



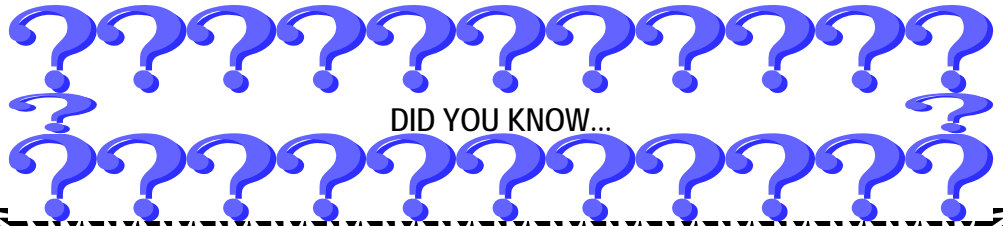
THE

Arizona Department of Real Estate

BULLETIN

October 2005

Volume 31, Issue 4



DID YOU KNOW...

Did you know that ...

The Department has seen an increase in a practice by real estate brokers that has led us to re-view the statutes. The practice in question is a broker who submits a "letter of authorization" to the Department, seeking to designate other licensees (employed by the same employing broker), who the designated broker wants to authorize to sign severs, hires, and renewal applications for any licensee employed under that employing broker's license. While the Department acknowledges that today's business demands quick answers, it cannot legally honor these letters of authorization.

The designated broker is the only person authorized by statute to act on behalf of a licensed entity or sole proprietorship. The statute (A.R.S. § 32-2125 (A)) specifically authorizes only the designated broker to act on behalf of an employing broker, and does not authorize others to be delegated that authority. Two exceptions to this restriction include when the designated broker is 'unable to act within 24 hours' and the designated broker appoints another licensee (singular) to act in his behalf (during his absence) and the appointment of a branch manager. A.R.S. § 32-2127 (D) In the case where a designated broker appoints another licensee as the broker's 'designee', the designee must attach a copy of the broker's designation letter to any documents (such as hire or sever forms, and renewal applications) that the designee signs and files with the Department. Another exception is the appointed manager of a branch office dealing with business and licensees licensed to that branch office, subject to the limits on authority that can be granted to a salesperson that is a branch manager (A.R.S. §32-2127 and A.A.C. R4-28-304). A branch manager cannot be authorized to act as manager of more than one branch office, unless appointed as the designee on a temporary basis when the designated broker is unavailable.

The designated broker can lawfully and ethically delegate many business tasks associated with of running a successful brokerage firm. This delegation does not extend to tasks required by law to be performed by the designated broker. The Department will accept a designated broker's signature when that signature has been applied by use of a signature stamp or electronically. As with a password to prevent unauthorized computer log-in and use of an electronic signature, appropriate precautions must be taken to safeguard signature stamps.

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Our Mission

The mission of the Department is to protect the public interest through licensure and regulation of the real estate profession in the State of Arizona.

KUDOS FOR ADRE



Cindy Wilkinson

The Department has a suggestion box where employees may submit ideas or creative solutions, that are beneficial to the Department.

Cindy suggested sending Pink Post Cards as renewal reminders instead of the four part renewal form that can be obtained online or downloaded. This saved the Department money in postage, printing, paper and staff time, too! ☺



Bob Cates

Bob is a Customer Service Representative in the Licensing Division for ADRE. He is on the "front line" and has daily contact with licensees. He noticed that licensees were being distracted from the business at hand by having to answer their cell phones.

His suggestion was to have licensees turn-off their cell phones while conducting business in the Licensing area. ☺

Education Advisory Committee

By
Cindy Wilkinson

The E.A.C. has been working hard over the summer. Our initial goal is to update and standardize prelicense education curricula for salespersons, brokers, and the two Arizona specific courses (broker and salesperson), including identification of course objectives. We are also discussing ways to improve the quality of real estate education. The Committee has a long list of education-related issues to discuss and on which it may make recommendations. Openings occur on the Committee from time to time, so if you are interested in learning more about it, let me know. If you would like to be considered for appointment to the Committee and are willing to put in the time and effort that is involved, send me your CV (curriculum vitae). ☺

Editor's Note: Cindy Wilkinson is the Director for the Licensing and Professional Education Division for ADRE.

