Code, which includes
8 but is not limited to the conduct of mortgage loan modification activities, and failed to obtain and
9 maintain a real estate license endorsement identifying that Respondents are a licensed mortgage
10 loan originator, in violation of Section 10166.02(b) (failure to obtain license endorsement) of the
11 Code.

12 13

13 The acts and/or omissions of Respondents as alleged in the First Cause of Action
14 constitute grounds for the suspension or revocation of all licenses and license rights of
15 Respondents, pursuant to the following provisions of the Code and Regulations:

16 As to Paragraph 11, under Section 10177(d) (willful disregard or violation of
17 Real Estate Law) and/or 10177(g) (negligence or incompetence in performing licensed act) of
18 the Code, and Section 10177(q) (violation of Civil Code) of the Code, in conjunction with
19 Section 10085.6 (unlawful collection of advance fees related to loan modifications) of the Code
20 and Section 2945.4 (unlawful collection of advance fees related to loan modifications) of the
21 Civil Code;

22 As to Paragraph 12(a), under Sections 10177(d) (willful disregard or violation of
23 Real Estate Law) and/or 10177(g) (negligence or incompetence in performing licensed act) of
24 the Code, in conjunction with Section 10085 (failure to submit materials used in collection of
25 advance fees to Bureau) of the Code and Section 2970 (materials used in collection of advance
26 fees must be approved by Bureau prior to use) of the Regulations;

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1 As to Paragraph 12(b), under Sections 10177(d) (willful disregard or violation of
2 Real Estate Law) and/or 10177(g) (negligence or incompetence in performing licensed act) of
3 the Code, in conjunction with Sections 10145 (trust fund handling) and 10146 (handling of
4 advance fees as trust funds) of the Code and 2832 of the Regulations;

5 As to Paragraph 12(c), under Sections 10177(d) (willful disregard or violation of
6 Real Estate Law) and/or 10177(g) (negligence or incompetence in performing licensed act) of
7 the Code, in conjunction with Section 10146 (handling of advance fees as trust funds) of the
8 Code and Section 2972 (verified accounting of advance fee handling to principals) of the
9 Regulations;

10 As to Paragraph 12(d), under Sections 10177(d) (willful disregard or violation of
11 Real Estate Law) and/or 10177(g) (negligence or incompetence in performing licensed act) of
12 the Code, in conjunction with Section 2831.1 (separate beneficiary records) of the Regulations;

13 As to Paragraph 12(e), under Sections 10177(d) (willful disregard or violation of
14 Real Estate Law) and/or 10177(g) (negligence or incompetence in performing licensed act) of
15 the Code, in conjunction with Section 2831.2 (trust account reconciliation) of the Regulations;

16 As to Paragraph 12(f), under Sections 10166.051 (grounds for discipline-
17 violation of license endorsement and notice requirements) of the Code and Section 10177(d)
18 (willful disregard or violation of Real Estate Law) and/or 10177(g) (negligence or incompetence
19 in performing licensed act) of the Code, in conjunction with Section 10166.02(a) (failure to
20 notify Bureau of loan activity) of the Code;

21 As to Paragraph 12(g), under Section 10166.051 (grounds for discipline-violation
22 of license endorsement and notice requirements) of the Code and Section 10177(d) (willful
23 disregard or violation of Real Estate Law) and/or 10177(g) (negligence or incompetence in
24 performing licensed act) of the Code, in conjunction with Section 10166.02(b) (failure to obtain
25 license endorsement) of the Code.

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1 SECOND CAUSE OF ACTION

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3 Each and every allegation in Paragraphs 1 through 13, inclusive, above, are
4 incorporated by this reference as if fully set forth herein.

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6 While acting as a real estate broker as described in Paragraph 7(a), and within
7 three years prior to the filing of this Accusation, LEGACY and PRASHAR accepted or received
8 trust funds from or on behalf of owners and tenants in connection with the leasing, renting, and
9 collection of rents on real property or improvements thereon, as alleged herein, and thereafter
10 from time to time made disbursements of said trust funds.

