

Arizona Department of Real Estate (ADRE)
Real Estate Advisory Board
Minutes
April 24, 2013

The Real Estate Advisory Board met on Wednesday, April 24, 2013 at the Arizona Department of Real Estate (ADRE), 2910 N 44th Street, Commissioner's Conference Room, Phoenix, Arizona.

I. Call to Order

Chair Charles Bowles called the meeting to order at 10:04 a.m.

Members present:

Carla Bowen, Vice Chair
Kim Clifton, Member
Frank Dickens, Member
Bill Gray, Member
Kim Horn, Member
Scott Peterson, Member

Absent:

Jo Ann Sabbagh, Member
Dennis Wilenchik, Member

ADRE Representatives present:

Judy Lowe, Commissioner
Mike Wheeler, Assistant Commissioner – Real Estate Services
Sarah Dobbins, Chief of Staff
Louis Dettorre, Legislative Liaison
Joni Smith, Administrative Assistant

Members of the Public Present:

Connie Wilhelm, Home Builders Association of Central Arizona
Courtney Gilstrap Levinus, Capitol Consulting
Scott Drucker, Arizona Association of Realtors

II. Introductions & Welcome

Chair Bowles welcomed Governor Brewer's newly appointed members Scott Peterson and Bill Gray.

Member Peterson is President of Porchlight Homes and an active member in Arizona's homebuilding industry. Member Gray's real estate career began in 1977 and includes working

with Arizona School of Real Estate. He is currently an independent consultant and has served on the State Land advisory board.

III. Minutes

Upon a motion by Member Dickens; seconded by Member Horn, the Minutes of the February 13, 2013 meeting were unanimously approved.

IV. Election of 2013 Chair and Vice Chair

Member Dickens nominated Member Horn as Chair and Member Clifton as Vice Chair. The vote passed unanimously. Member Horn's first meeting to serve as Chair will be June 12, 2013.

V. Facilitator Report

Member Dickens reported that he received inquiries regarding the broker survey. Commissioner Lowe responded that the purpose of the survey is to gather a baseline, aggregated database so that ADRE can best target the use of our limited resources in order to serve the industry and protect the public, and in order for the ADRE to accommodate the new law requirement for increased Broker Management Clinic (HB2357) renewal courses of Delegated Associate Broker.

Additionally, Member Dickens commented that he had a Broker request clarification on who is required to take the Broker Management Clinic.

Member Horn reported that she received an inquiry on the LI-216 – Entity/Broker Status Change licensing form.

New Member Gray requested clarification about being a facilitator. It was explained that the reason Real Estate Advisory Board member information is posted on ADRE's website is so that members of the public may reach out to Advisory Board members with inquiries if they wish. At each meeting, Advisory Board members report on the inquiries they've received.

Member Clifton reported on a concern brought to her regarding a licensed agent who has been at several companies and had reportedly filed multiple liens against short sale seller's properties and then moved on to work for another company, who does not know the agent is engaging in this practice. Consumers are feeling that not all offers on the properties were presented and then someone is showing up as the 'owner' of the property and the property was bought on 'the courthouse steps'. Discussion ensued around the issue of not getting offers signed by sellers. Commissioner Lowe commented that consumers may file a complaint with the department and they should also request a copy of the rejected offer through their Broker. She further added, unless there is a sellers written authorization to not present any additional offers, all offers must be presented up until closing. The written request must be filed along with any rejected offers.

Member Gray commented there is a new way of doing online offers called 'Flash Offers', he mentioned an online company called Red Fin.

Member Clifton also reported there have been issues with companies representing investors coming to Tucson 2-3 days before a closing and presenting full price offers on pending escrows. Member Clifton inquired how they might be getting closing date information. Member Bowen commented that MLS requires closing dates to be posted.

Member Bowen received a call from a title company on a sale that had been opened by a cooperating agent. The title company told them they could not give clear title. The escrow officer was reportedly asked by the agent not to tell the seller. The escrow agent felt uncomfortable because the buyer was still incurring costs around the sale. As a mutual third-party, they were advised to inform the buyer's agent that because it is a material fact the seller must to be notified.

She also reported that she had information regarding advertising issues that she planned to share with ADRE's Assistant Commissioner, Mike Wheeler. Member Bowen commented that there needs to be more education on advertising in the real estate classroom setting.

She also reported on BMC courses she took at an accredited real estate school and felt that instructors may be struggling with the new guidelines. She suggested that a module be added on "How to set up a brokerage" – she submitted her notes to Commissioner Lowe.

There were no other facilitator reports.

