

Arizona Department of Real Estate (ADRE)
Real Estate Advisory Board
Special Meeting
Minutes
August 21, 2013

The Real Estate Advisory Board met on Wednesday, August 21, 2013 at the Arizona Department of Real Estate (ADRE), 2910 N 44th Street, 3rd Floor Conference Room, Phoenix, Arizona.

I. Call to Order

Chair Kim Horn called the meeting to order at 9:00 a.m.

Members present

Kim Horn, Chair
Kimberly Clifton, Vice Chair
Carla Bowen, Member
Frank Dickens, Member
Bill Gray, Member
Scott Peterson, Member
Jo Ann Sabbagh, Member
Dennis Wilenchik, Member

Absent

Charlie Bowles. Since he could not attend the meeting, Mr. Bowles provided the attached letter noting his thoughts on the topic.

ADRE Representatives present

Judy Lowe, Commissioner
Mike Wheeler, Assistant Commissioner – Real Estate Services
Sarah Dobbins, Chief of Staff
Louis Dettorre, Legislative Liaison
Robin King, Auditing & Investigations Manager
Carla Randolph, ADRE Education Manager and Interim Licensing Manager

Attorney General's Office Representative

Shelby Cuevas

II. Introductions & Welcome

Chair Horn welcomed members and guests to the meeting. She gave special recognition to Secretary of State, Ken Bennett, who was in attendance for a portion of the meeting. Due to the large number of guests in attendance, Chair Horn asked Advisory Board Members to go around the table and introduce themselves.

III. Special Meeting Guidelines and Purpose

Chair Horn reviewed the purpose of the Advisory Board – The board shall provide the Commissioner with such recommendations as it deems necessary and beneficial to the best interest of the public (A.R.S. 32-2104(E)).

She then explained the purpose of the Special Real Estate Advisory Board meeting was information gathering and read aloud the motion that brought about the meeting. The motion was to convene a special advisory board meeting to review Property Management financial aspects of bonding and financial guarantee, and to also have a discussion of the collaborative opportunities for the exchange of knowledge between auditors and property managers and a discussion regarding timeframes.

IV. Overview of Arizona Property Management

Commissioner Lowe provided an overview of Property Management. She noted a recent article from the Phoenix Business Journal that provided statistics regarding rental properties in Maricopa County in 2006 versus now. The example cited that in 2006, there were approximately 127,000 rental properties in Maricopa County; now there are 225,000+. She commented that, due to the changes in the market, there are now many licensees doing property management, who in the past may have only done residential sales. She also commented that one of the keys to property management is managing the trust account and accounting. Commissioner Lowe also cited a recent article she wrote for the August 2013 ADRE Bulletin “Tsunami of Property Management” and shared how those interested can go to the website to find the bulletin and the article. The Commissioner also provided statistics from the recent Voluntary Broker Audit Survey. Of the 73% who responded, 1,167 reported that they or their company conduct residential property management and 620 reported that they worked with commercial property management. She also noted that the survey indicated an average of approximately \$87,711 flowing through the typical trust account monthly and that 56% of the residential property managers indicated that they carried E&O.

Robin King, ADRE Investigations and Auditing Manager provided an overview of the Auditing process at ADRE. She reviewed ARS 32-2108(A), which states that the Commissioner shall investigate written complaints, and may initiate an investigation into the licensed actions and operations of a business or person involved in real estate. She reviewed the various types of audits (Broker Audit Declaration, Electronic Broker Audit Review (EBAR) and Onsite Broker Audit) as well as what triggers an audit. She commented that the Auditing Manager randomly selects Property Management Brokers for EBAR’s or Onsite Audits and that the Auditing Manager may initiate a directed EBAR or Onsite Audit based on complaints received. She also reviewed items that ADRE Auditors look for when on an Audit. Some of the

items are: whether or not trust monies are being maintained on deposit in the trust accounts; are unlicensed persons conducting licensed activity; were actions committed intentionally; do actions indicate a pattern of non-compliance and is there a risk to the public. She also reviewed several scenarios when a license is 'not' required.

With regard to the Broker Audit Declaration (BAD), Ms. King noted that when a Broker completes a BAD, they are attesting that all the information they've provided is true and accurate.

Dan Jones, ADRE Auditor, provided a brief verbal report on the common findings in recent Audits. Some of the common findings he mentioned were failure to reconcile bank accounts and trust account balances; issues with identification of bank accounts as trust accounts (accounts should be clearly identified as to their purpose, dedicated trust accounts should be clearly identifiable as a trust account), off-site storage not being noted to the Department and delays in receiving records.

Auditing and Investigations Manager King closed by commenting that Brokers are encouraged to be active participants in their Audit.

Denise Holliday, P.C., Holliday & Holliday, P.C. provided a verbal report on what the legal field is seeing. Ms. Holliday provides education to attorneys, judges and realtors. A recent course she has been working with is called 'The Accidental Property Manager'. The course covers situations in which licensees or other professionals may find themselves performing real estate activity/ property management and not realizing that this is what they are doing and the statutes and rules that govern such activity. She commented that Brokers typically do not attend the course. She suggested there is a need for more property management education.

V. Property Management Education

Carla Randolph, ADRE Education Manager and Interim Licensing Manager provided a report on the courses that are currently being offered. She noted that while the pre-licensing course touches on property management, there is no requirement about education for property management for pre-licensing. She reported there are currently 64 courses with the title Property Management. There are 3,500 total courses currently approved by ADRE. There are currently 5 Broker Management Clinic courses that list Property Management as a specialty course.

