

*Jinday*

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**FILED**

MAR 15 2012

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

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In the Matter of the Accusation of                      No. H-36442 LA  
  
AMERIFUND INC.; AMERIFUND SMART,  
HOMES INC.; and RUSSELL J. MASSRO,  
individually and as designated  
officer of Amerifund Inc. and  
Amerifund Smart Homes Inc.,  
  
Respondents.

AMENDED ORDER ACCEPTING VOLUNTARY SURRENDER  
OF REAL ESTATE LICENSE

(Nunc Pro Tunc)

19                      On January 28, 2010, an Accusation was filed in this  
matter against Respondent RUSSELL J. MASSRO.

                    On November 22, 2010, Respondent petitioned the  
22 Commissioner to voluntarily surrender his real estate broker  
23 license and license rights pursuant to Section 10100.2 of the  
Business and Professions Code.

                    IT IS HEREBY ORDERED that Respondent RUSSELL J.  
MASSRO's petition for voluntary surrender of his real estate  
broker license and license rights is accepted as of the effective

1 the effective date of this Order as set forth below, based upon  
2 the understanding and agreement expressed in Respondent's  
3 Declaration dated November 22, 2010 (attached as Exhibit "A"  
4 hereto). Respondent's license certificate(s), pocket card(s) and  
5 any branch office license certificate(s) shall be sent to the  
6 below listed address so that they reach the Department on or  
7 before the effective date of this Order:

8 Department of Real Estate  
9 Atten: Licensing Flag Section  
10 P.O. Box 187000  
11 Sacramento, CA 95818-7000

12 This Order, nunc pro tunc to December 30, 2010, shall  
13 become effective immediately.

14 3/12/12

15  
16 BARBARA J. BIGBY  
17 Acting Real Estate Commissioner  
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Lauch

**FILED**

JAN 20 2011

DEPARTMENT OF REAL ESTATE  
BY: [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE.

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )

AMERIFUND INC.; AMERIFUND SMART )  
HOMES INC.; and RUSSELL J. MASSRO, )  
individually and as designated )  
officer of Amerifund Inc. and )  
Amerifund Smart Homes Inc., )

No. H-36442 LA

Respondents.. )

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On February 26, 2010, an Accusation was filed in this matter against Respondent BARAK VOLNER.

On November 22, 2010, Respondent petitioned the Commissioner to voluntarily surrender his real estate broker license rights pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent RUSSELL J. MASSRO's petition for voluntary surrender of his real estate broker license rights is accepted as of the effective date of

1 this Order as set forth below, based upon the understanding and  
2 agreement expressed in Respondent's Declaration dated November  
3 22, 2010, (attached as Exhibit "A" hereto). Respondent's license  
4 certificate, pocket card and any branch office license  
5 certificate shall be sent to the below listed address so that  
6 they reach the Department on or before the effective date of this  
7 Order:

8  
9 Department of Real Estate  
10 Atten: Licensing Flag Section  
11 P.O. Box 187000  
12 Sacramento, CA 95818-7000

13 This Order shall become effective at 12 o'clock noon on  
14 February 9, 2011.

15 DATED: 12/30, 2010

16 JEFF DAVIS  
17 Real Estate Commissioner  
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EXHIBIT "A"

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )

AMERIFUND INC.; AMERIFUND SMART )  
HOMES INC.; and RUSSELL J. MASSRO, )  
individually and as designated )  
officer of Amerifund Inc. and )  
Amerifund Smart Homes Inc., )

No. H-36442 LA

Respondents. )

DECLARATION

My name is RUSSELL J. MASSRO and I am currently  
licensed as a real estate broker and/or have license rights with  
respect to said license. I am representing myself.

In lieu of proceeding in this matter in accordance with  
the provisions of the Administrative Procedure Act (Sections  
11400 et seq., of the Government Code), I wish to voluntarily  
surrender my real estate license(s) issued by the Department of  
Real Estate ("Department"), pursuant to Business and Professions  
Code Section 10100.2.

1 I understand that by so voluntarily surrendering my  
2 license(s), I may be relicensed as a broker or as a salesperson  
3 only by petitioning for reinstatement pursuant to Section 11522  
4 of the Government Code. I also understand that by so voluntarily  
5 surrendering my license(s), I agree to the following:

6 1. The filing of this Declaration shall be deemed as  
7 my petition for voluntary surrender.

8 2. It shall also be deemed to be an understanding and  
9 agreement by me that I waive all rights I have to require the  
10 Commissioner to prove the allegations contained in the Accusation  
11 filed in this matter at a hearing held in accordance with the  
12 provisions of the Administrative Procedure Act (Government Code  
13 Sections 11400 et seq.), and that I also waive other rights  
14 afforded to me in connection with the hearing such as the right  
15 to discovery, the right to present evidence in defense of the  
16 allegations in the Accusation and the right to cross-examine  
17 witnesses.

18 3. I further agree that upon acceptance by the  
19 Commissioner, as evidenced by an appropriate order, all  
20 affidavits and all relevant evidence obtained by the Department  
21 in this matter prior to the Commissioner's acceptance, and all  
22 allegations contained in the Accusation filed in the Department  
23 Case No. H-36642 LA, excluding California Business and  
24 Professions Code Sections 10176(a), 10176(b) and 10176(c). may be  
25 considered by the Department to be true and correct for the  
26 purpose of deciding whether to grant relicensure or reinstatement  
27 pursuant to Government Code Section 11522.

4. I freely and voluntarily surrender all my licenses and license rights under the Real Estate Law.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration was executed on Nov 22, 2010, at LA Verno, CA, California.

  
RUSSELL J. MASSRO

FILED

JAN 20 2011

DEPARTMENT OF REAL ESTATE

BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of ) No. H-36442 LA  
)  
) AMERIFUND INC.; AMERIFUND SMART )  
) HOMES INC.; and RUSSELL J. MASSRO, )  
) individually and as designated )  
) officer of Amerifund Inc. and )  
) Amerifund Smart Homes Inc., )  
)  
) Respondents. )

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On January 28, 2010, an Accusation was filed in this matter against Respondents AMERIFUND INC. and AMERIFUND SMART HOMES INC.