The Good and the Not-So-Good!

As the Editor of the Bulletin, I frequently hear comments on the Department and its employees. Generally speaking those comments are usually positive, some are not. The following is a sampling of those comments:

- "Yeah Team, you guys are doing a great job. Thanks so much!" J.M. Ivey
- "Your phone system is horrible!" (No name given)
- "Nice website." (Kathy Howe)
- "P.S. When I called on Tuesday morning to let Carla know I wouldn't be attending the meeting, I was greeted by the comforting voice of Commissioner herself. You work for quite a woman. I give a great deal of credit to a Commissioner who is willing to answer a cold call on a main line-bravo!" (John Gerard)
- "Congratulations to the Department of Real Estate. SPS No. 2005.14 is insightful, progressive and I like it." Darrell Blomberg



Commissioner's Corner

By Commissioner Elaine Richardson

In each publication of ADRE's (the Department) Bulletin when I am asked to write an article, I attempt to bring you "inside" the Department of Real Estate. I know when I was actively selling real estate, the Department was, in my thinking at the time, a bastion of bureaucratic paperwork that I only had to deal with every two years for renewal. Little did I know, or care for that matter, what it took to oversee all of us licensees, and had no interest in the regulation of subdivisions or cared about Public Reports.

How things change. Hence, my desire to reach out to as many folks as I can and find out what your needs are in relation to the Department as well as give you insight as to the what and why of managing this agency. Hopefully you will come away with a better attitude than some of us may have had previously.

The Department has five Divisions: **Administrative Actions, Business Services, Investigations, Licensing/ Professional Education and Developments** (previously Subdivisions). Each Division is assigned tremendous tasks and responsibilities. It is my responsibility to ensure that all the Divisions are in sync. The Department also has a **Public Information Officer (PIO)**, Mary Utley, with whom most of you are acquainted via the Late Breaking News and bi-monthly Department Bulletins. She also manages all contact with the media and is one of the official spokespersons for the Department.

In order to keep the Department in sync with the Real Estate Industry, it is important to interact with as many of the industry stakeholder groups as possible. That is one of my top priorities. Whether I am invited to travel to Sierra Vista, or Payson to speak to Realtors®, or to make presentations to homebuilders groups, I make an effort to be as forthright as possible and actively listen to the ever- changing needs of our industry.

At present there is a burgeoning market in Mexico, specifically in the state of Sonora. I am privileged to be Co-Chair of the

of the Real Estate Ad Hoc Committee of the Arizona-Mexico Commission. Arizonans seem to love the sun and the ocean and even though we have an abundance of sun and sand, we are in short supply of oceans. Therefore, many, many Arizonans head south. It is the Department's responsibility to make sure that consumers have the same protections from the Department no matter if the transaction takes place in Arizona or another state or country. It is important that licensees remember that the Department regulates the licensee no matter where the transaction happens.

So whether I'm making a presentation, gathering facts or calling together a group of stakeholders, my goals remain the same. They are:

- **Protection for the public**
- **Promoting the Department as a consumer-friendly agency**
- **Being receptive to industry's needs, issues and concerns**
- **Being fair, equitable and just**

When these goals are achieved, then it's a win-win situation for everyone and hopefully you won't have the errant attitude that I once had! This article is my attempt at letting you know that I appreciate every opportunity you have given me to listen to the needs of industry.☺



Commissioner Richardson speaking before a group of Licensees in Southeast Arizona.



PREDATORY PRACTICES

BY
Henry Soza



The Arizona Department of Real Estate has seen a sharp increase in the number of complaints involving "Predatory Practices" over the last 2 to 3 years. These types of complaints involve allegations of fraud and theft perpetrated on individuals who are unsophisticated in the buying and selling of real estate, or they involve distressed situations (pending foreclosures).

