

CONNECTICUT REAL ESTATE COMMISSION

Notice of Declaratory Ruling Proceeding

The Connecticut Real Estate Commission hereby gives notice of its intent to hold a declaratory ruling proceeding pursuant to Connecticut General Statutes, Section 4-176.

The Commission intends to issue a Declaratory Ruling on the following:

- The applicability of Connecticut General Statutes, Section 20-311 and Section 20-325 and Section 20-328-8a of the Regulations of Connecticut State Agencies on a proposed Recommended Homebuyer program at Toll Brothers communities in Connecticut.

Copies of the Petition for Declaratory Ruling are available by contacting the Commission Secretary at (860) 713-6138 or robin.washbond@ct.gov.

All persons who wish to express their views orally may do so at a public hearing to be held at the Department of Consumer Protection, Room 126, State Office Building, 165 Capitol Avenue, Hartford, Connecticut, at 10:00 a.m., on Wednesday, October 3, 2012.

All persons who wish to submit written comments shall do so within thirty (30) days following the publication of this notice. An original and fifteen (15) copies of any such written materials should be mailed or delivered to the Commission Secretary, Connecticut Real Estate Commission, Department of Consumer Protection, Room 110, State Office Building, 165 Capitol Avenue, Hartford, Connecticut 06106.

STATE OF CONNECTICUT
REAL ESTATE COMMISSION

PETITION FOR A DECLARATORY RULING

Pursuant to Conn. Gen. Stat. Section 4-176 and Regs. Conn. State Agencies Section 21a-1-10, Toll Bros., Inc. of 250 Gibraltar Road, Horsham, PA 19044, by and through undersigned counsel, petitions the Real Estate Commission for a Declaratory Ruling as to the applicability of Conn. Gen. Stat. Sections 20-311 and 20-325, and Regs. Conn. State Agencies Section 20-328-8a.

Factual Background.

Toll Brothers, Inc. is an award-winning multi-state developer and builder of new home communities. Toll Brothers, through various subsidiaries, has been building new home communities in Connecticut for twenty years, and currently is developing townhome, condominium and single family home communities in Danbury, Bethel, Avon, Wallingford, Prospect, and Stonington, Connecticut.

In Wallingford, for example, Toll Brothers is developing a community of 28 single family homes for sale at 803 North Farms Road. Sales at the site are overseen by a sales manager who is a full time employee of Toll Brothers. The sales manager sells from a sales center in the Ellsworth Williamsburg model home, which won the HOBI Award for Best Single-Family Home from the Home Builders Association of Connecticut.

In Wallingford, as at other Toll Brothers communities in Connecticut, Toll Brothers has encouraged existing home owners to recommend to their friends, family, and others to consider purchasing a Toll Brothers home. The Company has found that a community of friends and family becomes closely knit, and more desirable for others considering purchasing a new home.

Accordingly, Toll Brothers wishes to encourage existing homeowners to recommend potential buyers to Toll Brothers sales team. In this regard, Toll Brothers wishes to initiate a program under which existing Toll Brothers homeowners who recommend to their friends or family (a "Recommended Homebuyer") to a sales representative receive a gift of up to \$ 3,000 upon the purchase by the Recommended Homebuyer of a new home. At the time of the initial visit by a Recommended Homebuyer they would have to indicate that it was recommended they visit a Toll Brothers community by an existing Toll Brothers homeowner. Thereafter, if the Recommended Homebuyer purchases a Toll Brothers home, the recommending homeowner will receive a gift not to

exceed the amount listed above. The recommending homeowner will have no obligations beyond making that initial recommendation, and is in no way involved in the negotiation or sale of any home.

Moreover, the recommended homeowner is not involved in any way with any licensed real estate brokers who may be involved in the sale and is not asked, nor permitted to perform any of the duties traditionally performed by a licensed broker. Toll Brothers in no way intends to interfere with the ability of any broker to earn a commission on the sale of any Toll Brothers home. The payment made to the recommending homeowner would be in addition to any commission which might be due and owing to a real estate broker under Toll Brothers commission policies.