On November 22, 2010, Respondents petitioned the Commissioner to voluntarily surrender their real estate broker licenses rights pursuant to Section 10100.2 of the Business and Professions Code.

///



1 IT IS HEREBY ORDERED that AMERIFUND INC. and AMERIFUND  
2 SMART HOMES INC. petition for voluntary surrender of their real  
3 estate broker license rights is accepted as of the effective  
4 date of this Order as set forth below, based upon the  
5 understanding and agreement expressed in Respondent's  
6 Declaration dated November 22, 2010, (attached as Exhibit "A"  
7 hereto). Respondents' license certificate, pocket card and any  
8 branch office license certificate shall be sent to the below  
9 listed address so that they reach the Department on or before  
10 the effective date of this Order:

11 Department of Real Estate  
12 Atten: Licensing Flag Section  
13 P.O. Box 187000  
14 Sacramento, CA 95818-7000

15 This Order shall become effective at 12 o'clock noon on  
16 February 9, 2011.

17 DATED: 12/31, 2010

18 JEFF DAVI  
19 Real Estate Commissioner  
20  
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EXHIBIT "A"

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )

AMERIFUND INC.; AMERIFUND SMART )  
HOMES INC.; and RUSSELL J. MASSRO, )  
individually and as designated )  
officer of Amerifund Inc. and )  
Amerifund Smart Homes Inc., )

No. H-36442 LA

Respondents. )

DECLARATION

My name is Russell J. Massro and I am the designated officer of AMERIFUND INC. and AMERIFUND SMART HOMES INC. which are licensed as real estate brokers and/or have license rights with respect to said licenses. I am authorized to sign this declaration on behalf of AMERIFUND INC. and AMERIFUND SMART HOMES INC.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedures Act (Sections 11400 et seq., of the Government Code) AMERIFUND INC.

1 and AMERIFUND SMART HOMES INC. wish to voluntarily surrender the  
2 real estate licenses issued by the Department of Real Estate  
3 ("Department"), pursuant to Business and Professions Code  
4 Section 10100.2.

5 I understand that AMERIFUND INC. and AMERIFUND SMART  
6 HOMES INC., by so voluntarily surrendering their licenses, can  
7 only have them reinstated in accordance with the provisions of  
8 Section 11522 of the Government Code. I also understand that by  
9 so voluntarily surrendering their license rights, AMERIFUND INC.  
10 and AMERIFUND SMART HOMES INC. agree to the following:

11 The filing of this Declaration shall be deemed as  
12 their petition for voluntary surrender. It shall also be deemed  
13 to be an understanding and agreement by AMERIFUND INC. and  
14 AMERIFUND SMART HOMES INC. that, they waive all rights they have  
15 to require the Commissioner to prove the allegations contained  
16 in the Accusation ("Accusation") filed in this matter at a  
17 hearing held in accordance with the provisions of the  
18 Administrative Procedures Act (Government Code Sections 11400 et  
19 seq.), and that they also waive other rights afforded to them in  
20 connection with the hearing such as the right to discovery, the  
21 right to present evidence in defense of the allegations in the  
22 Accusation and the right to cross examine witnesses.


24 I further agree on behalf of AMERIFUND INC. and  
25 AMERIFUND SMART HOMES INC. that upon acceptance by the  
26 Commissioner, as evidenced by an appropriate order, all  
27

1 affidavits and all relevant evidence obtained by the Department  
2 in this matter prior to the Commissioner's acceptance, and all  
3 allegations contained in the Accusation filed in the Department  
4 Case No. H-36442 LA, excluding California Business and  
5 Professions Code Sections 10176(a), 10176(b) and 10176(c), may  
6 be considered by the Department to be true and correct for the  
7 purpose of deciding whether or not to grant reinstatement of  
8 AMERIFUND INC. and AMERIFUND SMART HOMES INC.'s licenses  
9 pursuant to Government Code Section 11522.

10 I declare under penalty of perjury under the laws of  
11 the State of California that the above is true and correct and  
12 that I am acting freely and voluntarily on behalf of AMERIFUND  
13 INC. and AMERIFUND SMART HOMES INC. to surrender their licenses  
14 and all license rights attached thereto.  
15

16 Nov 22, 2010  
17 Date and Place

18 LA VERNE, CA

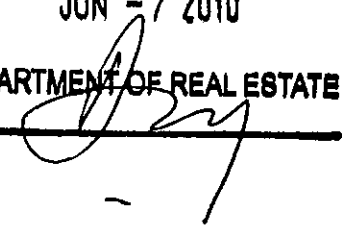
19  
20   
21 BY: RUSSELL J. MASRO  
22 Designated Officer of  
23 Amerifund Inc. and  
24 Amerifund Smart Homes Inc.  
25  
26  
27

1 ELLIOTT MAC LENNAN, SBN 66674  
2 Department of Real Estate  
3 320 West 4th Street, Ste. 350  
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6911 (direct)  
6 -or- (213) 576-6982 (office)  
7

**FILED**

JUN -7 2010

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 )

12 AMERIFUND INC.; AMERIFUND SMART )  
13 HOMES INC; and RUSSELL J. MASSRO, )  
14 individually and as designated )  
15 officer of Amerifund Inc. and )  
16 Amerifund Smart Homes Inc., )

17 Respondents. )

No. H-36442 LA

FIRST AMENDED

ACCUSATION

18 The Accusation filed on January 28, 2010 in this matter  
19 is amended in its entirety as follows:

20 The Complainant, Robin Trujillo, a Deputy Real Estate  
21 Commissioner of the State of California, for cause of Accusation  
22 against AMERIFUND INC., AMERIFUND SMART HOMES INC. and RUSSELL J.  
23 MASSRO, individually and as designated officer of Amerifund Inc.  
24 and Amerifund Smart Homes Inc., alleges as follows:  
25

26 ///

1.

The Complainant, Robin Trujillo, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against AMERIFUND INC., AMERIFUND SMART HOMES INC. and RUSSELL J. MASSRO.

2.

All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

3.