A large number of individuals who are victimized by Predatory Practices do not speak, read or write English. Many rely on the information given to them by the agent, which in some cases is neither true nor accurate. Even those who are capable of understanding English often do not understand the language of the agreements or contracts they are signing.

The Department has labeled the people who prey upon these individuals as "Predatory Agents." This is not to be confused with Predatory Lenders. With Predatory Lending, the victim is charged extra fees, high interest rates and high origination cost. Predatory Agents target those persons who can be taken advantage of during a transaction in such a manner that the transaction benefits only the agent, not the client.

Some complaints include the agent creating false wage or other documents needed to secure a mortgage loan. This includes providing false Social Security Numbers, W-2's, paycheck stubs, identification, and other documents necessary to insure the approval of the mortgage loan. In many instances the agent works with a loan officer and or escrow agent who helps the process along. In other instances the agent works alone.

In some cases the agent charges a service fee for creating the false documents. These fees range from \$250 to \$7,000. The fees are always paid in cash and are never noted on the HUD-1 Settlement Statement or any other documents. Written receipts are seldom, if ever, provided. Many of the victims gladly pay the fee, since this is their only means of securing a loan. Other fees include a charge to show houses, a charge to complete paperwork and various other

charges, limited only by the imagination of the perpetrator.

In a few cases, the identities of minor children are used to fraudulently obtain loans. Sometimes the parents of the children are willing participants; while in other cases the parents are unaware that their children's personal information is used. Nonetheless, the loans are processed and funded. The agents usually benefit from these transactions in two ways; first, they receive up-front cash for the fees and second, they receive a commission from the fraudulent sale.

Another Predatory Practice is the Stop Foreclosure scam. This practice involves individuals whose property is in foreclosure and who are seeking a way to keep or sell their home rather than lose it. Agents and/or unlicensed investors solicit owners of distressed property and make claims of stopping foreclosure. The owners place their trust in these solicitors and ultimately end up not only losing their home but also losing any equity that may have been due them.

The Department does not work alone in its efforts to investigate these types of complaints. The Investigators tasked with investigating Predatory Practices work closely with Law Enforcement and other agencies, including the Consumer Protection Division of the Attorney General's Office, the Arizona Department of Banking, the Arizona Department of Public Safety, the U.S. Department of Housing and Urban Development, the Social Security Administration, the Office of the Inspector General, the U.S. Postal Inspector, the U.S. Immigration and Customs Enforcement Administration and various other local State and local police agencies.

Within the past three years the Investigations Division, along with the help of the agencies mentioned above, has been responsible for at least 4 criminal indictments. These four cases have resulted in 1 conviction with a sentence to the Department of Corrections and an order to pay \$1.4 million in restitution, 1 perpetrator fleeing the

PREDATORY PRACTICES



Continued from page 4

the country to avoid an active arrest warrant, 1 pleading guilty to federal charges and 1 pending prosecution.

The Department is aggressively pursuing Predatory Agents criminally as well as administratively. The Department takes a very serious stand on Predatory Practices, and those convicted often no longer just lose their licenses but their freedom as well.

The Investigative Division offers a Predatory Practice presentation to all brokerages. The presentation covers in detail the issues surrounding Predatory Practices/Predatory Agents. Anyone interested in such a presentation may contact Tom Adams, Director of Investigation/Auditing at 602-468-1414 Ext. 500.☐

Editor's Note: Henry Soza is a Senior Investigator with ADRE/ Investigations Division. He has been with the Department for 4 years.



Attention All Designated Brokers

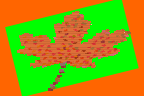
By
Cindy Wilkinson

When an employee severs employment with your company on-line (or, in the next release of the On-Line program, when you sever a licensed employee on-line), **do not return the license** of the severed person to the Department.