VI. Legislative Update

Legislative Liaison, Louis Dettorre, reported that it was the 101st day of session. He provided an update on four bills that were discussed at the February Advisory Board meeting

- **HB2390 – Amendment to Public Reports for Developer and Sub Dividers:** Introduced by Rep. Justin Pearce, which was an attempt to allow builders and developers a broad exemption from the public reporting process. The bill would have eliminated the subsequent owner's exemption process.
- **HB2525 – Cancellation of Inactive License:** Rep. Warren Peterson sponsored this bill that will allow an inactive licensee, in good standings, to cancel their real estate license.

The Department worked with Central Arizona Home Builders to add an amendment to HB2525 that addresses a person or entity wishing to market lots for sale or lease in an existing subdivision. The bill would extend the timeframe for an existing public report from two to five years. HB 2525 was signed by the Governor on April 5th, 2013.

- **HB2404 – Property Management Storage Retention:** Introduced by Rep. Heather Carter, the bill would have addressed property management and off-site storage of records.

Legislative Liaison Dettorre commented that the department worked with AMA to develop Substantive Policy Statement 2013.01 Multifamily Housing Records Retention which clarifies the statute guiding the department's policy on designating off-site storage location, thus allowing the bill to not be necessary. (See attachment).

- **HB2622 – Penalty for Cease & Desist and Unlicensed Activity:** Introduced by Rep. Lydia Hernandez and would have made an individual subject to civil penalty on cease & desist orders and unlicensed activity. The bill was an attempt to put a penalty in statute. The bill did not proceed past introduction.

Legislative Liaison Dettorre commented that, a bill the department is tracking is HB 2371 HOA omnibus bill that covers an array of HOA subjects; ADRE is tracking the bill and is neutral.

VII. Real Estate Services Update

Assistant Commissioner – Real Estate Services, Mike Wheeler presented an update on division services:

Mr. Wheeler reported that he has been working on the development of a Broker Audit Survey. The survey, which is being received by Designated Brokers and Self Employed Brokers at their email address, through Survey Monkey, will provide ADRE with a compiled aggregated database that will allow the Department to better serve licensees, better protect the public and focus its limited resources in the most critical areas. He reported that 1200 responded on the first day. Paper surveys were mailed to those who were not able to receive the survey via email.

- **Licensing** – The department is about to release the Original Online Licensing Application. Assistant Commissioner Wheeler also announced that Licensing Manager, Diane Paulsen would be retiring from State Service on Friday, April 26, 2013. Diane has worked with ADRE for 34 years. Carla Randolph, ADRE's Education Manager, will assume the role of Interim Licensing Manager while maintaining her duties as Education Manager.
- **Investigations** – Mr. Wheeler reported that the department is continuing to see violations in property management
- **Enforcement and Compliance** – Assistant Commissioner Wheeler commented that ADRE issued a Cease and Desist earlier in the week to a property management company. A \$270,000 deficiency was found in the Trust Account.

After a brief discussion, Assistant Commissioner Wheeler re-iterated the importance of turning detailed complaints into ADRE so that matters can be investigated.

Member Dickens inquired as to whether violations of property management are found through audits versus consumer complaints. Mr. Wheeler commented that the Auditors and Investigators are seeing some in Electronic Broker Audit Declarations. At the current time, most violations are being found during the Audit, however violations are also found through investigations when a complaint is turned in. Commissioner Lowe commented that, in their performance measures, each

Auditor has committed to doing a minimum of 12 Audits per month (this includes a combination of on-line and on-site Audits).

Commissioner Lowe reported auditing statistics for Jan 2012-Jan 2013:

- 115 Total Audits
- 25 Pending completion of Audit
- 7 Referred to Enforcement and Compliance
- 44 Closed in Substantive Compliance
- 32 Cease and Desist - 17 Property Management and 16 Unlicensed Activity
- \$3.4 million -Trust Account Deficiencies
- \$39,000 - Civil Penalties deposited to the State's General Fund.

Commissioner Lowe also commented that ADRE's Quarterly Bulletin would be coming out shortly and that it would list an Audit 'Honor Roll' of those found in compliance on their ADRE Audit.

A question was posed as to how the department issues a cease and desist on unlicensed activity if there is no authority over the individual(s). Mr. Wheeler responded that by law the department can administratively issue a cease and desist but it's difficult to get a prosecutor to pursue it as a civil violation. Vice Chair Bowen suggested Advisory Board members reach out to each constituent's county and city officials to see if they are willing to create a partnership with the department to address issues, to include unlicensed activity.

Assistant Commissioner Wheeler also noted that ADRE is in the process of updating agency policy and procedure manuals.

VIII. Follow up – Property Management item from December 4, 2012 Advisory Board meeting

To date, Members Horn, Clifton and Bowen have spoken, but due to the need for some clarification of the group charge and how logistics could be handled, nothing has been moved forward. Members Clifton and Horn requested further clarification on the item. Commissioner Lowe read the minutes from the December, 2012 meeting that summarized what was previously discussed and also referred to the Property Management Task Force...