License History

A. AMERIFUND INC. ("AI"). At all times mentioned, Respondent AI was licensed or had license rights issued by the Department of Real Estate ("Department") as a real estate broker. On February 25, 2008, AI was originally licensed as a corporate real estate broker. At all times mentioned herein, Respondent AI was authorized to act by and through Respondent RUSSELL J. MASSRO as AI's broker designated pursuant to Business and Professions Code (hereinafter "Code") Sections 10159.2 and 10211 to be responsible for ensuring AI's compliance with the Real Estate Law.

B. AMERIFUND SMART HOMES INC. ("ASHI"). At all times mentioned, AI was licensed or had license rights issued by the Department as a real estate broker. On November 17, 2008, AI was originally licensed as a corporate real estate broker. Respondent

1 AI was authorized to act by and through Respondent RUSSELL J.  
2 MASSRO as AI's broker designated pursuant to Business and  
3 Professions Code (hereinafter "Code") Sections 10159.2 and 10211  
4 to be responsible for ensuring AI's compliance with the Real  
5 Estate Law.

6 C. RUSSELL J. MASSRO ("MASSRO"). At all times  
7 mentioned, MASSRO was licensed or had license rights issued by  
8 the Department as a real estate broker. On June 17, 1993, MASSRO  
9 was originally licensed as a corporate real estate broker.

10 D. AI and ASHI are sister corporations owned in their  
11 entirety by MASSRO.

12 E. AI, ASHI and MASSRO conducted activities requiring  
13 a real estate license and an approved advance fee agreement from  
14 the Department.

15 Brokerage

16 4.

17  
18 At all times mentioned, in the City of La Verne and  
19 County of Los Angeles, AI, ASHI and MASSRO acted as real estate  
20 brokers conducting licensed activities within the meaning of Code  
21 Sections 10131(d) and 10131.2. AI, ASHI and MASSRO engaged in  
22 the business of a mortgage loan brokerage and a loan modification  
23 brokerage collecting advance fees.

24 Respondents AI, ASHI and MASSRO advertised, solicited  
25 and offered to provide loan modification services to economically  
26 distressed homeowners seeking adjustments to the terms and  
27

1 conditions of their home loans including, but not limited to,  
2 repayment plans, forbearance plans, partial claims, and reduction  
3 in principal or interest, foreclosure prevention and short sales.

4 AI processed the following loan modifications during the  
5 audit period:

6

7 Total Loan 8 Modifications	Pending Loan Modifications	Completed Loan Modifications	Advance Fees Collected
9 222	165	57	\$228,228.66

10

11 AMERIFUND INC.

12 FIRST CAUSE OF ACCUSATION  
13 (Mortgage Loan and Loan Modification Audit)

14 5.

15 On September 3, 2009, the Department completed an audit  
16 examination of the books and records of AI pertaining to the  
17 mortgage loan, loan modification and advance fee activities  
18 described in Paragraph 4, which require a real estate license.  
19 The audit examination covered a period of time beginning on  
20 December 1, 2007 to March 31, 2009. The audit examination  
21 revealed violations of the Code and the Regulations as set forth  
22 in the following paragraphs, and more fully discussed in Audit  
23 Report LA 080267 and the exhibits and work papers attached to  
24 said audit report.

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1 aggregate funds in B/A #1, to an amount which, on March 31, 2009,  
2 was \$228,470.99, less than the existing aggregate trust fund  
3 liability to every homeowner-principal who was an owner of said  
4 funds, without first obtaining the prior written consent of the  
5 owners, in violation of Code Section 10145 and Regulation 2832.1.

6 (b) Based on a review of web address,  
7 www.amerifundsmarthomes.com published on April 14, 2009,  
8 Amerifund Smart Homes Inc. (ASHI), AI's sister corporation,  
9 solicited home owners and offered to provide loan modification  
10 services, under AI's unlicensed fictitious business names,  
11 "Amerifund Smart Homes" and "American Smart Loan Modifications"  
12 as set forth in Audit LA 080228, below. "Amerifund Smart Homes"  
13 is a marketing name designed to generate leads consisting of real  
14 estate buyers, sellers, and business contacts and economically  
15 distressed borrowers seeking to modify their home loans.

16 AI is the creator of the marketing system. AI also  
17 indicated on AI's and AI's home page websites that AI would  
18 provide and in fact did provide loan modification services to the  
19 aforesaid homeowners using it own name and the fictitious  
20 business name of "American Smart Loan Modifications".

21 AI and AI's website www.amerifundsmarthomes.com,  
22 designed and implemented by AI, advertised for, and solicited  
23 loan modification services. The advertised representations are  
24 misleading or deceptive in themselves or through the omission of  
25 necessary information to make the advertised representations not  
26 misleading in the context in which they are used. This conduct  
27

1 by AI is in violation of Code Sections 10176(a), 10235 and  
2 Regulation 2848.

3 (c) Collected advance fees within the meaning of Code  
4 Section 10026 from homeowners seeking loan modification services  
5 wherein AI failed to provide homeowners with a pre-approved  
6 advance fee agreement from the Department, in violation of Code  
7 Section 10085 and Regulation 2970.

8 (d) With reference to the lack of an advance fee  
9 agreement, AI failed to provide a complete description of  
10 services to be rendered provided to each homeowner in 10 point  
11 type font and failed to provide an allocation and disbursement of  
12 the amount collected as the advance fee, in violation of Code  
13 Section 10146 and Regulation 2972.

14 (e) B/A #1 was not designated as a trust account, in  
15 violation of Code Section 10145 and Regulation 2832(a). B/A #1  
16 was the general operating account of AI.

17 (f) Converted trust funds in the amount of  
18 \$228,228.66, in advance fees collected from homeowners for loan  
19 modifications that AI failed to render. Pursuant to its loan  
20 modification agreement "Home Affordable Modification Trial Period  
21 Plan", AI collected \$228,228.66 from homeowners. Abrogating its  
22 own agreement with homeowners, AI made unauthorized disbursements  
23 to itself in the full amount of \$228,228.66, before the agreed to  
24 loan modifications services had been rendered. AI then reduced  
25 the balance in B/A #1, AI's general account, to an amount that  
26  
27

1 was less than the amount deposited \$228,228.66, in violation of  
2 Code Section 10145, 10176(a), 10176(i), 10176(b), 10176(c) and/or  
3 10177(g).