Remove the person's license from your notebook of licenses and **keep it and the email notification** from the Department with your employment records for the requisite five-year period following termination of employment. A.R.S. § 32-2151.01 (A).☐

Required Criminal Background Checks

By
Cindy Wilkinson



The Department checks for a criminal record on each original applicant, and on current licensees who disclose a criminal conviction. When we are advised of a criminal conviction, we review the person's application to see whether it was correctly completed and any conviction properly disclosed. If not, we follow up with the licensee and may ultimately prosecute the case as a "false or misleading application." In these cases we seek suspension or revocation of the person's license and usually assess a civil penalty. If you are completing an original or renewal application, in paper format or on-line, be sure you carefully read and honestly answer the questions.

If you are unsure whether a conviction in your background requires disclosure you can ask the Licensing Division personnel, but the best source of information to determine whether the question requires disclosure is to look at the documents pertaining to your conviction. In almost all cases, the paperwork will indicate the offense, date, and whether it was a misdemeanor, a felony, or an undesignated offense.

For professional/occupation licensing purposes in Arizona, an undesignated offense is considered to be a felony unless or until it is designated a misdemeanor by the court. Although it may take longer for the Department to review your application if you properly disclose a criminal conviction, if you fail to properly disclose it, chances are good that you will lose your licenses. In any case you will probably have significant disciplinary sanctions imposed once we discover that you were not truthful. After all, three of the most basic requirements for getting and holding a license are honesty, truthfulness and good character.☐

Editor's Note: Cindy Wilkinson is the Director for the Licensing and Professional Education Division for ADRE.





Arizona Real Estate Advisory Board Elects New Officers



At the quarterly meeting of the Arizona Real Estate Advisory Board scheduled October 20, 2005, elections were held for the Chair and Vice-Chair positions. Elected unanimously were Gary Brasher for Chair and Lisa Suarez for Vice-Chair.

Gary Brasher was appointed to the Board by Governor Janet Napolitano in 2003 to fill the Subdivider/Developer position and his term expires in January 2009. He is the President of Brasher Real Estate, Inc., based in Santa Cruz County. His experience in the Real Estate Industry dates back to 1981. He is responsible for developing the master-planned community of Barrio de Tubac and also serves as the Co-Chair of the Real Estate Ad Hoc Committee of the Arizona-Mexico Commission.

Lisa Suarez, a resident of Tucson was appointed by Governor Janet Napolitano in 2002 to fill the residential Licensee slot and her term expires January 2009. She is a Certified Residential Specialist and is the owner/Broker of EMS Realty, one of Southern Arizona's leading property management companies. She has been in the real estate industry since 1986.

Commissioner Elaine Richardson expressed appreciation to the newly elected officers and their willingness to dedicate time to the Board. Outgoing Chair R.L. Brown thanked the members of the Board for their commitment in working with him during his tenure. Past Chair Brown will continue to serve on the Board until his term expires (January 31, 2007). Commissioner Elaine Richardson also thanked R.L. Brown for all of his hard work and dedication to the Board. ☐



How To Be Involved in Successful Mexican Real Estate Transactions

By Alice Martin, RCE, CAE, Executive Vice President, Arizona Association of REALTORS®

At the Arizona Association of REALTORS® Arizona-Sonora Real Estate Conference last month, several questions arose about how Arizona licensees can be involved in real estate transactions taking place in Mexico or involving cross-border referrals. Three major questions are addressed below.