The Law

Section 20-311 of the Connecticut General Statutes provides:

"Engaging in the real estate business" means acting for another and for a fee, commission or other valuable consideration in the listing for sale, selling, exchanging, buying or renting, or offering or attempting to negotiate a sale, exchange, purchase or rental of, an estate or interest in real estate or a resale of a mobile manufactured home, as defined in subdivision (1) of section 21-64, or collecting upon a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate

Section 20-325 of the Connecticut General Statutes provides:

Engaging in business without license. Any person who engages in the business of a real estate broker or real estate salesperson without obtaining a license as provided in this chapter shall be fined not more than one thousand dollars or imprisoned not more than six months or both, and shall be ineligible to obtain a license for one year from the date of conviction of such offense, except that the commission, in its discretion, may grant a license to such person within such one-year period upon application and after a hearing on such application.

Section 20-329 of the Connecticut General Statutes provides, in pertinent part:

The provisions of this chapter concerning the licensure of real estate brokers and real estate salespersons shall not apply to: (1) Any person who as owner or lessor performs

any of the acts enumerated in Section 20-311, with reference to property owned, leased or sought to be acquired or leased by the person, or to the person's regular employees who are employed as on-site residential superintendents or custodians, with respect to the property so owned or leased or sought to be acquired or leased when such acts are performed in the regular course of, or incident to, the management of such property and the investment therein

Section 20-328-8a of the Regulations of Connecticut State Agencies provides:

(e) No licensee shall offer, promise, allow, give, pay or rebate, directly or indirectly, any part or share of the licensee's commission or compensation arising or accruing from any real estate transaction to any person who is engaging in the real estate business and who was not licensed as a real estate broker or real estate salesperson at the time the real estate broker or real estate salesperson performed the acts or rendered the services for which the licensee offers, promises, allows, gives, pays or rebates such commission or compensation.

Analysis.

Toll Brothers does not dispute that, as the provisions set forth above make clear, a licensed real estate agent or broker may not provide a referral fee or to otherwise share a commission with one who is not licensed and who has engaged in the real estate business, as defined by the statute. Toll Brothers also does not dispute that one may not engage in the business of real estate without a license. Nevertheless, Toll Brothers is permitted under the statutes and regulations of the State of Connecticut to pay a recommendation fee to existing Toll Brothers homeowners as a gift for recommending friends and family because Toll Brothers is a home builder/seller, not a licensed real estate agent or broker. Thus, Toll Brothers is not subject to the provisions of Section 20-311, or the regulations promulgated thereunder, including Section 20-328-8a.

The mere recommendation to visit a Toll Brothers community to a potential homebuyer in no way falls within the definition of "engaging in the real estate business" set forth Section 20-311, is not an act on behalf of Toll Brothers, and such arrangement does not in any way interfere with the conduct of a licensed agent or broker who may otherwise be entitled to a commission under Toll Brothers commission policy. Toll Brothers' recommendation fee is nothing more than a marketing program under which Toll Brothers offers a gift to existing Toll Brothers homeowners who help grow and add value to a Toll Brothers

Community by sharing their positive experiences with a friend or family member who later buys a home. It does not cut against, and is indeed complimentary to the role played by licensed real estate brokers and agents.

Conclusion.

Accordingly, Petitioner asks that the Commission issue a Declaratory Ruling, holding that Toll Brothers may, pursuant to the statutes and regulations cited above, and without violating any State Law or Statute, provide compensation to one who refers to Toll Brothers a person who buys a Toll Brothers property in Connecticut, so long as the compensation is paid upon the closing of the sale of the property, and so long as the payment of such compensation does not cause any reduction in any commission to which a licensed agent or broker is otherwise entitled.

THE PETITIONER,
TOLL BROS., INC.

By _____


Jeffrey J. Mirman, Esq.
LEVY & DRONEY, P.C.
74 Batterson Park Rd.
P.O. Box 887
Farmington, CT 06034
(860) 676-3120
(860) 676-3200 (fax)
jmirman@ldlaw.com
Its Attorneys