4 (g) Commingled trust funds and personal funds by  
5 depositing trust funds in the form of advance fees collected for  
6 loan modifications from homeowners into AI's general operating  
7 account, B/A #1, instead of depositing trust funds into a  
8 properly designated trust account, in violation of Code Sections  
9 10145 and 10176(e) and Regulation 2832.

10 (h) Failed to maintain a control record in the form of  
11 a columnar record in chronological order of all trust funds  
12 including advance fees collected, deposited and disbursed in  
13 connection with loan modifications, in violation of Code Section  
14 10145 and Regulation 2831.

15 (i) Failed to maintain a separate record for each  
16 beneficiary or transaction, thereby failing to account for all  
17 trust funds in the form of advance fees collected, deposited and  
18 disbursed, in violation of Code Section 10145 and Regulation  
19 2831.1.  
20

21 (j)(1) Failed to retain a true and correct copy of a  
22 Department of Real Estate approved Mortgage Loan Disclosure  
23 Statement signed by the broker for borrowers Jimmy Hughes and  
24 Gary Spenser, in violation of Code Section 10240; and  
25

26 (j)(2) Failed to disclose yield spread premiums from  
27 lenders on the approved Mortgage Loan Disclosure Statement for

1 the aforesaid borrowers in violation of Code Section 10240, 10241  
2 and Regulation 2840.

3 (k) Employed and/or compensated Lisa Pensick, Veronica  
4 Villatoro and Norma Lopez, as loan agents and loss mitigation  
5 agents who AI knew were not licensed by the Department as a real  
6 estate broker or as a real estate salesperson employed by a real  
7 estate broker, for performing acts for which a real estate  
8 license is required, including soliciting mortgage loans, in  
9 violation of Code Section 10137.

10 (l) Used the fictitious name of "Amerifund Smart Homes"  
11 to conduct licensed activities including mortgage loans and loan  
12 modifications without holding a license bearing said fictitious  
13 business name, in violation of Code Section 10159.5 and  
14 Regulation 2731.

15 (m) Failed to notify the Department of the termination  
16 of salesperson Nancy Marchiola, in violation of Code Section  
17 10161.8 and Regulation 2752; and

18 (n) MASSRO failed to exercise adequate supervision over  
19 AI's activities requiring a real estate license to ensure AI's  
20 compliance the Real Estate Laws and Regulations and had no system  
21 in place for regularly monitoring AI's compliance with the Real  
22 Estate Law, in violation of Code Sections 10159.2, 10177(h) and  
23 Regulation 2725.  
24

25 ///

26 ///

Discipline Statutes

8.

The conduct of Respondents AI and MASSRO described in Paragraph 7, above, violated the Code and the Regulations as set forth below:

PARAGRAPH	PROVISIONS VIOLATED
7(a)	Code Sections 10145 and Regulation 2832.1
7(b)	Code Sections 10176(a) 10235 and Regulation 2848
7(c)	Code Section 10085 and Regulation 2970
7(d)	Code Section 10146 and Regulation 2972
7(e)	Code Section 10145 and Regulation 2832(a)
7(f)	Code Sections 10145, 10176(a), 10176(b), 10176(c), 10176(i) and/or 10177(g)
7(g)	Code Section 10145 and 10176(e) and Regulation 2832
7(h)	Code Section 10145 and Regulation 2831
7(i)	Code Section 10145 and Regulation 2831.1
7(j)	Code Section 10240 and 2840
7(k)	Code Section 10137

1	7(l)	Code Section 10159.5 and Regulation 2731
2		
3	7(m)	Code Sections 10161.8 and Regulation 2752
4		
5	7(n)	Code Sections 10159.2, 10177(h) and Regulation 2725
6		

7  
8 The foregoing violations constitute cause for the suspension or  
9 revocation of the real estate license and license rights of  
10 Respondents AI and MASSRO under the provisions of Code Sections  
11 10176(a), 10176(b), 10176(c), 10176(e), 10176(i), 10177(d) and/or  
12 10177(g).

13 AMERIFUND SMART HOMES INC.

14 9.

15 Complainant hereby incorporates by reference the allegations set  
16 forth in Paragraphs 1 through 8, above.

17 SECOND CAUSE OF ACCUSATION  
18 (Mortgage Loan and Loan Modification Audit)

19 10.

20 On April 23, 2009, the Department completed an audit  
21 examination of the books and records of ASHI pertaining to the  
22 mortgage loan, loan modification and advance fee activities  
23 described in Paragraph 4, which require a real estate license.  
24 The audit examination covered a period of time beginning on  
25 November 29, 2007 to March 31, 2009. The audit examination  
26 revealed violations of the Code and the Regulations as set forth  
27

1 in the following paragraphs, and more fully discussed in Audit  
2 Report LA 080228 and the exhibits and work papers attached to  
3 said audit report.

4 Bank and Trust Accounts

5 11.

6 No trust account was maintained during the audit  
7 period.

8 Audit Violations

9 12.

10 In the course of activities described in Paragraph 4  
11 above, and during the audit examination period described in  
12 Paragraph 10, Respondents ASHI and MASSRO acted in violation of  
13 the Code and the Regulations in which Respondents:

14 (a) Based on a review of web address,  
15 www.amerifundsmarthomes.com published on April 14, 2009,  
16 Amerifund Smart Homes Inc. solicited home owners and offered to  
17 provide loan modification services, under ASHI's unlicensed  
18 fictitious business name, "Amerifund Smart Homes" as set forth in  
19 Audit LA 080228, below. "Amerifund Smart Homes" is a marketing  
20 name designed to generate live leads consisting of real estate  
21 buyers, sellers and business contacts.

22 ASHI is the creator of the marketing system. ASHI also  
23 indicated on ASHI's and ASHI's home page website that ASHI would  
24 provide and in fact did provide loan modification services to  
25 distressed homeowners.