- Q. Can I make referrals to Mexican real estate practitioners and receive a referral fee?
- A. Yes. If you refer an Arizona buyer to an individual legally doing business in Mexico (one who has the right permits, etc.), that individual can pay a referral fee to a licensed Arizona broker for the referral. Tip: Make sure that you have a written referral agreement that states exactly your terms of agreement.
- Q. Can I enter into an out-of-state broker agreement with a Mexican real estate practitioner in order for each of us to market the other's listings?
- A. Yes. Such an agreement could allow you to place listings of Mexican property in your MLS and market them to Arizonans, and your Arizona listings could be promoted to Mexican residents by the Mexican real estate practitioner. The key point is that both would be appropriately licensed or otherwise permitted to do business within their own jurisdictions.
- Q. How about Mexican subdivisions? Can they be promoted in Arizona? Can I send buyers to new subdivisions in Mexico?
- A. Subdivisions located in Mexico cannot be directly promoted by their developers or agents to Arizonans unless the properties have Arizona Subdivision Reports. If you receive information in Arizona about new subdivisions that are not authorized to advertise in Arizona, be cautious about referring buyers. Tip: Refer your buyer prospects to Mexican real estate practitioners to help them locate the right properties within their jurisdictions, which could include new subdivisions. (Note: the subdivision approval process for Mexican developments is being improved and streamlined, so many more Arizona reports for property in Sonora, may be approved in the near future.)

In summary, the smart way for Arizona licensees to find properties in Mexico for their buyers is not to try to do it themselves unless they have the necessary expertise, but to

and effectively. In our border state of Sonora, there is no 'licensing' as we know it, but there are certification programs for real estate practitioners, and a voluntary registry of those practitioners who have met certain criteria. Arizona licensees may want to refer to those individuals listed on the Registry, especially as it grows in numbers and awareness by both the real estate world and Sonoran consumers. Be watching for a link to the Sonoran Registry on ADRE's website soon.

Editor's Note: Alice Martin has been involved in Arizona/Sonora real estate issues for several years, initially serving on a cross-border group who drafted Statutes for Sonora real estate licensing in the mid-1990's until now, where she serves on the Arizona-Mexico Commission Real Estate Ad Hoc Committee.



Guest Column articles DO NOT necessarily reflect the opinions, policies or interpret actions of Law by ADRE. ADRE assumes no responsibility for the content in such guest articles.



The Importance & Availability of Subdivision Public Reports

By Roy Tanney and K. Michelle Lind



The Arizona Department of Real Estate ("ADRE") and the Arizona Association of REALTORS® ("AAR") often receive questions about subdivisions. Some of the most frequently asked questions have been: "What is a Public Report?" "When is it required?" and "What does the report contain?" Additionally, the recent publicity regarding fissures in the east valley of Maricopa County and elsewhere in the State have raised questions about whether such disclosures are made in a Public Report. In a spirit of cooperation, ADRE and AAR are working together to ensure that both the general public and real estate professionals are informed about these issues so that they can protect their interests.

Arizona law regulates the sale or lease of subdivided land, which is defined as land divided or proposed to be divided for sale or lease into six or more lots or parcels smaller than thirty-six acres. A.R.S. §32-2181 *et seq.* A subdivider may not sell or lease or offer for sale or lease any lots, parcels or fractional interests in a subdivision without first obtaining a Public Report from the ADRE. A.R.S. §32-2183(F). A "subdivider" is anyone who offers for sale or lease six or more lots, parcels or fractional interests in a subdivision or who causes land to be subdivided into a subdivision for the subdivider or for others, or who undertakes to develop a subdivision. A.R.S. §32-2101(54).

A subdivider must give a prospective new home buyer a copy of the Public Report and an opportunity to read and review it before the prospective buyer signs a contract to purchase a home in the subdivision. A buyer should carefully review the Public Report because the Report contains important information, such as:

- The identity of the subdivider/developer
- The physical characteristics of the subdivision e.g., level, hilly, rocky, loose soil, washes, arroyos, canyons
- Disclosure of conditions or provisions that may limit the use or occupancy of the home
- Homeowner's association information
- Whether the subdivision is subject to any known flooding or drainage problems
- Existing and proposed adjacent land use, including any unusual safety factors and uses that may cause a nuisance or adversely affect home owners within or near the subdivision (*the ADRE recommends that the subdivider research within two miles of the subdivision for*

unusual safety factors and five miles for factors that may cause a nuisance or adversely affect lot owners)

- Gas pipelines within the boundaries of the subdivision or within 500 feet of the subdivision boundary
- Environmental factors, including whether the subdivision is within a federal superfund or state WQARF site
- Whether any portion of the subdivision is located in territory in the vicinity of a military or public airport
- The availability of utilities
- Street and road maintenance
- Flood protection or drainage facilities
- Documents demonstrating acceptable arrangements have been made for completion of all facilities
- Locations and availability of schools, shopping facilities, public transportation, medical facilities, ambulance service, and police service.