The group charge as discussed previously was as follows: A group of RE Advisory Board members, to include a financial bonding professional, would explore property management financial mechanisms.

Member Horn commented that Rep. Fann offered the idea of working with ADRE Stakeholders this summer to develop solutions for concerns around the sustainability of the Recovery Fund (due to property management related claims). Member Horn will facilitate this group, providing a future report to the Real Estate Advisory Board.

Member Clifton motioned to create a taskforce to gather information in advance of a summer meeting; the motion was seconded by Member Dickens. Commissioner Lowe inquired about the charge of the stakeholder group. Discussion ensued regarding the financial aspects of bonding and property management and Member Clifton amended the motion to the following:

Amended motion:

Real Estate Advisory Board members Horn and Clifton will form a group of ADRE stakeholders to discuss the financial guarantee aspects of Property Management as it impacts the industry, and provide a report at the June 12, 2013 Real Estate Advisory Board meeting. The motion passed unanimously.

IX. Commissioner's Report

a) **Budget** - Commissioner Lowe reported that the legislature has not yet taken a vote on the Budget. The Governor's office is recommending an appropriation of \$2.9 million for ADRE for the upcoming FY2014.

Division Report - Commissioner Lowe reported the number of licensees that are leaving real estate at approximately 700 per month; however the Department is seeing an average of 400 new applicants per month.

Within the Education Division, as of March, 2013: 203 Active Status Schools, 3044 Active Status Courses and 1083 Instructors with 697 licensing exams administered.

Commissioner Lowe also commented that the Department will be developing new brochures. One will be 'How to Navigate www.azre.gov'; the other will be related to property management.

Member Bowen inquired when the Department would issue an updated law book. Commissioner Lowe commented that it would be the third quarter; after the legislative session ends, however there is an updated version online through www.azre.gov.

Commissioner Lowe reviewed the Recovery fund balance and the disbursements as of March 30, 2013. She also briefly reviewed the Recovery Fund process.

X. Other Matters

Member Dickens inquired about the status of creating a report for PC/PLLC independent agents. Commissioner Lowe responded she has forwarded the inquiry to the Licensing Manager to review and will follow up with her.

XI. Call to the Public

Courtney Gilstrap LeVinus, lobbyist for Arizona Multi-Housing Association, commented that she would be interested in being part of the Property Management Stakeholder Group.

Scott Drucker, general counsel for Arizona Association of Realtors had two questions around the Broker Audit Survey:

- He inquired about the use of the word “mandatory” on initial emails and the course of disciplinary actions if it’s not returned. Commissioner Lowe responded there has been conversation with the Attorney General’s office and the Governor’s office. The survey is required, however, it has been suggested to not use the word ‘Mandatory’; any disciplinary action has not been defined.
- Mr. Drucker inquired about the level of confidentiality of the survey and what information would be provided if there is a public records request on an individual broker/entity. Commissioner Lowe responded the third party source, Survey Monkey, does not download into the department’s database. Mr. Wheeler added that when information is requested through a public records request, the ADRE has the authority to redact information.

Courtney Levinus requested a copy of a letter from the Attorney General’s office to ADRE regarding the survey which the Commissioner referenced in the meeting.

Commissioner Lowe commented that the Governor’s office was supportive of the survey.

Mr. Drucker further added that there were concerns from the industry that the survey would trigger an audit.

Commissioner Lowe commented that the purpose of the survey is to gather baseline database information. The Department’s IT does not allow for compiling of information from the Broker Audit Declaration done at the time of renewal; therefore, when the Department is working with Stakeholder groups or receives inquiries from the industry and the public, we sometimes cannot answer the question because we are not able to compile the data. This survey will allow ADRE to compile an aggregate baseline database that will help the Department to better serve the real estate licensee and protect the public. It will also allow the Department to create the BMC education requirement for Delegated Associate Brokers in the on-line renewal system.

Real Estate Advisory Board Member Clifton commented on an example from the Property Management Stakeholder Taskforce last fall where questions could not be answered because ADRE did not have the data. She continued that this survey will provide information to help this and other task force groups to more effectively meet their charge and will help the Department in focusing its limited resources to best serve the industry and protect the public.

**XII. Next Real Estate Advisory Board Meeting:
June 12, 2013**

XIII. Adjournment

At 12:20pm Chair Bowles made a motion to adjourn the meeting. The motion was seconded by Member Gray and passed unanimously.

Respectfully submitted this 27 day of June, 2013
Real Estate Advisory Board



Kim Horn, Chair