26 ///



1 ASHI's website www.amerifundsmarthomes.com, designed  
2 and implements by ASHI, advertises for and solicits loan  
3 modification services that are misleading or deceptive in  
4 themselves or through the omission of necessary information to  
5 make the representations not misleading in the context in which  
6 they are used. This conduct by ASHI and ASHI is in violation of  
7 Code Section 10235 and Regulation 2848; and

8 (b) Used the fictitious names of "Amerifund Smart  
9 Homes," and "Amerifund Smart Loan Modifications" to conduct  
10 licensed activities including loan modifications without holding  
11 a license bearing said fictitious business names, in violation of  
12 Code Section 10159.5 and Regulation 2731.

13  
14 Discipline Statutes

15 13.

16 The conduct of Respondents ASHI and MASSRO described in  
17 Paragraph 12, above, violated the Code and the Regulations below:

18 PARAGRAPH	PROVISIONS VIOLATED
19 12(a)	Code Sections 10176(a) and 10235 and Regulation 2848
20 12(b)	Code Section 10159.5 and Regulation 2731

21 The foregoing violations constitute cause for the suspension or  
22 revocation of the real estate license and license rights of  
23 Respondents ASHI and MASSRO under the provisions of Code Sections  
24 10176(a), 10177(d) and/or 10177(g).

1  
2 AMERIFUND INC.

3 14.

4 Complainant hereby incorporates by reference the allegations set  
5 forth in Paragraphs 1 through 13, above.

6 THIRD CAUSE OF ACCUSATION  
7 (Broker Escrow Audit Examination)

8 15.

9 On September 15, 2009, the Department completed an  
10 audit examination of the books and records of AI pertaining to  
11 the broker escrow activities described in Paragraph 4, which  
12 require a real estate license. The audit examination covered a  
13 period of time beginning on December 01, 2007 to April 30, 2009.  
14 The audit examination revealed violations of the Code and the  
15 Regulations as set forth in the following paragraphs, and more  
16 fully discussed in Audit Report LA 080304 and the exhibits and  
17 work papers attached to said audit report.

18 Bank and Trust Accounts

19 16.

20 At all times mentioned, in connection with the  
21 activities described in Paragraph 4, above, AI accepted or  
22 received funds including funds in trust (hereinafter "trust  
23 funds") from or on behalf of actual or prospective parties  
24 including buyers and sellers, title companies, lenders and  
25 borrowers, for sales and loan and loan modification transactions  
26 brokered and escrowed by AI and thereafter made deposits and or  
27

1 disbursements of such funds. From time to time herein mentioned  
2 during the audit period, said trust funds were deposited and/or  
3 maintained by AI as follows:

4  
5 Amerifund Inc. Escrow Trust Account (VEI4T)  
6 Account No. 165717829916"  
7 US Bank  
8 P.O. Box 1800  
9 St. Paul, Minnesota 55101-0800 (B/A #1)

10 Amerifund Inc. Escrow Trust Account (VEI4T)  
11 Account No. 0001-782991"  
12 Mellon 1st Business Bank  
13 601 West Fifth St.  
14 Los Angeles, Ca 90071  
15 (Mellon 1st Business Bank merged with US Bank) (B/A #1)

16 Amerifund Inc. Escrow Trust Account (VEI)  
17 Account No. 254066478"  
18 Citizens Business Bank  
19 1010 E. Colorado Ave.  
20 Pasadena, CA 91106 (B/A #2)

21 ///

Audit Violations

17.

In the course of activities described in Paragraph 4 above, and during the audit examination period described in Paragraph 15, Respondents AI doing business as Homelife Smart Homes and MASSRO acted in violation of the Code and the Regulations in which Respondents:

(a) Permitted, allowed or caused the disbursement of trust funds from B/A #1, where the disbursement of funds reduced the total of aggregate funds in escrow trust account B/A #1 (Mellon 1st Business Bank), to an amount which, on December 31, 2008, was \$1,179, less than the existing aggregate trust fund liability of AI to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, in violation of Code Section 10145 and Regulations 2832.1, 2950(g) and 2951.

(b) While acting in the capacity of an escrow holder, failed to place trust funds, accepted on behalf of another into the hands of the owner of the funds, a neutral escrow depository or into a trust fund account in the name of the broker at a bank or other financial institution not later than the next business day following receipt of the funds by the broker or by the broker's salesperson, in violation of Code Section 10145 and Regulations 2832(e) and 2951.

///

(c) Failed to maintain an accurate and complete control record for each beneficiary or transaction, thereby failing to account for all trust funds received, deposited and disbursed for B/A #1, including appraisal fees, in violation of Code Section 10145 and Regulations 2831, 2950(d) and 2951.

(d) Failed to maintain an accurate and complete separate record for each beneficiary or transaction, thereby failing to account for all trust funds received, deposited and disbursed for B/A #1, including appraisal fees, in violation of Code Section 10145 and Regulations 2831.1, 2950(d) and 2951.

Discipline Statutes

18.

The conduct of Respondents AI and MASSRO described in Paragraph 12, above, violated the Code and the Regulations below:

PARAGRAPH	PROVISIONS VIOLATED
17(a)	Code Section 10145 and Regulations 2832.1, 2950(g) and 2951
17(b)	Code Section 10145 and Regulations 2832(e), 2950(d) and 2951
17(c)	Code Section 10145 and Regulations 2831, 2950(d) and 2951
17(d)	Code Section 10145 and Regulations 2831.1, 2950(d) and 2951

1 The foregoing violations constitute cause for the suspension or  
2 revocation of the real estate license and license rights of  
3 Respondents AI and MASSRO under the provisions of Code Sections  
4 10177(d) and/or 10177(g).

5 Negligence

6 19.

7 The overall conduct of Respondents AI, ASHI and MASSRO,  
8 constitutes negligence. This conduct and violation are cause for  
9 the suspension or revocation of the real estate license and  
10 license rights of Respondents, pursuant to Code Section 10177(g).

11 Supervision And Compliance

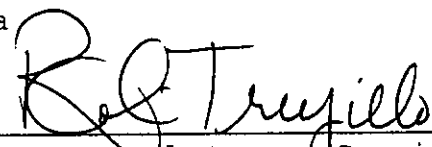
12 20.