It is now easier for a buyer to obtain a copy of the subdivision Public Report. Effective September 1, 2005, the public has access to the ADRE's Subdivision Database on its website, www.re.state.az.us. Navigate to the Subdivision Section of the Public Database and enter appropriate search criteria. If a subdivision record exists, certain information will be provided including whether a Public Report is available for download. If a Public Report is not available, follow the instructions given and ADRE staff will check the records to see if the Public Report can be made available. Any public Report issued prior to January 1, 1997, is likely to be unavailable unless it was amended at a later date. Always remember that given the age of some of the Public Reports, some of the disclosure information may be outdated and no longer accurate. If the Public Report is less than 20 years old, a hard copy of the report may still be available by contacting the ADRE.

Subsequent buyers may also benefit from reviewing the Public Report. Therefore, at the Commissioner's request, a notice to buyers about the availability of a Public Report will be added to AAR's Residential Seller's Property Disclosure Statement ("SPDS") at the next printing. The Buyer Advisory has also been updated to include a link to the ADRE website where the copies of Public Reports may be obtained. However, re-sale buyers must understand that even though the information in the Public Report may have been accurate when the

prior to when the home was built), the information could be outdated or inaccurate and should be verified.

The purpose of the Public Report is to protect the public by disclosing material information about a subdivision and the adjacent property to a prospective home buyer. Now that access to Public Reports issued after January 1, 1997 is immediately available, prospective home buyers of both new and resale properties are encouraged to take advantage of this information source when conducting their due diligence inspections and investigations.

Editor's Note: Roy is Subdivision Division Director for the ADRE and K. Michelle Lind is General Counsel to the AAR and a State Bar of Arizona board certified real estate specialist.

This article is of a general nature and may not be updated or revised for accuracy as statutory or case law changes following the date of first publication. Further, this article reflects only the opinion of the authors, is not intended as definitive legal advice and you should not act upon it without seeking independent legal counsel.



*Paul Waterman
Tri-Vista Partners*



*Tim Kelley
IMI Group, Inc.*



*Manuel Ruiz
Santa Cruz County
Board of Supervisors*

The Arizona-Mexico Commission/ Real Estate Ad Hoc Committee has three new members. They are Paul Waterman (Tri-Vista Partners), Manuel Ruiz (Santa Cruz County Board of Supervisors) and Tim Kelley (IMI Group). All three of the individuals bring a vast amount of experience in dealing with Mexico and Latin America. Each has his own special area of expertise that will be invaluable to the committee.



Recently there was an article in the September 2005 edition of the *Arizona Journal of Real Estate & Business*, which questioned the issuance of cease and desist orders by the Commissioner of the Department of Real Estate. The Commissioner takes the issuance of a cease and desist order very seriously. The process that leads up to any consideration of issuing a cease and desist order is a very thorough review of all of the facts and law that would apply, and to the ramifications from such an order, not just to the parties involved, but to the Commissioner's overall responsibilities to the protect the public. Only after such a review process, would the Commissioner consider issuing a cease and desist order.

What is a "cease and desist order" and when should it be used? "Cease and desist" means "stop what you are doing and don't do it again." The cease and desist order is one of the many enforcement tools available to administrative agencies such as the Department of Real Estate.

A cease-and-desist order is an order from a judge or government ordering a halt to an illegal activity. This prohibition is sometimes done as the outcome of a trial, in which case it is a permanent injunction against the activity, and sometimes done as an emergency measure to prevent possibly irreparable harm, in which case it takes the form of a temporary injunction.