11 16

12 The trust funds accepted or received by Respondents as described in Paragraph 15
13 were deposited or caused to be deposited by LEGACY and PRASHAR into a trust account
14 which was maintained by LEGACY and PRASHAR for the handling of trust funds, and
15 thereafter from time-to-time LEGACY and PRASHAR made disbursements of said trust funds,
16 identified as follows:

17

ACCOUNT # 1	
18 Bank Name and Location:	California Pacific Bank 250 Montgomery Street, 5 th Floor San Francisco, CA 94104
19 Account No.:	XXXXXX1790
20 Entitled:	Legacy Real Estate & Associates Inc. Property Management Trust Account

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23 17

24 In the course of the activities described in Paragraph 7(a), and within three years
25 prior to the filing of this Accusation, LEGACY and PRASHAR:

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1 (a) commingled with its own money or property, the money or property of
2 others which was received or held by LEGACY and PRASHAR in trust in violation of Section
3 10176(e) (comingling) of the Code;

4 (b) failed to maintain a written control record of all trust funds received and
5 disbursed in Account #1, containing all information required by Section 2831 (control record)
6 of the Regulations;

7 (c) failed to keep accurate separate records for each beneficiary or transaction,
8 accounting therein for all funds which were deposited into Account #1, containing all of the
9 information required by Section 2831.1 (separate beneficiary records) of the Regulations; and

10 (d) failed to reconcile the balance of separate beneficiary or transaction
11 records with the control record of trust funds received and disbursed at least once a month,
12 and/or failed to maintain a record of such reconciliations for each account as required by Section
13 2831.2 (trust account reconciliation) of the Regulations.

14 18

15 The acts and/or omissions of LEGACY and PRASHAR as alleged in the Second
16 Cause of Action constitute grounds for the suspension or revocation of all licenses and license
17 rights of Respondents, pursuant to the following provisions of the Code and Regulations:

18 As to Paragraph 17(a), under Section 10176(e) (comingling) of the Code;

19 As to Paragraph 17(b), under Sections 10177(d) (willful disregard or violation of
20 Real Estate Law) and/or 10177(g) (negligence or incompetence in performing licensed act) of
21 the Code in conjunction with Section 2831 (control record) of the Regulations;

22 As to Paragraph 17(c), under Sections 10177(d) (willful disregard or violation of
23 Real Estate Law) and/or 10177(g) (negligence or incompetence in performing licensed act) of
24 the Code in conjunction with Section 2831.1 (separate beneficiary records) of the Regulations;

25 and,

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1 As to Paragraph 17(d), under Sections 10177(d) (willful disregard or violation of
2 Real Estate Law) and/or 10177(g) (negligence or incompetence in performing licensed act) of
3 the Code in conjunction with Section 2831.2 (trust account reconciliation) of the Regulations.

4 THIRD CAUSE OF ACTION

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6 Each and every allegation in Paragraphs 1 through 18, inclusive, above, are
7 incorporated by this reference as if fully set forth herein.

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9 Respondent PRASHAR failed to exercise reasonable supervision over the acts of
10 LEGACY in such a manner as to allow the acts and events described above to occur.

11 21

12 The acts and/or omissions of PRASHAR described in Paragraph 20, constitute
13 failure on the part of PRASHAR, as designated broker-officer for LEGACY, to exercise
14 reasonable supervision and control over the licensed activities of LEGACY required by Section
15 10159.2 of the Code and Section 2725 (broker supervision) of the Regulations.

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17 The facts described above as to the Third Cause of Accusation constitute cause
18 for the suspension or revocation of the licenses and license rights of Respondent PRASHAR
19 under Section 10177(g) (negligence or incompetence in performing licensed act) of the Code,
20 Section 10177(h) (failure to supervise) of the Code, and/or Section 10177(d) (willful disregard or
21 violation of Real Estate Law) of the Code in conjunction with Section 10159.2 (responsibility of
22 corporate officer in charge) of the Code and Section 2725 (broker supervisor) of the Regulations.

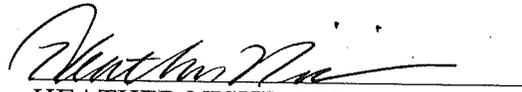
23 COST RECOVERY

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25 The acts and/or omissions of Respondents as alleged above, entitle the Bureau to
26 reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs for trust fund
27 handling violation) of the Code.

Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Bureau, the Commissioner may request the Administrative Law Judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing discipline on all licenses and license rights of Respondents under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), for the cost of the investigation and enforcement of this case as permitted by law, for the cost of the Bureau's audit as permitted by law, and for such other and further relief as may be proper under the provisions of law.


HEATHER NISHIMURA
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 18th day of March, 2015.

DISCOVERY DEMAND

Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the Bureau of Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in the *Administrative Procedure Act*. Failure to provide discovery to the Bureau of Real Estate may result in the exclusion of witnesses and documents at the hearing or other sanctions that the Office of Administrative Hearings deems appropriate.