13 The overall conduct of Respondent MASSRO constitutes a  
14 failure on their part, as officers designated by corporate broker  
15 licensees AI and ASHI, to exercise the reasonable supervision and  
16 control over the licensed activities of said corporate licensees,  
17 as required by Code Section 10159.2 and Regulation 2725, and to  
18 keep AI and AI in compliance with the Real Estate Law. Said  
19 conduct, acts and omissions are cause for the suspension or  
20 revocation of the real estate license and license rights of  
21 MASSRO pursuant to the provisions of Code Sections 10177(d) and  
22 10177(h). MASSRO failed to exercise reasonable care and  
23 supervision over AI and ASHI. Nor did MASSRO have policies and  
24 procedures in place to maintain and monitor AI and ASHI's  
25 compliance with the Real Estate Law.  
26  
27

1 WHEREFORE, Complainant prays that a hearing be  
2 conducted on the allegations of this Accusation and that upon  
3 proof thereof, a decision be rendered imposing disciplinary  
4 action against the license and license rights of Respondents  
5 AMERIFUND INC., AMERIFUND SMART HOMES INC. and RUSSELL J. MASSRO,  
6 under the Real Estate Law (Part 1 of Division 4 of the Business  
7 and Professions Code) and for such other and further relief as  
8 may be proper under other applicable provisions of law.  
9

10  
11 Dated at Los Angeles, California

12 this 3 day of June 2010.

13   
14 Deputy Real Estate Commissioner  
15  
16  
17  
18  
19  
20  
21  
22  
23

24 cc: Amerifund Inc.  
25 Amerifund Smart Homes Inc.  
26 c/o Russell J. Massro D.O.  
27 Robin Trujillo  
Sacto  
Audits - Chona Soriano

1 ELLIOTT MAC LENNAN, SBN 66674  
2 Department of Real Estate  
3 320 West 4th Street, Ste. 350  
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6911 (direct)  
6 -or- (213) 576-6982 (office)  
7

**FILED**

JAN 28 2010

DEPARTMENT OF REAL ESTATE  
BY: HP n. 10014

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )

12 AMERIFUND INC.; AMERIFUND SMART )  
13 HOMES INC; and RUSSELL J. MASSRO, )  
14 individually and as designated )  
15 officer of Amerifund Inc. and )  
16 Amerifund Smart Homes Inc., )

17 Respondents. )

No. H-36442 LA

A C C U S A T I O N

18 The Complainant, Robin Trujillo, a Deputy Real Estate  
19 Commissioner of the State of California, for cause of Accusation  
20 against AMERIFUND INC., AMERIFUND SMART HOMES INC. and RUSSELL J.  
21 MASSRO, individually and as designated officer of Amerifund Inc.  
22 and Amerifund Smart Homes Inc., alleges as follows:  
23

24 ///

25 ///

26 ///

27 ///



1.

The Complainant, Robin Trujillo, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against AMERIFUND INC., AMERIFUND SMART HOMES INC. and RUSSELL J. MASSRO.

2.

All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

3.

License History

a. AMERIFUND INC. ("AI"). At all times mentioned, Respondent AI was licensed or had license rights issued by the Department of Real Estate ("Department") as a real estate broker. On February 25, 2008, AI was originally licensed as a corporate real estate broker. At all times mentioned herein, Respondent AI was authorized to act by and through Respondent RUSSELL J. MASSRO as AI's broker designated pursuant to Business and Professions Code (hereinafter "Code") Sections 10159.2 and 10211 to be responsible for ensuring AI's compliance with the Real Estate Law.

b. AMERIFUND SMART HOMES INC. ("ASHI"). At all times mentioned, ASHI was licensed or had license rights issued by the Department as a real estate broker. On November 17, 2008, ASHI was originally licensed as a corporate real estate broker.

1 Respondent ASHI was authorized to act by and through Respondent  
2 RUSSELL J. MASSRO as ASHI's broker designated pursuant to  
3 Business and Professions Code (hereinafter "Code") Sections  
4 10159.2 and 10211 to be responsible for ensuring ASHI's  
5 compliance with the Real Estate Law.

6 c. RUSSELL J. MASSRO ("MASSRO"). At all times  
7 mentioned, MASSRO was licensed or had license rights issued by  
8 the Department as a real estate broker. On June 17, 1993, MASSRO  
9 was originally licensed as a corporate real estate broker.

10 d. AI and ASHI are sister corporations owned in their  
11 entirety by MASSRO.

12 e. AI, ASHI and MASSRO conducted activities requiring  
13 a real estate license and an approved advance fee agreement from  
14 the Department.

15 Brokerage

16 4.

17 At all times mentioned, in the City of La Verne and  
18 County of Los Angeles, AI, ASHI and MASSRO acted as real estate  
19 brokers conducting licensed activities within the meaning of Code  
20 Sections 10131(d) and 10131.2. AI, ASHI and MASSRO engaged in  
21 the business of a mortgage loan brokerage and a loan modification  
22 brokerage collecting advance fees.

23 Respondents AI, ASHI and MASSRO advertised, solicited  
24 and offered to provide loan modification services to economically  
25 distressed homeowners seeking adjustments to the terms and  
26

1 conditions of their home loans including, but not limited to,  
2 repayment plans, forbearance plans, partial claims, and reduction  
3 in principal or interest, foreclosure prevention and short sales.

4 AI processed the following loan modifications during the  
5 audit period:

6

7 Total Loan 8 Modifications	Pending Loan Modifications	Completed Loan Modifications	Advance Fees Collected
9 222	165	57	\$228,228.66

10

11 AMERIFUND INC.

12 FIRST CAUSE OF ACCUSATION  
13 (Audit Examination)

14 5.

15 On September 3, 2009, the Department completed an audit  
16 examination of the books and records of AI pertaining to the  
17 mortgage loan, loan modification and advance fee activities  
18 described in Paragraph 4, which require a real estate license.  
19 The audit examination covered a period of time beginning on  
20 December 1, 2007 to March 31, 2009. The audit examination  
21 revealed violations of the Code and the Regulations as set forth  
22 in the following paragraphs, and more fully discussed in Audit  
23 Report LA 080267 and the exhibits and work papers attached to  
24 said audit report.