A cease and desist order can be issued by the Commissioner to correct a problem that needs immediate action. If it appears to the Commissioner that a person has engaged, is or is planning to engage in an act, practice or transaction that violates a statute, rule or order issued by the Commissioner, she may issue an order directing that person to cease and desist from that action. Through use of the cease and desist order, the Commissioner can order restitution where appropriate and can order other timely affirmative action to correct conditions caused by the original act, practice or transaction. A.R.S. § 32-2154 (A).

Cease and desist orders have been issued for many reasons, but not very often. Since 1994, which is as far back as the computerized records go, the Commissioner has issued approximately thirty-five (35) cease and desist orders. The reasons for the issuance of the orders cover a wide range of violations. Unlicensed sales, illegal subdivisions and unreported convictions by licensees were responsible for the most cease

and desist orders issued over that time span. Some of the other violations where cease and desist orders were issued were non-compliance with an order, adverse judgments, trust account irregularities, breach of a fiduciary duty, misrepresentation, fraud, time share sale improprieties and cemetery sales violations. Each of the violations was a serious offense and a direct threat to the public's health, safety and welfare.

The decision by the Commissioner to use the cease and desist order to stop, or correct a violation she believes is a threat to the public's health, safety and welfare, is made after the Commissioner answers these questions, among others:

- Is immediate correction necessary to protect public health, safety, or the environment?
- It is reasonably possible to correct violation immediately?

How the Commissioner answers these questions, determines whether she will issue a cease and desist order.

Once the Department became aware of a violation, an investigation is conducted. After the investigation, the Department's response will depend upon the violation. The Department has other means to respond to violations of the statutes, rules or order issued by the Commissioner, and these would be considered first. Before a cease and desist order would be issued by the Commissioner, the Department may have taken other actions to respond to the violation. This tool is rarely selected first from among the devices the Commissioner has at her disposal to correct activity that does not conform to statute, rule or order.

A cease-and desist order is very serious. The order includes the notice for the opportunity of a hearing, and requires the offending party to suspend any unlawful, unsafe, or unsound practices. A cease and desist order is enforceable in a court of law. The appropriate statute must be declared in the text of the order, and the order must be delivered by personal service or certified mail, return receipt requested.

Many government administrative agencies have the ability to issue cease and desist orders. Frequently, these orders will contain a period of time for the subject of the order to request a hearing. If a hearing is not requested, the cease and desist order will become final and the agency is able to enforce its order in a court of law.

its order in a court of law.

The process that the Commissioner follows prior to taking the step of issuing such an order, is a review of the violations of the parties, a review of the law by the department, meetings with her staff to consider alternative actions and meetings with her attorneys to consider ramifications of her issuing such an order. Only after this review process, would the Commissioner consider issuing a cease and desist order.☐

Editor's Note: Tony Leonard is the Acting Deputy Director for the Administrative Actions Division for ADRE.



Q. If clients/sellers state in writing, that they want all offers presented together at a specific time, can the sales agent/broker hold offers until that time and not be in violation of R4-28-802(B)?

A. R4-28-802(B) states in part: “During the term of a listing agreement, a salesperson or broker *shall promptly submit to the salesperson's or broker's client all offers* to purchase or lease the listed property. . . . The salesperson or broker shall submit to the client all offers made prior to closing and is not released from this duty by the client's acceptance of an offer *unless the client instructs the salesperson or broker in writing to cease submitting offers or unless otherwise provided in the listing agreement*, lease, or purchase contract.”

If the client/seller states IN WRITING, or as an addendum to the listing agreement, a provision that the offers shall all be presented at a specific time, the agent/broker may do so. The rule allows variance from the “shall promptly submit” requirement by including reference to the seller's direction or with the seller's permission in writing in the listing agreement. If the direction/permission meets the "in writing/in the listing agreement" requirement, holding offers is allowed. **One caveat** is that obtaining the written direction to hold the offers needs to be done BEFORE the first offer is received. Any offers received before the written direction to hold offers until a specified time are not subject to that restriction and should be presented immediately.☐

Editor's Note: Tom Adams is the Director of the Investigations Division for the ADRE.