Sue Flucke, Keller Williams Professional Partners, provided a report on what real estate educators are seeing. Ms. Flucke is also the current President of AAR and she teaches a Property Management Boot Camp. She commented that one of the most common things she hears from students is that "they didn't know what a trust account was or how to reconcile a ledger, etc,".

VI. Call to the Public

Chair Horn opened the discussion with a 'call to the public'.

Comments from the public included the following:

- Specialized education is key
- A checklist or questionnaire with the Broker Audit Declaration would be helpful
- Education should focus on single family home management

Chair Horn closed 'call to the public' and opened up the Advisory Board Discussion.

Board Discussion

Member Dickens suggested that courses be reviewed and a determination be made as to what could be moved from the 'general' category to 'Commissioner's Standards'.

There was also a suggestion to add Accounting courses to a category other than 'General'.

Commissioner Lowe explained that Statute and Rule determines the continuing education categories/ topics that are allowed. Therefore, this type of change may require legislation or rule modification.

Member Gray provided the Board members with a handout. He suggested that, if the trust account is where the problem lies, a solution to explore might be to work with title companies to put trust account dollars into escrow with the title company; the Broker could keep a maintenance account; each month the Broker would receive an accounting report from the title company. He suggested that this idea would not apply to anything over a 4plex, commercial or industrial property or multi-family. After discussion, it was determined that this idea should be placed on a future meeting agenda.

VII. Broker Audit Timeline

Assistant Commissioner Regulatory Affairs, Mike Wheeler, provided a verbal report on Audit timelines. He commented that the typical Audit takes 60-90 days. He mentioned that when a discrepancy is found, ADRE invites the Broker in for a meeting.

VIII. Call to the Public

Chair Horn opened the discussion with a call to the public.

Comments from the public included the following:

- If the issues are mainly around the Trust Accounts, addressing this area should be the focus
- There was an inquiry as to what types of questions might be asked on an Audit

- There was discussion on why Audits can vary in length of time

Board Discussion

Member Sabbagh asked how ADRE can handle someone who may not be responding to an Audit or has a deficiency in the Trust Account. Assistant Commissioner Wheeler explained that, by statute, ADRE does not have the authority to seize a trust fund. Since the purpose of an audit is to insure compliance, one of the goals is to stop some of the shortfalls before they occur.

Member Wilenchik suggested that the board explore how ADRE could address a licensee who is not responding to an Audit who may be violating the law. This topic will be placed on a future meeting agenda.

Member Dickens inquired how the Department facilitates out of town Brokers. He also requested statistics as to how many audits are conducted where Brokers who do not live in Maricopa County must travel to Phoenix for a meeting at the Department. Chair Horn mentioned this item would be on a future meeting agenda.

IX. Property Management Financial Guarantee Options

Louis Dettorre, ADRE's Legislative Liaison and Recovery Fund Administrator, commented that the recovery fund is capped in statute at \$600,000. The current balance of the fund is approximately \$516,000. He noted that, while this is encouraging, there is a concern that with trust account issues, the liability to the recovery fund may increase. In FY13, there were 14 applications to the recovery fund and payouts were approximately \$89,166.

Lisa Robinson of Pinnacle Ins. Consultants spoke on errors and omission (E&O) policies in a real estate transaction. She discussed what is covered as well as misconceptions about E&O coverage. It does not cover every activity a licensee may do. It covers mistakes in professional services rendered. E&O does not cover 'intentional acts' She noted that policies vary by carrier.

Martin Uhlhorn with Strong Tower Insurance and Christine Cornelius with RLI Surety Branch spoke on bonding. Ms. Cornelius commented on the various types of bonds. She noted, with property management, if the issue is stolen monies, then crime coverage would need to come into play, but it would not cover the principle.

Ms. Cornelius also commented that the availability and expense of a bond depends on regulation and what the bond covers.

Member Dickens inquired, if a Broker has \$100,000 in their trust account, what would the monthly cost of a bond be? Ms. Cornelius commented that it would depend on the brokerage financial profile, but the cost would be roughly 2-5%.

She also noted that right now, since a Bond is not required by statute, her company might not issue it. She provided samples of what other states have in legislation with regards to bonds.

X. Call to the Public

Chair Horn opened the discussion for 'call to the public'.

Comments from the public included:

- An attendee who is licensed in Arizona and several other states commented that all the other States she is licensed in require some type of insurance or bond.
- An attendee who is an Arizona licensee commented that his coverage costs him roughly \$200/year. He strongly indicated that ADRE must be able to identify who is conducting property management in Arizona.
- There was an inquiry as to, if 100% of the Recovery Fund were paid out, what would the liability be? Chair Horn asked Mr. Dettorre to provide figures at the October Advisory Board meeting.

Board Discussion

Chair Horn closed public comment and opened the floor for Advisory Board member discussion.

Member Bowen commented on the concern around salespersons who are conducting property management without their Broker being aware.

Member Gray requested that the topic of education be placed on the October, 2013 Advisory Board Agenda. He would like to discuss what can be specified for education related to insurance coverage.

Member Peterson echoed the concern that the Department should be able to know who is conducting property management, and that education was very important.

Chair Horn commented that these issues would be discussed at the October, 2013 Advisory Board meeting.

XI. Adjournment

Chair Horn adjourned the meeting at 11:30am.

Respectfully submitted this 9 day of October, 2013
Real Estate Advisory Board



Kim Horn, Chair