25  
26 ///

27 ///



1 was \$228,470.99, less than the existing aggregate trust fund  
2 liability to every homeowner-principal who was an owner of said  
3 funds, without first obtaining the prior written consent of the  
4 owners, in violation of Code Section 10145 and Regulation 2832.1.

5 (b) Based on a review of web address,  
6 www.amerifundsmarthomes.com published on April 14, 2009,  
7 Amerifund Smart Homes Inc. (ASHI), AI's sister corporation,  
8 solicited home owners and offered to provide loan modification  
9 services, under ASHI's unlicensed fictitious business names,  
10 "Amerifund Smart Homes" and "American Smart Loan Modifications"  
11 as set forth in Audit LA 080228, below. "Amerifund Smart Homes"  
12 is a marketing name designed to generate leads consisting of real  
13 estate buyers, sellers, and business contacts and economically  
14 distressed borrowers seeking to modify their home loans.

15 AI is the creator of the marketing system. AI also  
16 indicated on AI's and ASHI's home page websites that AI would  
17 provide and in fact did provide loan modification services to the  
18 aforesaid homeowners using its own name and the fictitious  
19 business name of "American Smart Loan Modifications".

20 AI and ASHI's website www.amerifundsmarthomes.com,  
21 designed and implemented by AI, advertised for, and solicited  
22 loan modification services. The advertised representations are  
23 misleading or deceptive in themselves or through the omission of  
24 necessary information to make the advertised representations not  
25 misleading in the context in which they are used. This conduct  
26  
27

1 by ASHI is in violation of Code Sections 10176(a), 10235 and  
2 Regulation 2848.

3 (c) Collected advance fees within the meaning of Code  
4 Section 10026 from homeowners seeking loan modification services  
5 wherein AI failed to provide homeowners with a pre-approved  
6 advance fee agreement from the Department, in violation of Code  
7 Section 10085 and Regulation 2970.

8 (d) With reference to the lack of an advance fee  
9 agreement, AI failed to provide a complete description of  
10 services to be rendered provided to each homeowner in 10 point  
11 type font and failed to provide an allocation and disbursement of  
12 the amount collected as the advance fee, in violation of Code  
13 Section 10146 and Regulation 2972.

14 (e) B/A #1 was not designated as a trust account, in  
15 violation of Code Section 10145 and Regulation 2832(a). B/A #1  
16 was the general operating account of AI.

17 (f) Converted trust funds in the amount of  
18 \$228, 228.66, in advance fees collected from homeowners for loan  
19 modifications that AI failed to render. AI collected \$228,228.66  
20 from homeowners pursuant to its loan modification agreement "  
21 Home Affordable Modification Trial Period Plan". Abrogating its  
22 own agreement with homeowners, AI made unauthorized disbursements  
23 to itself in the full amount of \$228,228.66, before the agreed to  
24 loan modifications services had been rendered. AI then reduced  
25 the balance in B/A #1, AI's general account, to an amount that  
26  
27

1 was less than the amount deposited \$228,228.66, in violation of  
2 Code Section 10145, 10176(a), 10176(i), 10176(b), 10176(c) and/or  
3 10177(g).

4 (g) Commingled trust funds and personal funds by  
5 depositing trust funds in the form of advance fees collected for  
6 loan modifications from homeowners into AI's general operating  
7 account, B/A #1, instead of depositing trust funds into a  
8 properly designated trust account, in violation of Code Sections  
9 10145 and 10176(e) and Regulation 2832.

10 (h) Failed to maintain a control record in the form of  
11 a columnar record in chronological order of all trust funds  
12 including advance fees collected, deposited and disbursed in  
13 connection with loan modifications, in violation of Code Section  
14 10145 and Regulation 2831.

15 (i) Failed to maintain a separate record for each  
16 beneficiary or transaction, thereby failing to account for all  
17 trust funds in the form of advance fees collected, deposited and  
18 disbursed, in violation of Code Section 10145 and Regulation  
19 2831.1.  
20

21 (j)(1) Failed to retain a true and correct copy of a  
22 Department of Real Estate approved Mortgage Loan Disclosure  
23 Statement signed by the broker for borrowers Jimmy Hughes and  
24 Gary Spenser, in violation of Code Section 10240; and

25 (j)(2) Failed to disclose yield spread premiums from  
26 lenders on the approved Mortgage Loan Disclosure Statement for  
27

1 the aforesaid borrowers in violation of Code Section 10240, 10241  
2 and Regulation 2840.

3 (k) Employed and/or compensated Lisa Pensick, Veronica  
4 Villatoro and Norma Lopez, as loan agents and loss mitigation  
5 agents who AI knew were not licensed by the Department as a real  
6 estate broker or as a real estate salesperson employed by a real  
7 estate broker, for performing acts for which a real estate  
8 license is required, including soliciting mortgage loans, in  
9 violation of Code Section 10137.

10 (l) Used the fictitious name of "Amerifund Smart Homes"  
11 to conduct licensed activities including mortgage loans and loan  
12 modifications without holding a license bearing said fictitious  
13 business name, in violation of Code Section 10159.5 and  
14 Regulation 2731.

15 (m) Failed to notify the Department of the termination  
16 of salesperson Nancy Marchiola, in violation of Code Section  
17 10161.8 and Regulation 2752; and

18 (n) MASSRO failed to exercise adequate supervision over  
19 AI's activities requiring a real estate license to ensure AI's  
20 compliance the Real Estate Laws and Regulations and had no system  
21 in place for regularly monitoring AI's compliance with the Real  
22 Estate Law, in violation of Code Sections 10159.2, 10177(h) and  
23 Regulation 2725.  
24

25 ///

26 ///



Discipline Statutes

8.