Online License Renewal System UPDATE



ADRE and AAR strongly encourage licensees to utilize Dare's on-line license renewal system to make changes to their personal addresses. Remember that R4-28-303 D requires licensees to provide notice of a change of residence address or residential mailing address within 10 days of the change.

You may change your address on line at your convenience for NO charge; however if you request the Department to make the change by either physically coming to the Department, faxing or mailing in your request, the charge is \$10.00.

As the chart indicates, more and more licensees are using the Online License Renewal System. More than 2,000 made changes on the OLRS during the month of October as well as 1,356 renewed their license..

As Wendy Cracchiolo found out on Halloween (October 31), it's a crime to waste your valuable (\$\$\$) time waiting in line! So take advantage of the OLRS.





William D. King (Yuma)

File # 05F-LI-147, Final Order 09/06/05

After a hearing, the Department denied King's application for real estate broker's license under A.R.S § 32-2153 (B)(1)(3) and (7), as well as A.R.S. § 32-2130(E) based on two felony convictions for Possession of Marijuana and Possession of Drug Paraphernalia, in 2001, which made King ineligible for license renewal.

Terri Tchernoiwanov (Gilbert)

File # 05F-LI-043, Final Order 9/6/05

After a hearing, in opposition to the Administrative Law Judges' decision recommending renewing a license, the Department denied Tchernoiwanov's application for a real estate Broker's license renewal under A.R.S § 32-2153 (B) (7) based on Tchernoiwanov's misdemeanor conviction for Domestic Violence/Damage To Property in February 2004. The Commissioner declined to grant Tchernoiwanov licensure, as she determined that the seriousness of the crime as evidenced by the Petitioner's disregard for the safety of her husband and the property damage done to the victim's home indicates that Petitioner lacks the character required for licensure. The totality of these circumstances establishes sufficient grounds to deny the renewal of Petitioner's license.

Jennifer Elliott (Avondale)

File # 05F-LI-366, Final Order 09/06/05

After a hearing, the Department denied Elliott's application for real estate salesperson's license under A.R.S § 32-2153 (B)(7) and (B)(10), based on a misdemeanor conviction for Retail Theft, in 12/04, which indicates that Petitioner lacks the honesty, truthfulness and good character required for licensure.

William Colbert (Phoenix)

File # 05F-LI-161, Final Order 09/06/05

After a hearing, the Department denied Colbert's application for real estate broker's license renewal under A.R.S § 32-2153 (B)(2), as well as A.R.S. § 32-2130(E) based on the felony conviction of Facilitating an Illegal Enterprise, in 5/04, and that Colbert is currently on felony probation, which made Colbert ineligible for license renewal.

Michelle Houze (Scottsdale)

File # 05F-LI-380 Final Order 9/30/05

The Department denied Houze's application for a real estate salesperson's license under A.R.S § 32-2153 (B)(2) (5)(9), and (10) for an undesignated conviction for Theft in 6/93 and two class 4 felony convictions for Fraud in 12/95. Houze is granted a 2-year provisional license, subject to specified terms and conditions. Houze shall post a ten thousand dollar (\$10,000.00) surety bond for two years.

CONSENT ORDERS

Debra S. Power-Thompson (Cottonwood)

File # 06F-LI-088-REL, Consent Order 10/13/05

On 7/28/05, Power-Thompson applied for a renewal of her salesperson's license. Power-Thompson admitted on her application that she had been convicted of a misdemeanor DUI, in 5/04. Power-Thompson failed to notify the Department within 10 days of that conviction, in violation of A.R.S § 32-2153 (A)(3) and A.A.C. R4-28-301(F). Power-Thompson is assessed a civil penalty of two thousand dollars (\$2,000.00).



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