The conduct of Respondents AI and MASSRO described in Paragraph 7, above, violated the Code and the Regulations as set forth below:

PARAGRAPH	PROVISIONS VIOLATED
7(a)	Code Sections 10145 and Regulation 2832.1
7(b)	Code Sections 10176(a) 10235 and Regulation 2848
7(c)	Code Section 10085 and Regulation 2970
7(d)	Code Section 10146 and Regulation 2972
7(e)	Code Section 10145 and Regulation 2832(a)
7(f)	Code Sections 10145, 10176(a), 10176(b), 10176(c), 10176(i) and/or 10177(g)
7(g)	Code Section 10145 and 10176(e) and Regulation 2832
7(h)	Code Section 10145 and Regulation 2831
7(i)	Code Section 10145 and Regulation 2831.1
7(j)	Code Section 10240 and 2840
7(k)	Code Section 10137

1	7(l)	Code Section 10159.5 and Regulation 2731
2		
3	7(m)	Code Sections 10161.8 and Regulation 2752
4		
5	7(n)	Code Sections 10159.2, 10177(h) and Regulation 2725
6		

7 The foregoing violations constitute cause for the suspension or  
8 revocation of the real estate license and license rights of  
9 Respondents AI and MASSRO under the provisions of Code Sections  
10 10176(a), 10176(b), 10176(c), 10176(e), 10176(i), 10177(d) and/or  
11 10177(g).

12  
13 SECOND CAUSE OF ACCUSATION  
14 (Loan Modification Services)

15 9.

16 Complainant hereby incorporates by reference the allegations set  
17 forth in Paragraphs 1 through 8, above.

18 AMERIFUND INC.

19 SECOND CAUSE OF ACCUSATION  
20 (Audit Examination)

21 10.

22 On April 23, 2009, the Department completed an audit  
23 examination of the books and records of ASHI pertaining to the  
24 mortgage loan, loan modification and advance fee activities  
25 described in Paragraph 4, which require a real estate license.  
26 The audit examination covered a period of time beginning on  
27 November 29, 2007 to March 31, 2009. The audit examination

1 revealed violations of the Code and the Regulations as set forth  
2 in the following paragraphs, and more fully discussed in Audit  
3 Report LA 080228 and the exhibits and work papers attached to  
4 said audit report.

5 Bank and Trust Accounts

6 11.

7 No trust account was kept during the audit period.

8 Audit Violations

9 12.

10 In the course of activities described in Paragraph 4  
11 above, and during the audit examination period described in  
12 Paragraph 10, Respondents ASHI and MASSRO acted in violation of  
13 the Code and the Regulations in which Respondents:  
14

15 (a) Based on a review of web address,  
16 www.amerifundsmarthomes.com published on April 14, 2009,  
17 Amerifund Smart Homes Inc. (ASHI) solicited home owners and  
18 offered to provide loan modification services, under ASHI's  
19 unlicensed fictitious business name, "Amerifund Smart Homes" as  
20 set forth in Audit LA 080228, below. "Amerifund Smart Homes" is a  
21 marketing name designed to generate live leads consisting of real  
22 estate buyers, sellers and business contacts.

23 AI is the creator of the marketing system. AI also  
24 indicated on AI's and ASHI's home page website that AI would  
25 provide and in fact did provide loan modification services to  
26 distressed homeowners.  
27

1 ASHI's website www.amerifundsmarthomes.com, designed  
2 and implements by AI, advertises for and solicits loan  
3 modification services that are misleading or deceptive in  
4 themselves or through the omission of necessary information to  
5 make the representations not misleading in the context in which  
6 they are used. This conduct by AI and ASHI is in violation of  
7 Code Section 10235 and Regulation 2848; and

8 (b) Used the fictitious names of "Amerifund Smart  
9 Homes," and "Amerifund Smart Loan Modifications" to conduct  
10 licensed activities including loan modifications without holding  
11 a license bearing said fictitious business names, in violation of  
12 Code Section 10159.5 and Regulation 2731.

13  
14 Discipline Statutes

15 13.

16 The conduct of Respondents ASHI and MASSRO described in  
17 Paragraph 12, above, violated the Code and the Regulations below:

18 PARAGRAPH	PROVISIONS VIOLATED
19 12(a)	20 Code Sections 10176(a) and 10235 and Regulation 2848
21 12(b)	22 Code Section 10159.5 and Regulation 2731

23 The foregoing violations constitute cause for the suspension or  
24 revocation of the real estate license and license rights of  
25 Respondents AI and MASSRO under the provisions of Code Sections  
26 10176(a), 10177(d) and/or 10177(g).  
27

Negligence

14.

The overall conduct of Respondents AI, ASHI and MASSRO, constitutes negligence. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of said Respondents, pursuant to Code Section 10177(g).

Supervision And Compliance

15.

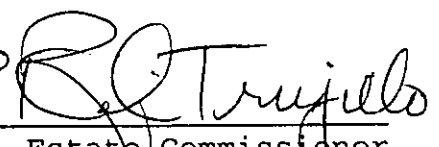
The overall conduct of Respondent MASSRO constitutes a failure on their part, as officers designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of AI and ASHI, as required by Code Section 10159.2 and Regulation 2725, and to keep AI and ASHI in compliance with the Real Estate Law. Said conduct, acts and omissions are cause for the suspension or revocation of the real estate license and license rights of MASSRO pursuant to the provisions of Code Sections 10177(d) and 10177(h). MASSRO failed to exercise reasonable care and supervision over AI and ASHI, particularly with respect to the trust fund handling monitoring and procedures of Choice Escrow. Nor did MASSRO have policies and procedures in place to maintain and monitor AI and ASHI's compliance with the Real Estate Law.

///

///

1 WHEREFORE, Complainant prays that a hearing be  
2 conducted on the allegations of this Accusation and that upon  
3 proof thereof, a decision be rendered imposing disciplinary  
4 action against the license and license rights of Respondents  
5 AMERIFUND INC., AMERIFUND SMART HOMES INC. and RUSSELL J. MASSRO,  
6 under the Real Estate Law (Part 1 of Division 4 of the Business  
7 and Professions Code) and for such other and further relief as  
8 may be proper under other applicable provisions of law.  
9

10 Dated at Los Angeles, California

11 this 26 day of January 2010   
12 Deputy Real Estate Commissioner  
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23 cc: Amerifund Inc.  
24 Amerifund Smart Homes Inc.  
25 c/o Russell J. Massro D.O.  
26 Robin Trujillo  
27 Sacto  
Audits - Chona Soriano  
Summer Bakotich